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## Disparity in Decisions Against Children in Conflict with the Law from the Perspective of Judicial Justice

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**Abstract:** The occurrence of discrepancies in rulings against Children in Conflict with the Law (ABH) highlights the diversity in how the justice principle is applied, especially when judges take aggravating and mitigating circumstances into account. Actually, through a restorative justice approach, Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) highlights the best interests of children and the principle of legal protection. However, judges' broad discretionary powers, without clear normative guidelines, often lead to different decisions in similar cases and open up space for non-juridical factors to influence sentences. By analyzing primary, secondary, and tertiary legal documents, this study employs a normative-juridical method to investigate the coherence of the concepts of justice, expediency, and legal certainty in juvenile criminal justice practices. The study's findings show that the primary source of disparity is the absence of uniform guidelines governing the foundation for judges' considerations., which in turn reduces the effectiveness of the SPPA Law in protecting ABH. Therefore, ius constituendum is needed in the form of firmer normative guidelines for judges, so that legal considerations no longer depend on subjective assessments, but rather on legal parameters that are consistent with the principles of justice and legal certainty.

**Keyword:** Disparity in Decisions, Judges' Legal Considerations, Juvenile Criminal Justice System.

### INTRODUCTION

In Indonesia, the issue of children in confrontation with the law (ABH) is one that needs more and more serious attention. Based on information from the Ministry of Women's Empowerment and Child Protection and the Police, the number of ABH cases shows a varying trend each year, with a tendency to increase from minor to serious violations. (Balla, 2022) These cases occur not only in urban areas but also in rural areas, demonstrating the complex and multidimensional nature of this problem. (Lubis, 2021) The ABH phenomenon is not solely related to legal violations but is also closely linked to social, economic, and

family environmental factors, thus requiring a holistic approach to addressing them. (Al-Ghony, 2024)

The types of crimes frequently committed by ABH include theft, assault, fights between children, drug abuse, and sexual violence. The patterns of crime committed by children are often influenced by their social environment, peer pressure, and lack of family supervision. (Asmara, 2021) This behavior demonstrates that children in conflict with the law are not solely morally guilty but are also victims of specific social and psychological conditions. (Saputra, 2021) Therefore, handling of children with disabilities (ABH) must consider the factors that lead to criminal acts, rather than simply focusing on criminal sanctions.

The social and psychological impacts of children's involvement in criminal acts are significant. Socially, children can experience stigma from their environment, have difficulty continuing their education, and be cut off from family and community support. Psychologically, the experience of dealing with the law can lead to trauma, fear, and low self-esteem. (Budiaulia, 2024) From a legal perspective, the involvement of children in the judicial process can limit their rights as children if there is no special protection that prioritizes the child's best interests, as outlined in Law No. 11 of 2012's Article 1, Number 3 on the Juvenile Criminal Justice System (SPPA Law). (Kurniawan, 2023)

The SPPA Law specifically governs the criminal court system's application of child protection principles. According to Article 2 of the Juvenile Justice and Child Protection Law, the juvenile criminal justice system's goal is to safeguard children, supervision, and guidance to prevent children from repeating crimes and to provide them with the opportunity to develop optimally. The approach applied is restorative justice, which emphasizes restoring relationships between victims, perpetrators, and the community, and prioritizes rehabilitation over mere punishment. This principle aligns with the best interests of children and makes legal protection the primary focus of law enforcement against children with disabilities. (Sabaruddin, 2021)

In practice, judges play a strategic role in upholding this legal principle. Article 37 of the Juvenile Justice and Child Protection Law authorizes judges to consider aggravating and mitigating factors, as well as the child's specific circumstances, when issuing sentences. However, this discretionary power sometimes leads to disparities in decisions, as not all judges use the same parameters when assessing similar cases. As a result, although the Juvenile Justice and Child Protection Law aim to protect children and provide restorative justice, judicial practices can vary, reducing legal certainty. (Mukaffah, 2022)

Disparities in judicial decisions regarding Children in Conflict with the Law (ABH) are a real phenomenon in juvenile criminal justice practices in Indonesia. This disparity can be defined as differences or inconsistencies in decisions rendered in cases with nearly identical facts and legal circumstances. A concrete example can be found in cases of theft or abuse involving children; in similar cases, one child may be sentenced to imprisonment, while another child is given counseling or rehabilitation. The concepts of justice, legal certainty, and child safety outlined in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) are called into doubt by this discrepancy. (Maran, 2024)

Several factors influence this disparity in decisions. First, the aggravating and mitigating factors considered by judges are often subjective and lack standard criteria. Aggravating factors can include the violence committed, repeated offenses, or the resulting social impact, while mitigating factors can include the child's age, remorse, or family circumstances. Second, broad judicial discretion grants freedom in determining decisions, but the lack of clear normative guidelines allows decisions to be influenced by personal judgment or experience. Furthermore, non-legal factors such as public opinion, family pressure, or

social stereotypes can also influence judges' judgments when determining sentences. (Agus, 2022)

The impact of disparity in decisions is significant for legal certainty and child protection. This uncertainty undermines children's right to legal protection, as children who commit similar crimes may receive drastically different treatment. Furthermore, disparity can foster public distrust in the juvenile justice system and undermine the legitimacy of judges as fair law enforcers. This situation indicates that the goal of the Juvenile Justice and Child Protection Law (UU SPPA) to guarantee restorative justice and the best interests of children has not been fully achieved. (Nurmala, 2023)

The gap between ideal legal principles and court practice is also a serious problem. Although the UU SPPA places a strong emphasis on the concepts of restorative justice and children's legal protection, many rulings in practice only address the criminal aspect, ignoring the child's rehabilitation and social reintegration. This discrepancy demonstrates that ideal legal theory emphasizing children's rights and best interests has not been consistently applied in practice. As a result, many children who should receive development opportunities instead experience harsher punishments, rendering the law's goal of preventing the recurrence of criminal offenses ineffective. (Putri, 2023)

One of the main causes of this gap is the lack of clear standards or normative guidelines for judicial deliberation. Although Article 37 of the Child Protection and Child Protection Law authorize judges to consider mitigating and aggravating factors, there are no detailed guidelines on the weight or priority of each factor. It opens the door to judicial subjectivity in determining decisions, resulting in inconsistent decisions and potentially unfair treatment for children. (Silalahi, 2021)

The negative impact of this gap between theory and practice is felt not only by the children themselves but also by society at large. Legal effectiveness declines because the goals of child rehabilitation and protection are not achieved, while public trust in juvenile criminal justice can be eroded. (Setyaningsih, 2023) Therefore, normative measures are needed to align court practices with ideal legal principles, including the development of clear guidelines or standards for judges, so that legal reasoning is more objective, fair, and consistent with the principles of restorative justice and legal certainty.

Understanding and analyzing the phenomenon of disparity in decisions for Children in Conflict with the Law (ABH) is crucial because it shows an inconsistent application of the legal certainty, justice, and child protection principles outlined in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law). This makes the research urgent. Examining disparity in decisions is crucial because inconsistent judicial decisions in similar cases can lead to injustice for children, reduce the effectiveness of the law, and undermine public trust in the juvenile justice system. This research is expected to provide a real contribution to the improvement of the juvenile justice system by offering a comprehensive analysis of the factors that influence judges' considerations, both from a legal and non-legal aspect, so that it can become the basis for policy recommendations to improve the consistency and fairness of decisions. In addition, this research also emphasizes the need for *ius constituendum*, namely the preparation of new normative rules or clear guidelines for judges, so that legal considerations no longer depend on subjective assessments, but are based on clear, consistent legal parameters and are in line with the principles of restorative justice, the child's best interests and legal clarity in order to better accomplish the SPPA Law's goals of safeguarding children and preventing the recurrence of criminal crimes.

## METHOD

In order to comprehend the problem of discrepancies in decisions for Children in Conflict with the Law (ABH), this study employs a normative juridical approach, concentrating on the examination of pertinent literature and legal documents. A legislative strategy, including a thorough examination of the provisions of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) and its implementing regulations, is one of the methods employed, and a conceptual approach, which aims to compare applicable legal theories, concepts, and principles with juvenile court practices in the field. The data sources used consist of primary data, in the form of relevant statutory provisions and court decisions; secondary data, such as books, journals, articles, and previous research; and tertiary data, in the form of encyclopedias, legal dictionaries, and other supporting literature. Data collection techniques are carried out through library research and documentation, with a systematic selection of relevant legal materials and literature. Data analysis was conducted qualitatively, namely by reviewing, describing, and interpreting regulations, literature, and legal decisions to find patterns, gaps, and relevance between ideal legal principles and juvenile justice practices, so that comprehensive conclusions and applicable suggestions can be produced for the preparation of normative guidelines.

## RESULTS AND DISCUSSION

### Factors Influencing Disparities in Judges' Decisions on ABH

Aggravating factors in judges' decisions regarding Children in Conflict with the Law (ABH) are considerations used to determine a more severe sentence based on the level of culpability and the resulting impact. These factors are important because they help judges assess the extent to which the child's actions have caused harm to the victim, society, and the law itself. In practice, judges consider the child's condition and behavior, which indicate the seriousness of the crime, including whether the act is violent, repeated, or involves a vulnerable victim. Thus, aggravating factors serve as a mechanism to balance the child's right to legal protection and the community's need for justice.

Concrete examples of aggravating factors include physical or psychological violence perpetrated by the child against the victim, repeated criminal acts demonstrating a lack of remorse, or the child's involvement in a broader criminal network. Furthermore, the social impact of the crime—such as economic loss, victim trauma, or disturbance of public order—is also an important consideration. For example, in cases of serious abuse, even though the perpetrator is a child, the judge may determine that the act threatens the victim's safety and instills fear in the community, thus imposing a harsher sentence.

The relevance of aggravating factors to Law No. Article 37 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) stipulates that judges are authorized to consider aggravating and mitigating factors when determining a sentence. This article provides a legal basis for judges to assess circumstances that increase the seriousness of a crime, but they must still adhere to the principle of the child's best interests. With this basis, aggravating considerations should not be purely subjective but rather based on clear legal facts, ensuring legal legitimacy and consistency in the judge's decision.

Meanwhile, mitigating factors are considerations used to reduce a child's sentence. These factors consider circumstances indicating the child's potential for self-improvement and that excessively harsh punishment could harm their psychological and social development. Mitigating factors include the child's age, demonstrated remorse, peer pressure influencing the child's behavior, unsupportive family circumstances, and good behavior during the judicial process. By considering these factors, judges can prioritize a rehabilitative and restorative justice approach, as mandated by the UU SPPA.

Since the main objective of the juvenile criminal justice system is not only to punish but also to guide and rehabilitate children so they do not commit crimes again, there is a close relationship between mitigating factors and the principle of the child's best interests. For example, a child who commits theft for the first time due to peer pressure, shows remorse, and is willing to participate in social counseling may be awarded counseling or a rehabilitation program rather than imprisonment. It aligns with Article 2 of the Child Protection and Child Protection Law, which emphasizes the protection, supervision, and guidance of children to ensure their optimal development.

Judicial discretion is the authority a judge has to make his or her own judgment when issuing a verdict for a Child in Conflict with the Law (ABH). This discretion arises because each case has unique facts and context, so objective judgment alone is sometimes insufficient to assess the severity of the offense and the state of the child. Regarding the Juvenile Criminal Justice System (SPPA Law), Law No. 11 of 2012, Article 37 provides judges with the authority to consider aggravating and mitigating factors, allowing them to tailor their decisions to each child's specific circumstances. This discretion should allow for the flexible application of the principles of restorative justice and the child's best interests.

However, broad discretion without clear normative guidelines can lead to disparate decisions in cases with similar facts. When there is no standard weighting of aggravating and mitigating factors, judges have considerable freedom to interpret the child's condition and the impact of the crime. As a result, one child may receive counseling, while another child with a similar case is sentenced to prison. This inconsistency leads to disparities in decisions, which is one of the causes of the lack of legal certainty in juvenile criminal justice. The risks of judicial subjectivity in exercising discretion are also significant. Personal considerations, experience, or even preferences can influence decisions, so they do not always reflect the principle of justice that balances the interests of the child, the victim, and society. This situation demonstrates the need for more detailed normative guidelines or standard operating procedures to ensure that judicial discretion remains within the law and does not lead to injustice. Thus, discretion, originally intended for flexibility, has the potential to become a source of disparity in decisions.

In addition to legal factors, non-legal factors also influence judicial decisions. Public opinion, family pressure, social stereotypes, and the child's psychological condition can enter into judicial considerations even if they are not stated in the legal facts. For example, a child from a disadvantaged environment or from a particular social background may be treated differently from a child from a more affluent family, even if both have committed the same crime. These non-legal factors are a major source of inconsistent decisions in juvenile courts.

Disparities in decisions arising from the combination of judicial discretion and non-legal factors have serious implications for legal certainty and child protection. Children who should receive fair legal protection may instead experience uncertainty due to varying legal treatment. This uncertainty not only impacts children's rights to guidance and rehabilitation but also impacts the effectiveness of the Child Protection Act (SPPA) in achieving restorative justice goals. Children who are treated inconsistently are at risk of social stigma and reoffending.

Furthermore, disparities in decisions can also foster public distrust in the juvenile justice system. When the public sees inconsistent decisions in similar cases, the legitimacy of judges and juvenile criminal justice systems is questioned. It can undermine public confidence in the courts' ability to enforce the law fairly and proportionally and reduce the effectiveness of child development efforts. Therefore, clear normative guidelines are crucial to limit the risk of judicial subjectivity, ensure consistent legal reasoning, and strengthen legal protection for children.

## **The Gap Between Ideal Legal Principles and Juvenile Justice Practices**

Law No. 11 of 2012 respecting the Juvenile Criminal Justice System (UU SPPA) lays out the ideal legislative foundations of the juvenile criminal justice system in Indonesia. According to Article 2 of the Law, the juvenile criminal justice system's goal is to protect, guide, and supervise minors in order to promote their best possible development and deter future criminal activity. Additionally, Article 3 highlights the restorative justice notion, where the handling of juvenile cases is directed at restoring relationships between victims, perpetrators, and the community, rather than simply imposing punishment. This principle aligns with the concept of the child's best interests, which underpins all policies, procedures, and decisions in juvenile criminal justice, ensuring that children in conflict with the law continue to receive legal protection and opportunities for social rehabilitation.

Although these ideal legal principles have been established normatively, juvenile justice practice demonstrates a significant gap between theory and practice. In some cases, judges tend to emphasize the criminal aspect or punitive sanctions, particularly for crimes that result in material or physical harm to the victim, without adequately addressing the child's rehabilitation or guidance. This occurs due to subjective factors, a lack of detailed normative guidelines, and pressure from public opinion or social interests, which often lead judges to focus more on the deterrent effect than on the child's best interests.

A concrete example of this disparity can be found in cases of theft or child abuse in various regions. In some decisions, children who have committed first-time crimes and shown remorse are sentenced to prison, while the goals of rehabilitation and restorative justice are ignored. This situation demonstrates that ideal legal principles, although enshrined in the Child Protection and Juvenile Justice Law, have not been fully implemented in court practice. As a result, children do not receive optimal legal protection, and their potential for social reintegration and development is compromised.

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## CONCLUSION

The conclusion of this study indicates that disparities in decisions regarding In Indonesia, a mix of legal and non-legal reasons contribute to children in conflict with the law (ABH). Legal factors include consideration of aggravating and mitigating factors that lack standardized standards, as well as broad judicial discretion without detailed normative guidelines. Meanwhile, non-legal factors include public opinion, family pressure, social stereotypes, and the child's psychological condition, which also influence judges' deliberations. This lack of clear guidelines leads to differing decisions in similar cases, thus reducing legal certainty, the effectiveness of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), and child protection. Disparities in decisions also impact the goals of restorative justice, as rehabilitation, social reintegration, and the best interests of the child are often not optimally implemented, which in turn can lead to public distrust in the juvenile justice system. Based on these findings, the following recommendations suggest the need for the development of more stringent normative guidelines, or ius constituendum, to regulate the application of aggravating factors, mitigating factors, and special circumstances of children in determining decisions. These guidelines should provide clear standards to ensure that judges' discretion remains proportionate and consistent with legal principles, the child's best interests, and restorative justice. Furthermore, training and outreach to judges on the principles of juvenile justice are needed to ensure more objective and fair legal considerations. With the appropriate implementation of these normative guidelines, it is hoped that disparities in decisions can be minimized, the effectiveness of the Child Protection Act (SPPA) will increase, child protection will be assured, and public trust in the juvenile justice system will be maintained.

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