



The Independence of Judiciary in Imposing Criminal Sanctions on Law Enforcement Officials in the Context of Juvenile Criminal Justice

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Abstract

The state is trying to improve the juvenile criminal justice system in Indonesia. Departing from changing the retributive or retaliatory paradigm to a restorative justice paradigm. Fulfillment of rights is also an obligation of the state in accordance with the international instruments Beijing Rules Juvenile and the Convention on the Rights of the Child. The state guarantees the implementation of a better criminal justice system by carrying out, one of them, the criminalization of law enforcement officers within the scope of juvenile criminal justice. The criminalization process has a juridical impact. Criminalization of law enforcement officers within the scope of juvenile criminal justice results in judicial independence. This criminalization interferes with judicial power. This research is descriptive analytical with normative juridical research methods. The type and source of data in the form of primary data was obtained by literature study. The analysis method used was the qualitative analysis method. Judicial independence occurs because legislative institutions do not comply with the concept of the Rule of Law, namely mutual respect and understanding of the powers of each institution. The disharmony between the SPPA Law and the 1945 Constitution of the Republic of Indonesia regarding judicial power resulted in law enforcement officials submitting a request for a judicial review to the Supreme Court, which was then granted. The results of the decision are stated in the Constitutional Court Decision Number 110/PUU-X/2012. The decision states that Article 96, Article 100, Article 101 of the SPPA Law is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force.

Keywords: *Children in Conflict with the Law; Law Enforcement Officers; Criminalization*

Introduction

The objectives of the Indonesian state are articulated in the preamble of the 1945 Constitution, which states that one of the goals and ideals of the Indonesian nation is to promote the welfare of its

people. This reflects the concept of social welfare.¹ Additionally, it aims to fulfill the nation's aspiration to educate the Indonesian youth in preparation for future national development. Children, being the future of the nation, must be protected and nurtured to ensure the formation of capable individuals who will lead development and governance in the future.²

During their growth and development phases, children require special treatment as they undergo numerous changes.³ Their living environment significantly influences their behavioral patterns as they mature. Juvenile delinquency often arises from unmet basic human needs. The basic needs of children and adolescents during their transition to adulthood include physical requirements such as growth and development, as well as psychological needs, including safety, love, and self-esteem. When these fundamental needs are not met, feelings of disappointment may arise, leading children to seek outlets outside their family environments. This can increase the risk of juvenile delinquency and even criminal behavior.⁴ Therefore, every child requires protection and assistance from adults to foster their social and motor skills, as children are still psychologically immature and belong to a vulnerable group. Without such support, children may struggle to achieve normal developmental stages.⁵

Children are a divine gift and the most precious blessing from God to every human being. On the other hand, children represent potential for realizing aspirations and determining the future direction of the nation.⁶ In connection with unlawful acts committed by children in conflict with the law (hereinafter referred to as ABH), the state requires a set of specific regulations to address these issues. The proposed solutions aim to resolve concerns related to the future interests of children while upholding law and justice.⁷ Therefore, the state has established national instruments to protect and address crimes committed by ABH. The state regulates the handling of child crime cases through Law Number 11 of 2012 concerning the Child Criminal Justice System (hereinafter referred to as UU SPPA). The SPPA Law outlines principles, rights of the child, procedural processes, and criminalization of law enforcement officials (hereinafter referred to as APH) who fail to fulfill their duties as stipulated in the SPPA Law.

The Indonesian criminal justice system adheres to the principle of divine justice aimed at upholding justice for society based on Pancasila.⁸ A. Hamzah states that the criminal procedural process should be impartial, as judges perform their duties and functions, embodying the law without providing differential treatment in handling cases.⁹ Barda Nawawi Arief notes that law enforcement can be realized when judicial power exists to uphold law and justice, ultimately contributing to the establishment of a rule of law.¹⁰

From this perspective, it is understood that judicial power is independent, aiming to achieve justice. However, the criminalization of APH within the realm of juvenile justice is viewed as inconsistent with the principles of judicial power. Article 1 of the 1945 Constitution states that Indonesia is a state governed by law. A state governed by law implies that such a nation must clearly regulate the principles of the Rule of Law, which includes fundamental protections for citizens, the supremacy of law, separation

¹ arda Arief Nawawi, *Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru)* (Jakarta: Prenadamedia Group, 2008)

² Nashriana, *Perlindungan Hukum Pidana Bagi Anak Di Indonesia* (Jakarta: PT Raja Grafindo Persada, 2011).

³ Wagiaty Soetedjo, *Hukum Pidana Anak* (Bandung: PT Refika Aditama, 2013).

⁴ Rosleny Marliani, *Psikologi Perkembangan Anak Dan Remaja* (Bandung: Pustaka Setia, 2021).

⁵ Alycia Sandra, "Analisis Perlindungan Hukum Terhadap Tindak Pidana Kekerasan Pada Anak Di Indonesia," *Ajudikasi: Jurnal Ilmu Hukum* 3, no. 1 (2019): 43.

⁶ Hasuri, "Restorative Justice Bagi Anak Pelaku Tindak Pidana Pembunuhan Dalam Perspektif Pidana Islam," *Ajudikasi: Jurnal Ilmu Hukum* 2, no. 1 (2018): 55.

⁷ *Ibid.*

⁸ Tri Utama Rico Yodi, "Independensi Dan Urgensi Restrukturisasi Sistem Peradilan Pidana Indonesia Berdasarkan Aspek Kekuasaan Kehakiman," *Ajudikasi: Jurnal Ilmu Hukum* 5, no. 1 (2021): 54.

⁹ *Ibid.*

¹⁰ *Ibid.*

of powers, checks and balances, and limitations on government authority to prevent abuse.¹¹ The Constitutional Court in Indonesia functions to oversee the balance among state institutions, known as checks and balances.¹² Based on the principle of Indonesia as a rule-of-law state, all citizens and governmental institutions must adhere to the law grounded in justice as enshrined in the 1945 Constitution of the Republic of Indonesia.¹³

Regarding the criminal sanctions imposed on APH in the SPPA Law, these are inconsistent with Article 24, paragraph (1) of the 1945 Constitution. This article explains that judicial power is independent in administering justice and upholding law.¹⁴ The imposition of criminal sanctions on APH in the UU SPPA contradicts the independence of the judiciary. The SPPA Law does not comply with the principles of Indonesia as a rule-of-law state, as it clearly stipulates criminal sanctions against APH in the juvenile justice system, disrupting the independence of judicial power. The imposition of criminal penalties on APH has legal implications.

The emergence of issues regarding the independence of the judiciary between the SPPA Law and the independence of judicial power as established in Article 24 of the 1945 Constitution has prompted APH, represented by the chairman Dr. H. Mohammad Saleh, S.H., M.H., as the chairperson of the Indonesian Judges Association, to request a Judicial Review of Articles 96, 100, and 101 of the UU SPPA from the Constitutional Court. The Constitutional Court judges determined that the articles imposing criminal penalties on APH within juvenile justice do not provide a constitutional framework concerning the independence of the judiciary and the special independence of juvenile judges, public prosecutors, and child investigators.¹⁵

Moreover, the criminal sanctions imposed on APH in juvenile justice also violate Article 28D, paragraph (1) of the 1945 Constitution, which states that all individuals are equal before the law. The penalties for APH are discriminatory because only APH in juvenile justice can face criminal charges, whereas APH in general courts outside juvenile justice do not face such penalties. Based on the judges' considerations in the Constitutional Court, the Court granted the applicants' request entirely through Constitutional Court Decision Number 110/PUU-X/2012.

A state that upholds the best interests of children in conflict with the law faces challenges to the independence of the judiciary that may disrupt the judicial process. This research is crucial to understand the legal impact of criminal sanctions imposed on law enforcement officials within the juvenile criminal justice system. Additionally, it pertains to the principle of legal certainty, which intersects with the state's guarantee to protect children during judicial processes and the legal certainty afforded to law enforcement officials and regulations concerning juvenile justice.

¹¹ Munir Fuady, *Teori Negara Hukum Modern (Rechtstaat)* (Bandung: Refika Aditama, 2011).

¹² Widati Wulandari, "Putusan Mahkamah Konstitusi: Dampaknya Terhadap Perubahan Undang – Unang Dan Penegakan Hukum Pidana," *Jurnal Konstitusi* 18, no. 3 (2021): 481.

¹³ *Ibid*

¹⁴ Muh Ridha Hakim, "Tafsir Independensi Kekuasaan Kehakiman Dalam Putusan Mahkamah Konstitusi," *Jurnal Hukum Dan Peradilan* 7, no. 2 (2019): 279–96

¹⁵ Asep Nursobah, "MK Kabulkan Pengujian UU SPPA Oleh PP IKAHI," *Kepaniteraan Mahkamah Agung*, 2013, <https://kepaniteraan.mahkamahagung.go.id/registry-news/613-mk-kabulkan-permohonan-pengujian-uu-sppa-oleh-pp-ikahi>.

Research Method

The method of normative juridical approach is the research method employed in this study. The normative juridical approach is also referred to as library research, focusing on secondary data (primary legal materials including fundamental norms, Pancasila, and legislation).¹⁶

The research method utilized is a doctrinal approach to law. This approach focuses on the conceptualization of law as a set of systematically arranged regulations. The regulations to be discussed or analyzed are characterized by harmonization or synchronization both vertically and horizontally.¹⁷ Based on this approach, a study covering all principles, doctrines, values, and norms within a regulation must be integral, consistent, and harmonious. If this does not occur, then the legislation has manifested inconsistencies. The existence of inconsistencies in legislation has legal implications, meaning it may lack binding legal force.¹⁸

Discussion

1.State Efforts in Ensuring the Implementation of the Juvenile Criminal Justice System

a.Development of Child Protection Instruments

Indonesia guarantees the survival of children through the 1945 Constitution of the Republic of Indonesia, specifically in Article 28B, paragraph (2), which states that the state is obliged to ensure the survival, growth, and development of children and to protect them from discrimination and violence. Additionally, Indonesia is a member of the international agreement known as the Convention on the Rights of the Child (1989), which was ratified by Indonesia through Presidential Decree No. 36 of 1990 on August 25, 1990, regarding the ratification of the Convention on the Rights of the Child. As a member state, Indonesia is obligated to fulfill the mandates outlined in this convention. To realize the implementation of the convention's contents, Indonesia has established specific laws for children, including Law No. 3 of 1997 concerning Juvenile Courts and Law No. 23 of 2002 concerning Child Protection.

Based on the Convention on the Rights of the Child, Indonesia subsequently formulated the Child Law, specifically Law No. 3 of 1997 concerning Juvenile Courts (hereinafter referred to as the Juvenile Court Law). This law was enacted with the aim of protecting and caring for children in conflict with the law. However, the Juvenile Court Law has been deemed inadequate in addressing issues related to criminal cases, as it does not align with the principles outlined in the United Nations Convention on the Rights of the Child (1989), which includes fundamental principles of child protection: non-discrimination, the best interests of the child, the survival and development of the child, and respecting the child's participation. The convention also stipulates principles for the special protection of children.¹⁹ Imprisonment of children has psychological impacts, as there is a possibility of interaction between juvenile offenders and adult prisoners, even when separated by blocks. Such interactions pose a risk of knowledge transfer to juvenile offenders and could potentially lead to further criminal behavior.²⁰ This scenario could have detrimental effects, resulting in negative behavior when they are reintegrated into

¹⁶ Roemy Hajanto, *Metodologi Penelitian Hukum Dan Jurimetri* (Jakarta: Ghalia Indonesia, 1988).

¹⁷ Suteki, *Metodologi Penelitian Hukum (Filsafa, Teori, Dan Praktik)* (Semarang: Rajawali Pers, 2017).

¹⁸ *Ibid*

¹⁹ Dea Noor Fajriah, "Implementasi Restorative Justice Terhadap Anak Yang Berkonflik Dengan Hukum Pada Tindak Pidana Pencurian (Studi Di Kepolisian Resor Kabupaten Pekalongan)" (Diponegoro University, 2023).

²⁰ Giselle Suhendra, "Pemerintah Menjatuhkan Pidana Penjara Bagi Anak: Tepat Atau Tidak?," Lembaga Bantuan Hukum Pengayoman, 2023, <https://lbhpengayoman.unpar.ac.id/Pemerintah-Menjatuhkan-Pidana-Penjara-Bagi-Anak-Tepat-Atau-Tidak/>.

society.²¹ Concerns arise because children at this developmental stage are learning from their surrounding environment. Therefore, to mitigate these concerns, children require supervision, guidance, and support to foster their physical, mental, psychological, and spiritual development optimally.²² Additionally, incarceration poses risks of violence against juvenile offenders.²³

Further provisions are detailed in the Minimum Standard Rules for the Administration of Juvenile Justice, adopted by General Assembly Resolution 40/30 (Beijing Rules). The main principle of the Beijing Rules is to avoid the criminalization of juvenile offenders whenever possible. Criminal sanctions against juvenile offenders are considered a last resort (*ultimum remedium*) because imposing penalties on them often results in negative consequences, such as stigma, child violence, and knowledge transfer.²⁴ Beyond the social implications, imposing penalties on juvenile offenders does not necessarily reduce crime rates in society.

The Indonesian state, in its efforts to protect all citizens, is obliged to provide legal protection for children as outlined in Article 28B, paragraph (2) of the Constitution of the Republic of Indonesia, which states that the state is obliged to ensure the survival, growth, and development of children and to protect them from discrimination and violence. In relation to the challenges faced within the juvenile criminal justice system, the government has sought to enhance the juvenile justice system by adopting a new approach, namely Restorative Justice, through Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. Restorative Justice represents an evolution in resolving criminal cases outside the court system, involving all parties engaged in the case, including the perpetrator, the victim harmed by the perpetrator, community leaders, and relevant officials as mediators in facilitating Restorative Justice between the perpetrator and the victim.²⁵ This approach provides opportunities for the parties involved, especially the perpetrator and the victim, to engage in the resolution of the case.²⁶

b. Paradigm Shift from Retributive to Restorative Justice

Prior to the enactment of the Juvenile Criminal Justice System Law, the juvenile criminal justice process was conducted based on the Juvenile Court Law. This process was not grounded in the principles outlined in the Convention on the Rights of the Child and the Minimum Standards (Beijing Rules). Numerous issues arising from the implementation of the Juvenile Court Law have led to the perception that it is no longer relevant to contemporary developments and does not deliver justice for children.²⁷ Various evaluations of the implementation of the Juvenile Court Law in handling criminal cases involving children have identified problems, including wrongful arrests, torture of children, the denial of children's rights during their sentences, and the lack of rehabilitation following their sentences. In light of these evaluations, the state needs to improve the juvenile criminal justice system by reforming the fundamental ideas or concepts in the new law to employ a restorative justice approach.²⁸ The emphasis in the new law focuses on addressing criminal offenses committed by children without neglecting the

²¹ Yoris Faqurais, "Efek Buruk Hukuman Penjara Pada Anak (Studi Kasus Di Lembaga Pemasyarakatan Khusus Anak Kelas Ii Bandar Lampung)," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 2 (2021): 216.

²² Soetedjo, *Hukum Pidana Anak*.

²³ Faqurais, "Efek Buruk Hukuman Penjara Pada Anak (Studi Kasus Di Lembaga Pemasyarakatan Khusus Anak Kelas Ii Bandar Lampung)."

²⁴ Suhendra, "Pemerintah Menjatuhkan Pidana Penjara Bagi Anak: Tepat Atau Tidak?"

²⁵ Sumadi, "Restorative Justice Untuk Anak, Apakah Menjadi Solusi? Sumadi (Pembimbing Kemasyarakatan Muda Di Balai Pemasyarakatan Kelas I Tangerang)," *Direktoral Jendral Pemasyarakatan Kementerian Hukum dan HAM Republik Indonesia*, 2023, <https://www.ditjenpas.go.id/Restorative-Justice-Untuk-Anak-Apakah-Menjadi-Solusi>.

²⁶ Fajriah, "Implementasi Restorative Justice Terhadap Anak Yang Berkonflik Dengan Hukum Pada Tindak Pidana Pencurian (Studi Di Kepolisian Resor Kabupaten Pekalongan)."

²⁷ J Armawan, "Sistem Peradilan Pidana Anak," *Jdih Mahkamah Agung*, 2019, https://www.academia.edu/104673175/SISTEM_PERADILAN_PIDANA_ANAK.

²⁸ *Ibid*

principles established in the Convention on the Rights of the Child. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, effective from July 30, 2014, introduces a new paradigm namely, the restorative justice paradigm. This paradigm is expected to provide justice for children who come into conflict with the law. The resolution of criminal acts committed by juvenile offenders through the restorative justice approach occurs during the diversion stage.

Diversion mandates all law enforcement agencies within the juvenile justice system to seek diversion for juvenile offenders under certain conditions. Diversion serves as a method of resolving criminal cases involving juvenile offenders by redirecting them from the criminal justice process to an alternative process based on restorative justice.²⁹ Restorative justice aims to restore the situation to its original state by involving the parties in the dispute in this resolution process. The fundamental idea behind the Juvenile Criminal Justice System Law aims to keep children from being criminalized. This avoidance of criminalization for juvenile offenders also represents the government's effort in preparing for national development in the future.

Besides emphasizing the avoidance of criminalization for juvenile offenders, the government seeks to address the issues of prison overcrowding and to reduce the workload of law enforcement, prosecutors, courts, probation offices, and correctional facilities.³⁰

The juvenile criminal justice process based on the Juvenile Court Law functioned as a preventive measure aimed at preventing or addressing future crimes and served a repressive role to deter juvenile offenders and instill fear in society. In contrast, the juvenile criminal justice process based on the Juvenile Criminal Justice System Law functions as a preventive measure through non-penal means, namely through diversion. The diversion process can keep juvenile offenders from incarceration, thereby reducing the number of juvenile offenders in prison, and it is hoped that they can be rehabilitated and reintegrated into society by community mentors.

c. State Guarantees for the Implementation of the Juvenile Criminal Justice System

The state guarantees the implementation of the juvenile criminal justice system based on the Juvenile Criminal Justice System Law by imposing penalties or criminalization against law enforcement agencies that fail to fulfill their obligations or violate several regulations outlined in the Juvenile Criminal Justice System Law. This measure aims to prevent law enforcement agencies from abusing their authority in handling juvenile criminal cases.

Prior to the enactment of the Juvenile Criminal Justice System Law, several issues arose in juvenile criminal proceedings, including minor offenses that proceeded to court. An example of this occurred in November 2010 involving AAL, a student from SMK 3 Palu, who was accused of stealing sandals without the owner's permission, namely Briptu Ahmad Rusdi Harahap, a member of the Central Sulawesi Police Mobile Brigade.³¹ AAL, a 15-year-old student, was convicted by the Palu District Court judge for committing theft. It was alleged that law enforcement officials tortured AAL during interrogation, using bare hands and blunt objects. After the investigation was completed, the case was referred to the prosecutor's office, where AAL was charged under Article 362 of the Criminal Code with a maximum penalty of five years in prison. The case of sandal theft reported by the police mobilized a

²⁹ *Ibid*

³⁰ Nurul Hani Pratiwi, "Kondisi Lembaga Pemasarakatan Di Indonesia Pasca Ditetapkannya UU Nomor 22 Tahun 2022 Tentang Pemasarakatan," Sekretariat Kabinet Republik Indonesia, 2024, <https://setkab.go.id/kondisi-lembaga-pemasyarakatan-di-indonesia-pasca-ditetapkannya-uu-nomor-22-tahun-2022-tentang-pemasyarakatan/>.

³¹ BBC News Indonesia, "AAL Dinyatakan Bersalah Mencuri Sandal Polisi," BBC News Indonesia, 2012, https://www.bbc.com/indonesia/berita_indonesia/2012/01/120104_vonis_aal.

nationwide solidarity movement, leading to the collection of 1,000 pairs of sandals as a moral gesture by the public concerned about the criminalization of children.

The judge found AAL guilty but ordered his return to his parents. Although the judge did not impose a prison sentence on AAL, this ruling underscores that the juvenile criminal justice system at that time was far from achieving justice for juvenile offenders. The case involving AAL raises concerns about the potential negative impact on the child's social life, including stigma and psychological effects. There is apprehension that this may worsen the child's situation in the future, increasing the risk of more serious criminal behavior. Furthermore, the juvenile justice process that does not adhere to the principle of the best interests of the child deprives the child of their freedom and their rights to grow, play, and learn.

To protect and fulfill children's rights as outlined in the Convention on the Rights of the Child (CRC) and the Beijing Rules on Juvenile Justice, the government must reform the juvenile criminal justice system. Prior to the enactment of the Child Criminal Justice System Law (SPPA Law), the implementation of the juvenile criminal justice system was based on the Child Court Law, which was grounded in a retributive ideology functioning as both preventive and repressive measures against children in conflict with the law (ABH). The retributive nature of the Child Court Law provided opportunities for law enforcement authorities (APH) to handle juvenile delinquency cases with excessive authority, leading to numerous human rights violations against ABH, including torture.

In examining this issue from the perspective of the legal structure, the actions taken by APH in executing their duties and functions were aligned with the mandates of the Child Court Law at that time. This situation arose because regulations regarding the principle of the best interests of the child and restorative justice approaches had not yet been established, resulting in a lack of legal protection for ABH (legal substance).

The Child Court Law has become outdated and does not meet the current societal needs, as directly stated by the Minister of Law and Human Rights, Amir Syamsuddin. According to Amir, the Child Court Law fails to provide comprehensive protection for ABH.³² The Ministry of Law and Human Rights reported in 2008 that there were a total of 5,760 ABH across prisons in Indonesia, with 57% placed alongside adult detainees.³³ This data clearly indicates that many ABH still have unmet rights, including inadequate facilities and fulfillment of children's rights. It is not uncommon for ABH to be processed for minor offenses as if they were adults, leading to prison sentences handed down by judges.

The issues arising from the implementation of the juvenile criminal justice system based on the Child Court Law necessitate state efforts to ensure the protection of ABH during judicial proceedings. The government's strategy to guarantee the implementation of the juvenile criminal justice process includes mandating APH to fulfill all obligations outlined in the UU SPPA. Additionally, if APH fails to meet the responsibilities specified in the UU SPPA, they may face administrative sanctions and even criminal charges. Criminal sanctions serve as a last resort if APH cannot comply with the criminal justice system as mandated by law, as this pertains to the guarantee of protection for ABH.

2. Legal Implications of Criminal Threats Against Law Enforcement Authorities

Based on various evaluations of the juvenile criminal justice system rooted in the Child Court Law, the state is striving to ensure the implementation of the juvenile criminal justice system based on a

³² Viva.co.id, "8 Isu Krusial Di UU Sistem Peradilan Anak," Viva.co.id, 2012, <https://www.viva.co.id/Arsip/332348-8-Isu-Krusial-Di-Uu-Sistem-Peradilan-Anak>.

³³ Armanila Febri, "Perbandingan Undang – Undang Nomor 3 Tahun 1997 Tentang Pengadilan Anak Dengan Undang – Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak Dalam Pemeriksaan Perkara Anak Di Pengadilan Anak," *Jurnal Fiat Justicia Jurnal Ilmu Hukum* 8, no. 1 (2014): 3.

restorative justice approach and the principle of the best interests of the child. To this end, the state imposes criminal threats against APH within the scope of the UU SPPA. These criminal threats present various issues.

Mardjono Reksodipuro argues that the criminal justice system consists of several subsystems, including the police, the prosecution, the judiciary, and correctional institutions. These four subsystems are expected to collaborate to form an Integrated Criminal Justice System. A criminal justice system that is not under a single institutional framework does not provide the benefits of cohesive judicial management.³⁴This situation can trigger the independence of the criminal justice subsystems. Judicial independence may be compromised by other powers, such as the legislative branch, which creates laws. In this case, lawmakers did not consider judicial authority when drafting the SPPA Law, leading to criminal threats against APH in the SPPA Law, which in turn fosters judicial independence.

Criminal Threats for Law Enforcement Authorities

Obligations	Administrative Sanctions	Criminal Sanctions
1.Obligation of APH to seek diversion (Article 7) 2.Obligation of judges to release children from detention once the time limit has expired (15 days) at the first instance, on appeal, and in cassation (Articles 35–38). 3.Obligation of the Court to provide a copy of the decision within a maximum of 5 days after the ruling to the child/advocate/community facilitator/public prosecutor (Article 62).	Officials who violate Articles 7 (1), 14 (2), 17, 18, 21 (3), 27 (1) (3), 29 (1), 39, 42 (1) (4), 55 (1), and 62 are subject to administrative sanctions (Article 95).	1.APH who fails to fulfill the obligations under Article 7 may be imprisoned for up to 2 years or fined up to 200 million IDR (Article 96). 2.Judges who do not comply with Articles 35 (3), 37 (3), or 38 (3) may face a maximum sentence of 2 years in prison (Article 100). 3.Court officials who do not fulfill the obligations under Article 62 may be sentenced to a maximum of 2 years in prison (Article 101).

a. Juridical Impact on the Implementation of the Juvenile Criminal Justice Process

The principle of legality is recognized in criminal law to provide legal certainty. This principle establishes boundaries by formulating a criminal offense within a law, aimed at limiting the authority of legal subjects mentioned in the problem statement and protecting public interests. This is also applied in the Law on the Child Criminal Justice System (SPPA Law), where the state imposes criminal threats against law enforcement officials (APH) by stipulating penal provisions for law enforcement within the scope of SPPA, such as juvenile investigators, juvenile prosecutors, and juvenile judges.³⁵ The imposition of such criminal threats aims to prevent law enforcement from acting arbitrarily in juvenile court proceedings. The threats imposed by the state include administrative sanctions and criminal penalties. The criminal threats against APH are stipulated in Articles 96, 100, and 101 of the SPPA Law. The criminalization of APH within the SPPA contradicts the constitution, particularly concerning the

³⁴ Yodi, “Independensi Dan Urgensi Restrukturisasi Sistem Peradilan Pidana Indonesia Berdasarkan Aspek Kekuasaan Kehakiman.”

³⁵ Wulandari, “Putusan Mahkamah Konstitusi: Dampaknya Terhadap Perubahan Undang – Unang Dan Penegakan Hukum Pidana.”

independence of the judiciary.³⁶ The authority and criminal threats against APH in the UU SPPA weaken the criminal justice system, necessitating an integral or structural synchronization among APH (investigators, prosecutors, and judges), substantial harmonization (legislative provisions), and cultural harmonization (public perceptions regarding the implementation of legal products).³⁷

This situation arises because the norms contained in these articles contradict several provisions in the 1945 Constitution of the Republic of Indonesia. The imposition of criminal threats against the organizers of the SPPA negatively impacts APH, as it generates unnecessary psychological effects, including fear and anxiety regarding the juvenile criminal justice process.³⁸ Articles 31 and 33 of Law Number 48 of 2009 concerning the Judicial Power (hereinafter referred to as KK Law) explain that judges in courts under the Supreme Court are state officials who exercise judicial power within the judicial bodies under the Supreme Court, while Article 3 of the UU KK stipulates that in carrying out their duties and functions, judges and constitutional judges are obliged to maintain the independence of the judiciary.

According to the 1945 Constitution and the KK Law outlined above, it can be understood that APH within the SPPA, particularly judges, possess independence and freedom in administering justice. This independence is derived directly from the mandate of the law, thus all subordinate regulations must align with the higher law, namely the 1945 Constitution of the Republic of Indonesia. When there is disharmony among laws vertically, inconsistencies or a lack of synchronization may occur, which can have juridical implications for the implementation of the judicial process.

The lawmakers or legislative bodies involved in the formation of the UU SPPA did not consider or respect the independence of the judiciary. Such deviations can lead to legal issues, as they are inconsistent with the principles of a state governed by law, contradicting Articles 1 paragraph (3), 24, and 28D paragraph (1) of the 1945 Constitution. The explanations are as follows:

1) Contradiction with Article 1 Paragraph (3) of the 1945 Constitution

Article 1 paragraph (3) mandates the establishment of the Constitutional Court as part of the effort to realize a state governed by law. Indonesia is a state governed by law, and judicial independence is an essential element of this concept (rechtstaat/rule of law).³⁹ The principle of separation of powers among the executive, legislative, and judicial branches is a fundamental concept, forming the essence of the constitution itself. The provisions imposing criminal threats against APH (investigators, prosecutors, judges) violate the principles of the independence of the judiciary.⁴⁰ Policymakers or regulators, in this case, the drafters of the UU SPPA, do not respect, understand, or take into account the independence of judicial power. The principle of separation of powers is further explained in Article 24 of the 1945 Constitution.

2) Contradiction with Article 24 of the 1945 Constitution

The judicial power within the Indonesian constitutional system is an independent power. This independent power is exercised by the Supreme Court and the judicial bodies beneath it to conduct trials

³⁶ Mahkamah Konstitusi Republik Indonesia Lembaga Negara Pengawal Konstitusi, "UU SPPA Bertentangan Dengan Konstitusi, Lembaga Negara Pengawal Konstitusi, Mahkamah Konstitusi Republik Indonesia," Lembaga Negara Pengawal Konstitusi, Mahkamah Konstitusi Republik Indonesia, 2013, <https://www.mkri.id/Index.Php?Page=Web.Berita&Id=7753/1000>

³⁷ Syamsul Fatoni, "Penghapusan Kriminalisasi Terhadap Hakim Dan Jaksa Dalam Rangka Mewujudkan Sinkronisasi Sistem Peradilan Pidana Anak," *Jurnal Konstitusi* 17, no. 1 (2020): 226.

³⁸ Khalisa Hayatuddin, "Implikasi Hukum Putusan Mahkamah Konstitusi Terhadap Penerapan Konsep Restorative Justice Di Indonesia," *Jurnal Hukum Dan Peradilan* 11, no. 2 (2022): 284.

³⁹ Elisabeth Nurhaini Butarbutar, "Sistem Peradilan Satu Atap Dan Perwujudan Negara Hukum RI Menurut UU No. 4 Tahun 2004," *Jurnal Mimbar Hukum* 2, no. 1 (2010): 189.

⁴⁰ Radian Salman, "Prinsip-Prinsip Konstitusional, Interpretasi Konstitusi, Dan Alasan-Alasan Yang Mendasari Putusan Mahkamah Konstitusi" (Surabaya: Dosen Bagian HTN Universitas Airlangga, 2019), 15.

and uphold law and justice. Article 96 of the UU SPPA has psychological implications for APH, causing doubt and fear in handling cases, which can influence judges' decisions. This contradicts judges' constitutional rights regarding professional immunity (judicial immunity).⁴¹ Sanctions for APH are sufficiently addressed through administrative penalties. Administrative violations and criminal offenses fall under the authority of the Judicial Commission, making it inappropriate for the UU SPPA to criminalize APH.

3) Contradiction with Article 28D Paragraph (1) of the 1945 Constitution

Article 28D paragraph (1) states that every citizen is entitled to recognition, guarantees, protection, and legal certainty that is equal and fair. Additionally, it provides for equal treatment before the law, including for APH in carrying out their duties. The imposition of criminal penalties on APH within the juvenile criminal justice system results in a violation of the right to equal treatment. The criminal threats against APH or officials within the juvenile criminal justice system create differential treatment or discrimination, as only APH within the juvenile criminal justice system may face criminal penalties.

Based on the explanations above, it is evident that the criminal threats imposed on APH within the juvenile justice system violate the 1945 Constitution, as they disrupt the independence of the judiciary and subject APH to discriminatory treatment, given that only APH within the juvenile justice system may be penalized for failing to fulfill the obligations stipulated in relevant laws. The position and duties of judges, as the primary actors in the juvenile criminal justice process and as state officials exercising judicial power as mandated by the 1945 Constitution, have been constrained by the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which imposes criminal penalties on law enforcement officials, particularly judges. Furthermore, the judges' constitutional rights and authority concerning independence and autonomy in determining their roles have been specifically and substantially harmed.

Criminal Threats in the Child Justice System and Their Impact on Judicial Independence. The criminal threats outlined in the Child Criminal Justice System Law (SPPA Law) have adversely affected the judicial process, leading to a decline in the independence of judges in carrying out their duties. It is imperative that the law is upheld by law enforcement agencies, especially judges, as formal child criminal law serves as a means for judges to enforce, implement, uphold, and guarantee that material child criminal law is adhered to by society. Therefore, administrative penalties should suffice without imposing criminal sanctions, which leads to the criminalization of law enforcement agencies, particularly judges.

The criminalization of law enforcement by the legislative body, as the lawmaker, reflects a lack of orientation towards a policy-oriented approach or value judgment approach in carrying out their duties. Instead, it leans more towards an emotionally charged value judgment approach by the lawmakers. The emotional evaluation of the legislative body in formulating the SPPA Law has resulted in the criminalization of law enforcement, leading to legal crises such as over-criminalization and overreach of criminal law within the child criminal justice process.⁴²

⁴¹ Kongres Advokat Indonesia, "Aturan Hak Imunitas Dalam UU Advokat Konstitusional," Kongres Advokat Indonesia, 2023, <https://www.kai.or.id/berita/hukum/23354/aturan-hak-imunitas-dalam-uu-advokat-konstitusional.html>.

⁴² Mahkamah Konstitusi Republik Indonesia Lembaga Negara Pengawal Konstitusi, "Putusan Nomor 110/PUU-X/2012 Tentang Uji Materil Undang - Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak Terhadap Undang - Undang Dasar Negara Republik Indonesia Tahun 1945," Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM Republik Indonesia, 2012, https://bphn.go.id/data/documents/110_puu_2012_-_telah_ucap_28_maret_2013.pdf.

Conclusion

Based on the findings and discussions above, the researcher concludes that the state guarantees the implementation of the child criminal justice system in accordance with the United Nations Convention on the Rights of the Child, which was ratified through Presidential Decree No. 36 of 1990 on August 25, 1990, and in accordance with minimum standard regulations (Beijing Rules on Juvenile Justice), which are subsequently outlined in the SPPA Law. To ensure the enforcement of the SPPA Law, the state imposes criminal threats against law enforcement officials within the child justice system.

The imposition of criminal threats against law enforcement officials in the child justice system results in a compromise of judicial independence between the SPPA Law and the independence of the judiciary, as stipulated in Article 24 of the 1945 Constitution of the Republic of Indonesia. The presence of judicial independence in Articles 96, 100, and 101 of the SPPA Law and the 1945 Constitution undermines the structural authority (of investigators, prosecutors, and judges) within the child criminal justice process. The criminalization of law enforcement officials diminishes their independence in handling cases. The role of law enforcement officials in the child criminal justice system is to enforce, uphold, and ensure compliance with material child criminal law, thus making criminal threats unnecessary; administrative penalties would suffice.

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