



## PUBLICATIONS OF THE IDENTITY OF CHILDREN IN CONFLICT WITH THE LAW ON THE OFFICIAL SITE OF THE INDONESIAN SUPREME COURT DECISION DIRECTORY

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### ABSTRACT

Protection of children's rights in conflict with the law (ABH) is a state obligation. The protection aims to ensure the best interests of the child and to prevent discrimination. As stated in Article 19 of Law Number 11 of 2012, one of the rights is that law enforcement institutions are not allowed to publish the identities of ABH, either in print/ electronic media. However, their identities are still revealed in various Decisions of children's cases. Particularly, their identity is published on the Site of the Supreme Court's Ruling Directory. The purpose of this study is to find out why the Supreme Court Decision Directory Site does not keep the identity of ABH a secret and what are the implications. This research used a socio-legal approach. The results of the study show the management team did not understand their main tasks and rules of protecting the identity of ABH, inconsistency in checking copies of court decisions, ineffective monitoring, and only a handful of people reported the case so this situation is considered normal. The implications of the children's identity disclosure have affected the rights of children, families, and applicable rules that do not provide legal certainty.

**Keywords:** the right of the children; publication of identity; children in conflict with the law; court decisions; juvenile criminal justice system

### INTRODUCTION

#### Background

Children are the asset and the future of the nation. Their rights and welfare should be protected and respected. In addition, as significant figures for the nation's sustainability as well as gifts from God, it is the main obligation of the country to fully protect and respect children's rights as human beings.<sup>1</sup>

Protection, fulfillment, and respect for children's rights are really important. It is because children are often being the object of inhumane treatment and considered vulnerable to discriminatory actions by various parties.<sup>2</sup> Such treatments will of course have an impact on the sustainability of the child's growth and development. This impact may

1 Cekli S Pratiwi, "Optimizing Restorative Justice Program For The Best Interest Of The Children In Reforming Juvenile Justice System In Utah," *Legality : Jurnal Ilmiah Hukum* 27, no. 2 (2019):242-258.

2 Hana Hanifah, Meilanny Budiarti Santoso, and Dessy Hasanah Siti Asiah, "Anak Sebagai Kelompok Rentan Yang Terdampak Konflik Bersenjata Dan Situasi Kekerasan Lainnya," *Focus : Jurnal Pekerjaan Sosial* 2, no. 1 (2019): 2620-3367.

happen because their physical and mental conditions are not in the same state as adults. Children are easily influenced by their surroundings and act as they please without putting any consideration upon their actions.<sup>3</sup> Therefore, legal protection and special aid are needed for children, including for those who have legal problems.<sup>4</sup>

These actions are needed to prevent any arbitrary treatment of children. Legal protection for children is a form of protection for fundamental rights and freedom of children as well as all matters related to children's welfare.<sup>5</sup> In other words, legal protection for children in conflict with the law is nothing but a form of strategy to guarantee, protect and fulfill all the children's rights to grow into their best potential. Correspondingly, special aid or treatment is to differentiate the treatment between adults and children.

In Indonesia, legal protection and special treatment for children who face legal problems are regulated in several regulations. They include the Convention on the Rights of the Child ratified by the Government of Indonesia through Presidential Decree Number 36 of 1990, Law Number 23 of 2002 on Child Protection, Law Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection and Law Number 11 of 2012 on the Juvenile Justice System. All of these regulations put forward a principle to ensure children's welfare. In addition, the existence of these regulations needs to be used as a basis for applying special treatment to children in conflict with the law, notably the

legal protection in its judicial system.

Regularly, during the juvenile justice process from the stages of the investigation, prosecution, trial, and in carrying out court decisions in juvenile prisons, children's rights must be fulfilled and carried out by specially educated officials or at least those who understand problems related to children in conflict with the law.<sup>6</sup> In addition, regarding the process of resolving child cases that are carried out inside and outside the court, the child protection processes must continue to prioritize and uphold the dignity of the child without neglecting the implementation of justice, r even downgrading the child's human value. The Convention on Human Rights requires that all people deprived of liberty be treated with respect for the inherent dignity of the human being.<sup>7</sup> Referring to Article 2 of Law Number 11 of 2012 on the Juvenile Justice System, it states that the Juvenile Justice System is implemented based on the principle of:<sup>8</sup>

- a. Protection;
- b. Justice;
- c. Non-discrimination;
- d. Children's interest;
- e. Respect for the child's opinion;
- f. Survival and development of children;
- g. Child development and guidance;
- h. Proportional
- i. Deprivation of liberty and imprisonment as a last resort; and
- j. Retaliation avoidance.

3 Prof. Dr. Singgih. D Gunarsa and Dra. Yulia D. Gunarsa, *Psikologi Perkembangan Anak Dan Remaja*, (Jakarta: PT. BPK Gunung Mulia, 2008).

4 Rendy H Pratama, Sri Sulastri, and Rudi Saprudin Darwis, "Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum," *Prosiding Penelitian dan Pengabdian kepada Masyarakat* 2, no. 1 (2017): 2442-4480..

5 Barda Nawawi Arief., *Beberapa Aspek Kebijakan Penegakan Dan Pengembangan Hukum Pidana* (Bandung: Citra Aditya Bakti, 1998).

6 Dony Pribadi, "Perlindungan Terhadap Anak Berhadapan Dengan Hukum," *Jurnal Hukum Volkgeist* 3, no. 1 (2018): 2528-360X.

7 Haryono Haryono, "Implikasi Perubahan Undang-Undang Pemasarakatan Terhadap Perlakuan Tahanan, Anak Dan Warga Binaan Pemasarakatan," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 1 (2021): 17-36, <http://dx.doi.org/10.30641/kebijakan.2021.V15.17-36>.

8 "Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak" (2012).

Based on the article a quo, juvenile justice must rely on these principles as the basis for implementing the juvenile justice process. However, in reality, these principles have not been able to accommodate the protection of those children in conflict with the law. Even though the presence of a set of rules has formulated the protection of children's rights, in reality, this treatment has not been useful for the best interests of the child.<sup>9</sup> Many people state that the implementation of the juvenile justice system is still far from being able to support the realization of children's welfare and the interests of children. As can be seen in the news from various media, both print and electronic, the rise of cases of children in conflict with the law, often appears in media coverage.<sup>10</sup> In addition, the Site of the Supreme Court's Decision Directory publishes child's legal case decisions without making the children's identity secret.

Article 3 jo Article 19 of Law Number 11 of 2012 on the Juvenile Justice System stipulates that the identity of a child must be kept secret in print and electronic media. However, the violation of this regulation can be seen on one of the electronic media pages, namely the official Site of the Directory of Supreme Court Decisions. This violation happens by not keeping the child's name out of the case press release on the Site.

Figure 1. A copy of the decision in a child's case which disclosed a child's identity



Source: putusan.mahkamahagung.go.id, 2021

Note: The identity of the child in the Supreme Court Decisions directory is not blurred. It is written in full instead. For this study, the identity of the child was deliberately blurred by the author.

As another example, as shown in the image above, this violation can be seen in the Yogyakarta District Court Decision Number 10/PID.SUS-Anak/2015/PN.Yyk, Banda Aceh High Court Decision Number 18/Pid.Sus-Anak/2015/PT.BNA, Tanjung pinang District Court Decision Number 21/Pid.Sus-Anak/2016/PN.Tpg, Sungailiat District Court Decision No 8/Pid.Sus.Anak/2017/PN.Sgl, Bangkalan District Court Decision No 17/Pid.Sus.An/2018/PN.Bkl, Polewali District Court Decision No 5/Pid.Sus.Anak/2019/PN.Pol, Batusangkar District Court Class II Decision Number 13/Pid.Sus-Anak/2020/PN Bsk, and others.

Some of the decisions mentioned above are decisions or electronic decision documents published through the Supreme Court Decision Directory Site. These Decisions mention children's complete identity and even their parents' names. Based on this case, there has been a gap between *das sollen* and *das sein*, especially in Article 19 of Law Number 11 of 2012 which states<sup>11</sup>

9 Azwad Rachmat Hambali, "Penerapan Diversi Terhadap Anak Yang Berhadapan Dengan Hukum Dalam Sistem Peradilan Pidana," *Jurnal Ilmiah Kebijakan Hukum* 13, no. 1 (2019): 15-30, <http://dx.doi.org/10.30641/kebijakan.2019.V13.15-30>.

10 Nikmah Rosidah, *Sistem Peradilan Pidana Anak* (Bandar Lampung: Aura Publishing, 2019).

11 "Undang-Undang Nomor 11 Tahun 2012 Tentang

- (1) The identity of the Child, Child Victim, and/or Child Witness must be kept confidential in the news in print or electronic media
- (2) The identity as mentioned in paragraph (1) includes the name of the Child, the name of the Child Victim, the name of the Child Witness, the name of the parents, address, face, and other matters that may reveal the identity of the Child, Child Victim and/or Child Witness.

In the process of publishing decisions on the Site, some stages must be carried out. As an example, before providing a copy of the information to the public or including in one Supreme Court Decision Directory Site, it is mandatory to blur information that could reveal the identity of the parties in a decision or determination of judges in cases. Disclosure of the child's identity written in the decision has violated the provisions of the law that protect the right to the confidentiality of the child's identity who is in conflict with the law. As an example to avoid this violation, a child's identity can be written by using initials.<sup>12</sup> This has also been stipulated in the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number: 1-144/KMA/SK/II/2011 concerning Guidelines for Information Services in Courts.

It is known that the Supreme Court Decision Directory site is a site that provides information in this case a decision regarding a valid and accurate case. This Site becomes a source for many people to search for some information, read or even download a decision that is used for various purposes. Despite of this, there is still a decision that does not meet the provisions or regulations in terms of publication, especially regarding decisions about child cases. In fact, law enforcement is

a process of real enforcement of legal norms as behavioural guidelines by the community in legal areas.<sup>13</sup> Based on this definition, if the legal subject does not enforce the law, he is actually violating the law. Therefore, legal certainty regarding the protection of the identity rights of children in conflict with the law has not yet been realized. This is a violation of children's rights because in addition to violating the rights of children guaranteed in the law, this violation will also have an impact on children's mental, psychological and social conditions.

Several previous studies on children's rights focused more on examining children's rights in general. There are not many studies that examine children's rights in conflict with the law, especially the right to not allow their identity to be published.<sup>14</sup> Therefore, this research becomes very relevant. Moreover, in several studies related to the rights of children in conflict with the law, the discussion is generally only mentioned aspects of procedures in law enforcement such as children's rights in obtaining legal assistance.<sup>15</sup> However, it has not discussed the administrative aspects of law enforcement such as procedures for keeping children's identities a secret. Thus, the topics discussed in this study are very relevant and important to be reviewed.

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Sistem Peradilan Pidana Anak" (2012).

12 M Hufron Fakhri et al., "Perlindungan Hukum Pengungkapan Identitas Anak Oleh Aparat Penegak Hukum" *Jurnal Recidive* Vol 10, no. 2 (n.d.) (2021): 109–116.

13 Nizar Apriansyah, "Penerapan Sistem Informasi Terintegrasi Dalam Upaya Penegakan Hukuman Disiplin Di Kementerian Hukum Dan Hak Asasi Manusia," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 3 (2021): 473-488, <http://dx.doi.org/10.30641/kebijakan.2021.V15.473-488>.

14 M.Hufron fakhri Et Al., "Perlindungan Hukum Pengungkapan Identitas Anak Oleh Aparat Penegak Hukum." *Jurnal Recidive* Vol 10, no. 2 (n.d.) (2021): 109-116

15 Anggara, Erasmus A T Napitupulu, and Alex Argo Hernowo. *Studi Implementasi Penanganan Anak Di Pengadilan Berdasarkan UU SPPA*. (Jakarta Selatan: Institute For Criminal Justice Reform, 2016). <http://icjr.or.id/data/wp-content/uploads/2017/02/Studi-Implementasi-Penanganan-Anak-di-Pengadilan-Berdasarkan-UU-SPPA.pdf>.

## Research Questions

Based on the background of the study above, the research questions of this study are:

1. Why does the Supreme Court Decision Directory Site disclose the identity of children in conflict with the law?
2. What are the implications of publishing the identity of a child in conflict with the law on the Supreme Court Decision Directory Site?

## Research Objectives

This study aims to:

1. Find out the cause of the Supreme Court Decision Directory disclosing the identity of children in conflict with the law
2. Analyse the implication of publishing the identity of children in conflict with the law on the Supreme Court Decision Directory site.

## Research Methods

### 1. Approach

This study used a socio-legal approach. The socio-legal approach emphasizes the importance of qualitative empirical observation and analysis steps. "Social legal research approach<sup>16</sup> analyzes the gap between law norms and reality. This approach means that the procedure used to solve the problem is to examine secondary data first, which is then followed by researching on primary data in the field.<sup>17</sup>

### 2. Data Source

Data source for this study are:

- a. Primary data  
Primary data was obtained from the results of:
  - a) Interview with Judicial Judge/Head of Case Inventory and Information Coordinator at the Supreme Court

Registry Office of the Republic of Indonesia Mr. Asep Nursobah, S.Ag., M.H

- b) Interview with Mr. Agus Subyantoro, S.H, an Advocate at the Law Office of Agus Subyantoro & Partners.

Observation and interview were done structurally with prepared questions and the follow-ups.

- b. Secondary Data

Secondary legal materials are legal materials used to support primary legal materials in analyzing and understanding problems. Secondary legal materials are obtained from books, journals, laws and regulations related to problems and also sources of information from the internet which are of course related to the problems or issues.

- c. Tertiary Data

Tertiary legal materials are legal materials that provide information on primary legal materials and secondary legal materials, which include the Big Indonesian Dictionary.

### 3. Data Collection Method

The data collection techniques in sociological juridical research were stated as follows:

- a. Document Study, namely studying documents in the form of written data regarding the researched problem such as legislation rules and regulations, decisions related to this research
- b. Interview Analysis, this technique is carried out through interviews with related parties in which the guidelines and questions asked in the online interview have been prepared in advance
- c. Literature review, namely indirect data collection which addresses the research subject. In this case, the data obtained from the literature are considered helpful to conduct analysis related to this research.

16 Supranto, Metode Penelitian Hukum Dan Statistik, (Jakarta: PT. Rineka Cipta, 2003).

17 Abdulkadir Muhammad, Hukum Dan Penelitian Hukum, (Bandung: Citra Aditya Bakti, 2004).

#### 4. Data Analysis

The collected data both primary and secondary data were analysed using qualitative descriptive analysis. Researchers will analyse between *das sollen* and *das sein* by constructing whether the application of legislation was appropriate or not and whether it is based on facts or not. This argument is constructed in the field related to what factors were the causes of the Supreme Court Decision Directory Site disclosing the identity of children in conflict with the law and what were the implications of disclosing the identity of children in conflict with the law.

Based on the research method used by the researcher, it is hoped that it could provide an answer to the problem stated above. In addition, this study is expected to become an evaluation and legal interpretation in solving problems discussed in the study.

#### DISCUSSION

##### **The Cause of the Supreme Court's Decision Directory Site Discloses the Identity of Children in Conflict with the Law**

The Supreme Court Decision Directory Site can be accessed through <https://putusan.mahkamahagung.go.id>. It is a web-based information system that publishes Supreme Court Decision and all court decision copies, both at the first level and at the appellate level throughout Indonesia. The Supreme Court Decision Directory Site is one of the implementers of the Decision of the Chief Justice of the Supreme Court Number 144/KMA/SK/VIII/2007 concerning Information Disclosure in Courts. It has the function to ensure comprehensive information is available to the public and can be accessed quickly and inexpensively.

The Supreme Court Decision Directory Site is a medium used to upload a copy of the decision of all occurring cases. The copies of the decision posted on this site are guaranteed

to be valid and accurate. The copy of the decision uploaded on the Court's Decision Directory Site is a copy of the decision that is addressed to the public. Its access is limited to information that can reveal the identity of certain parties in certain cases.

The Supreme Court Decision Directory site functions as a forum or place to distribute information. The information on this site includes a decision in any case, whether criminal, civil or other, whether at the first level, appeal or cassation, including the decision of a child case. Indirectly, the existence of this site enables the public to find out about legal cases even though they do not follow the particular settlement process directly. It helps legal practitioners, academics, and researchers to get particular data or uphold justice. The objectives of the establishment of the Supreme Court Decision Directory Site are:<sup>18</sup>

- a. Being a place or media to publish or upload a decision that can be accessed by the public
- b. Fulfilling the right of the public to access information
- c. Creating an open or transparent court
- d. Creating an accountable court
- e. Encouraging all ranks of the court to use the Supreme Court Decision Directory facility as a medium to upload a Decision
- f. Ensuring complete information accessed by the community quickly and inexpensively
- g. Supporting the judicial process to achieve effectiveness and efficiency in providing information
- h. Facilitating services, copies of decisions, or the injunction electronically for the public.

To ensure the public get valid and accurate information regarding case decisions, there are the clerkship of the Supreme Court and the clerkship of each court to manage the site

18 Direktori Putusan Mahkamah Agung. <https://putusan3.mahkamahagung.go.id>. Diakses tanggal 01 Desember 2021, pukul 14.22 WIB.

under the supervision of the Supreme Court. As this information becomes crucial in the open state administration, this information will be more accountable.<sup>19</sup>

In the provisions of the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number: 1-144/KMA/SK/II/2011 concerning Guidelines for Information Services in Courts, the executors of information services at each court and the Supreme Court are stated as follows:

- a) The structure of information services in each court consists of:
  1. The superior of the Information and Management Officer (PPID superior) by the court leadership;
  2. The superior of the Information and Management Officer (PPID) by the clerk/secretary;
  3. Information Officer by a junior law clerk or other employees; and
  4. Person in Charge of Information by the head of the work unit
- b) Implementing Structure at the Supreme Court
  1. The superior of the Information and Management Officer by the clerk and secretary;
  2. The superior of the Information and Management Officer (PPID) within the scope of the Supreme Court by the Head of the Bureau of Law and Public Relations
  3. The superior of the Information and Management Officer (PPID) in each work unit of the Supreme Court:
    - a. Director-General of the General Judiciary Agency
    - b. Director-General of the Religious Courts Agency;
    - c. Director-General of the Military Judiciary and State Administration;

- d. Head of Administrative Affairs Agency;
  - e. Head of the Legal and Judicial Research and Development Agency; and
  - f. Head of Supervisory Agency
4. The information officer within the Supreme Court and the Administrative Affairs Agency is the Head of the Data and Information Services Subdivision;
  5. The information officer in each of the Directorate General of the Judiciary and Oversight Body is the Head of the Documentation and Information Subdivision
  6. The information officer at the Legal and Judicial Research, Development, Education, and Training Agency is the Head of the Administrative Subdivision;
  7. The Person Responsible for information within the Supreme Court and the work unit of the Supreme Court by the Head of the work unit.

The stages in uploading a copy of the decisions on the Supreme Court Decision Directory Site in general are stated as follows:

- a) Decisions uploaded on the Supreme Court's Decisions Directory Site are copies of previously examined Decisions. The original one has been given to the litigating party no later than 2 (two) weeks;
- b) Then, the officer can upload a copy of the decision to the Supreme Court Decision Directory Site by the established procedure as stated in the Supreme Court Decision Number 1144/KMA/SK/II/2011 concerning Guidelines for Information Services in Courts

The Judicial Judge/Head of Case Inventory and Information Coordinator at the Supreme Court Registry Office of the Republic of Indonesia explained the stages of uploading decisions. Regarding children's cases, they must go through different phases compared to the phase in uploading decisions

<sup>19</sup> Eko Noer Kristiyanto, "Urgensi Keterbukaan Informasi Dalam Penyelenggaraan Pelayanan Publik," *Jurnal Penelitian Hukum De Jure* 16, no. 2 (2016): 231-244.

in general. Some things need to be done and are necessary with specific actions. In this case, there will be concerns to blurring the identity of children in conflict with the law and this action must be carried out and protected.<sup>20</sup>

The stages in uploading children's case decisions are generally the same as the stages in uploading copies of ordinary case decisions. The significant differences are stated below:

- a) Decisions uploaded on the Supreme Court's Decision Directory Site are copies of examined decisions. The original decision has been given to the litigating party no later than 2 (two) weeks;
- b) Before the decision is uploaded, there is a provision whereby the identity of the child in conflict with the law must be kept confidential by using initials or crossed out entirely;
- c) Regarding the obscuring of the identity of children in conflict with the law, putting the a child identity on the decision uploaded on the Supreme Court Directory Site can follow these steps:
  1. To replace, it means that the identity of the child in conflict with the law is replaced with another name or other designation. For example, in the case of a child case named Wati as the defendant, the Supreme Court Decision Directory Site will publish a copy of the decision, and the name of the defendant will be replaced with the name of the defendant without mentioning the name of Wati, as well as witnesses or victims.
  2. Shortening information, it means shortening the page. For example, in the original initial decision, the complete home address of the child

in conflict with the law is shortened by stating the provincial capital of the child where the child lives.

Referring to the Decree of the Chief of the Supreme Court of the Republic of Indonesia Number: 1-144/KMA/SK/II/2011 concerning Guidelines for Information Services in Courts, it provides the procedure that gives provision for blurring identity information and related information accessible to the public as follows:<sup>21</sup>

1. Before providing a copy of the information to the applicant or putting it on the site, the information officer is obliged to obscure the information that may reveal the identity of the parties in decisions or judges' decisions in the following cases:
  - a. Obscuring the case number and identity of victim-witnesses in such cases:
    - (i) Crime of decency;
    - (ii) Crimes related to domestic violence;
    - (iii) Criminal acts which based on the law concerning the protection of witnesses and victims which must not reveal their identities; and
    - (iv) Other criminal acts which based on the law, the trial is carried out behind closed doors
  - b. Blurring case numbers, identities of litigants, witnesses, and parties involved in such cases:
    - (i) Marriage and other cases arising from marital disputes;
    - (ii) Child Adoption;
    - (iii) Will; and
    - (iv) In civil cases, religious civil cases, and state administration

<sup>20</sup> Hasil Wawancara dengan Hakim Yustisial/Kepala Koordinator Data dan Informasi Perkara pada Kepaniteraan Mahkamah Agung RI Bapak Asep Nursobah, S.Ag.,M.H pada Rabu, 22 Desember 2021.

<sup>21</sup> "Keputusan Ketua Mahkamah Agung Republik Indonesia Nomor: 1-144/KMA/SK/II/2011 tentang Pedoman Pelayanan Informasi di Pengadilan" (2011).

according to law, the trial is conducted behind closed doors.

- c. Obscuring the case number and identity of the victim, defendant, or convicted in a child crime case.
2. The information must be obscured and it relates to the identity of the parties referred to in point 1, including:
    - a. Names and aliases;
    - b. Work, place of work, and identity of the employee concerned; as well as
    - c. Schools or educational institutions of the referred parties.
  3. The identity of the expert witnesses and the legal representatives, if any, does not need to be obscured
  4. The obscurement is done by:
    - a. Discolouring the referred information with a marker so that it becomes unreadable in the case of blurring of the printed text (hardcopy); or
    - b. Replacing the referred information by using other terms in the electronic text (softcopy) with the following procedure:

**Table 1. Procedure for replacing information with other terms.**

INFORMATION	PROCEDURE OF OBSCURING	EXAMPLE
<b>I. Name</b>		
a) The Defendant, The Convict, and Other Parties' Names	<ol style="list-style-type: none"> <li>1. The defendant, the convict, and others parties' names in particular cases are obscured by writing only their status (standing status) in a case.</li> <li>2. If there is only one person being convicted, the convict's name changes to "THE CONVICT 1", "THE CONVICT 2", and so on. This is also applied to the defendant and other parties.</li> <li>3. The sequence order is given based on the order in which it appears in the decision draft.</li> </ol>	<ul style="list-style-type: none"> <li>◆ "Mulyadi" who is a defendant in a case with only one defendant becomes "THE DEFENDANT".</li> <li>◆ "Mulyanto" who is the second defendant in a case with more than one defendant becomes "THE DEFENDANT II".</li> <li>◆ "Mulyanto" who is the third plaintiff in a case with more than one plaintiff becomes "THE PLAINTIFF III".</li> </ul>
b) The Witness	<ol style="list-style-type: none"> <li>1. The Witness' names are obscured by writing only their status (standing status) in a case.</li> <li>2. The sequence order is given based on the order in which it appears in the decision draft</li> </ol>	<ul style="list-style-type: none"> <li>◆ "Sulistami" who is the first witness to appear in the trial becomes "THE WITNESS 1".</li> <li>◆ "Sulistyawai" who is the second witness to appear in the trial becomes "THE WITNESS 2"</li> </ul>

<p>c) The Other Related Parties</p>	<p>1. Other parties' names are obscured by writing their relationships with the parties.</p> <p>2. If there is only one person as the other related parties, the name is obscured by writing their status/ relationship with the defendant, the parties or the victim. If there is more than one person, then a numbered sequence is given based on the order in which they appear in the decision draft; or in the order clearly stated in the decision. For the example, the first child, the second child, and so on.</p>	<ul style="list-style-type: none"> <li>◆ "Sodikin", who is in a divorce case, is the only child from a divorcing couple. He becomes "THE CHILD OF THE PLAINTIFF AND THE DEFENDANT " .</li> <li>◆ "Sobirin", who is in a divorce case, is the third child from a divorcing couple. He becomes "THE CHILD OF THE PLAINTIFF AND THE DEFENDANT III".</li> <li>◆ "Sobari", who is in a divorce case, is a brother-in-law of the plaintiff. He is mentioned second in the decision draft, so he becomes "THE BROTHER IN LAW OF THE PLAINTIFF II"</li> </ul>			
<p>d) The Expert Witnesses</p>	<p>1. Names (and any other identities) of the expert witnesses do not need to be obscured</p>	<p>-</p>			
<p>e) The Attorneys or Legal Counsels</p>	<p>1. Names (and any other identities) of the attorneys or legal counsels do not need to be obscured</p>	<p>-</p>			
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td data-bbox="839 230 1045 1167"> <p>f) The Government Institutions and Private Institution</p> </td> <td data-bbox="1045 230 1278 1167"> <p>1. The name of a private institution/private legal entity associated with the defendant, the convict, the parties, the witnesses or the other related parties is obscured by writing the general legal term of the institution/ legal entity.</p> <p>2. The sequence order of a private institution/ private legal entity is given based on the order in which it appears in the decision draft.</p> <p>3. The identity of the state/ government institutions does not need to be obscured.</p> </td> <td data-bbox="1278 230 1490 1167"> <ul style="list-style-type: none"> <li>◆ "Bakti Sejahtera LLC" is the third limited liability company (LLC) mentioned in the draft. This company name becomes "The LLC III".</li> <li>◆ "Bakti Utama Co-operative" which is the only cooperative stated in the decision draft, becomes "The Co-operative".</li> </ul> </td> </tr> </table>			<p>f) The Government Institutions and Private Institution</p>	<p>1. The name of a private institution/private legal entity associated with the defendant, the convict, the parties, the witnesses or the other related parties is obscured by writing the general legal term of the institution/ legal entity.</p> <p>2. The sequence order of a private institution/ private legal entity is given based on the order in which it appears in the decision draft.</p> <p>3. The identity of the state/ government institutions does not need to be obscured.</p>	<ul style="list-style-type: none"> <li>◆ "Bakti Sejahtera LLC" is the third limited liability company (LLC) mentioned in the draft. This company name becomes "The LLC III".</li> <li>◆ "Bakti Utama Co-operative" which is the only cooperative stated in the decision draft, becomes "The Co-operative".</li> </ul>
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<p><b>II. Address</b></p>					
<p>Address</p>	<p>The address of a person or a private legal entity associated with the defendant, the convict, the parties, the witnesses or the other related parties is obscured by writing the second-level area where the address is located.</p>	<p>"Berlian St. No. 3, RT. 001, RW.001, Lenteng Agung, South Jakarta" becomes "South Jakarta".</p>			

III. Occupation, Function and Corps (Institution)		
Occupation, Function and Corps (Institution)	1. The occupations and positions of the defendants, the convicts, the parties, the witnesses or the other related parties are obscured by mentioning the general description of the witnesses' occupations and functions.  2. The obscuration of the witnesses' Corps (Institution) in a certain case that the identity must be obscured is done by eliminating the name of the unit.	♦ "A Student of Widya Karya University" becomes "A Student".  ♦ CIVIL SERVANT MA KREM-032/ WBR becomes "A Civil Servant".
IV. Employee Identification Number or similar identification		
Employee Identification	The employee identification number, employee registration number or other employee identities are obscured by removing them from the decision draft.	-

Source: The Decree of The Supreme Court of The Republic of Indonesia Number: 1-144/KMA/SK/II/2011 regarding The Guidelines for Information Services in Courts.

The regulation above provides prohibition to keep the identity of the children who are in conflict with the law. It also provides a procedure for uploading a copy of a child's case decision, as it has been distinguished by terms, use of language, address information, up to the group of the child in conflict with the law.

The purpose of the obscuration is no other than an effort to protect the identity of the children in conflict with the law. In addition, the protection for not publishing the identity of the children in conflict with the law is no other

than to realize the children's main interest. This main interest is to protect them from all forms of discrimination and to maintain their physical and psychological health.<sup>22</sup>

Based on the statements above, the Supreme Court juridically has paid attention on how to protect the rights of the children in conflict with the law, especially regarding the protection of the children's identity rights which will not published in prints or electronic medias. Regarding this case, the SK (Decree) made by the Chief of the Supreme Court has given a form of special treatment to children in conflict with the law.

It can be said that the protections and the special treatments in this case should also assist the realization of identity right protection for the children in conflict with the law. Their identity must be kept secret in prints/ electronic medias as stated in Article 19 of the Act Number 11 of 2012 regarding the Juvenile Criminal Justice System as follows:

- (1) The identity of the Child, The Victims' Child, and/or The Witnesses' Child must be kept confidential from the news published both in prints or electronic platforms.
- (2) The identities as referred to paragraph (1) include the names of the Child, the names of the Victims' Child, the names of the Witnesses' Child, the names of the parents, address, face, and other matters that may reveal the identity of the Child, Victims' Child, and/or Witnesses' Child.

However, there are facts that the official Site of the Supreme Court Decision Directory Site does not keep the confidentiality of child's identity. As the examples, this cases happen at the Yogyakarta District Court's Decision Number 10/PID.SUS-anak/2015/PN.Yyk, Banda Aceh High Decision Number 18/Pid.Sus-anak/2015/PT.BNA,

<sup>22</sup> Dedi Sahputra, "Perlindungan Hak-Hak Anak Dalam Perspektif Komunikasi Massa," *Jurnal HAM* 10, no. 2 (2019): 2579-8553.

Tanjungpinang District Decision Number 21/Pid.Sus - Anak/2016/PN.Tpg, Sungailiat District Court's Decision Number 8/Pid.Sus.anak/2017/PN.Sgl, Sumber District Court's Decision Number 25/Pid.Sus.An/2018/PN.Sbr, Polewali District Court's Decision Number 5/Pid.Sus.Anak/2019/PN.Pol, Class II Batusangkar District Court's Decision Number 13/Pid.Sus-Child/2020/PN Bsk, Pati District Court's Decision No. 3/Pid.Sus-Child/2020 /PN.Pti, Palembang Court Decision Number 24/Pid.Sus-Anak/2021/PN.Plg.

Some of the cases mentioned above are decisions or electronic documents or electronic information in the form of copies that published through the Directory of Supreme Court Decision Site. On the this site, the names are clearly and completely stated and also other names related to the child's identity. The examples are the full name which is not disguised with the initial/crossed out/or replaced, the residential address is fully stated, even the names of children's parents are listed.

The principle of child protection is based on the best interest of the child. This principle regulates all actions involving child carried out by all parties, including the government, society, legislative and judicial agency, so that the child's interest must be a major consideration.<sup>23</sup>

Prohibitions of the child's identity from being published in printing press or electronic media are stated in Article 3 in conjunction with Article 19 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. This provision is made to prevent the child from all forms of threats, both physical, psychological, social and psychological threats and to prevent the child from being

23 Harrys Pratama Teguh, *Teori Dan Praktek Perlindungan Anak Dalam Hukum Pidana*(Yogyakarta: ANDI Yogyakarta, 2018).

labeled which is not good for child's growth.<sup>24</sup>

Therefore, from this case, it's clear that there is a gap between *das sollen* and *das sein*, especially in Article 19 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and the decree made by the Chief Justice of Supreme Court. Thus, it is necessary to know what are the factors causing the Directory Supreme Court Decision Site to not hide the identity of children in conflict with the law.

Based on what was conveyed by the Judicial Judge/Head of Data and Information Coordinator at the Supreme Court Registry Office above, the factors of why children's identity is not kept secret are stated as follows:<sup>25</sup>

1. The officer or manager team in the Directory of Supreme Court Decision Site does not understand the rule about prohibition of publishing the identity of children in conflict with the law.

The officer or team assigned to upload or to publish child case decision in the of Supreme Court Decision Site still does not understand the regulation governing prohibition of publishing the identity of children in conflict with the law. These are factors of the non-disclosure of children's identity uploaded on the Directory of Supreme Court Decision Site. They happen because it cannot be denied that the existence of rule is not known yet to the public. However, the public is expected to know this provision since it is legal and valid regulation.

It is undeniable that inadequate law enforcement is caused by the

24 Septian Tedi Prasianto, "Implementasi Pasal 64 Undang-Undang Nomor 35 Tahun 2014 Terhadap Identitas Anak Sebagai Pelaku Kriminal Yang Tidak Dirahasiakan Oleh Pers," *Jurnal Novum* 05, No. 02 (2018): 2442-4641.

25 Hasil Wawancara dengan Hakim Yustisial/Kepala Koordinator Data dan Informasi Perkara pada Kepaniteraan Mahkamah Agung RI Bapak Asep Nursobah, S.Ag.,M.H pada Rabu, 22 Desember 2021.

lack of understanding of law from law enforcement officials.<sup>26</sup> If someone only knows the law, she/he can be said having a low level of legal awareness. If someone is behaved by the law, she/he can be said having a high level of legal awareness. So, the researcher can conclude that in the children's identity disclosure, the existence of rule is still unknown to the officers. Only a small number of officers or the publication team may know about this regulation.

## 2. Inconsistency in examining copies of child case Decision

It is undeniable if there are still many copies of child case decisions published or uploaded on the Directory of Supreme Court Decision Site with the children's identity revealed. They happen due to inconsistency in examining copies of child case decisions which will be uploaded the Directory of Supreme Court Decision Site. Although the Supreme Court Decree Number 1-144/KMA/SK/I/2011 concerning Guidelines for Information Services in Courts has provided information about which part of the procedure needs to be obscured, there are not any examples of a copy format in children case decision.

Thus, it can be seen that the inconsistency of copy format and examining the decisions of child's case create a gap and cause violations of children's rights. Decision uploaded on the Supreme Court's Decision Directory Website is a copy of decision which previously had been examined first before uploaded on the site. The nature of uploading the decision is intended for being accessed by the public in which the form is a copy of the decision, not

the original one. It is different from the decision that is addressed to the parties concerned or the litigant. If that is the case, the decision is original version.

What needs to be re-arranged is the format copy of child case decision. The format needs to be parallel, consistent and achieves legal certainty. In making a decision, judge has followed the procedure as stipulated in the applicable provisions.<sup>27</sup>

If the judge has examined a case that has been submitted, there is a procedure in making a decision of the related case, even if it is a child case. Judge is obliged to make decision that complies with procedures and judge can end the case by reading out the decision in a trial open for public.<sup>28</sup>

As stipulated in Article 13 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, it states that a court decision is only valid and has legal force if it is pronounced in a trial open to the public. In addition, the decision must contain the conditions stated in Article 197 paragraph (1) of the Criminal Procedure Code. One of the conditions is that a decision has to include full name, place of birth, age or date of birth, gender, nationality, place of residence, religion and work. If a decision does not contain those conditions, the decision may be declared null and void by the law.

Sudikno Martokusumo as stated by Abdul Manan explained that "A decision is a statement by a judge as a state official who is authorized to make decision and is pronounced in a trial open to the public with the aim of resolving cases between

26 Muhammad Agung Ardiputra, "Pola Efektif Pembinaan Hukum Untuk Meningkatkan Keberhasilan Pembangunan Hukum," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 1 (2021): 37-48, <http://dx.doi.org/10.30641/kebijakan.2021.V15.37-48>.

27 Hasil Wawancara dengan Hakim Yustisial/Kepala Koordinator Data dan Informasi Perkara pada Kepaniteraan Mahkamah Agung RI Bapak Asep Nursobah, S.Ag.,M.H pada Rabu, 22 Desember 2021.

28 Nurlen Afriza. 2018. *Tahap-tahap dalam Membuat Putusan.pa-padang.go.id*. Diakses pada tanggal 07 Januari 2022 pukul 20.14 WIB.

the litigant”.<sup>29</sup>

So, it can be concluded that the uploaded decision is a copy version, not the original one. The original version is given to related parties and if there is a copy of the decision uploaded on the Supreme Court Decision Directory Website that contains the identity of a child, it does not affect the legal force of the decision.

3. The monitoring which has been carried out is not yet massive.

As it is known, each Supreme Court authorizes court to upload copies of child case decision through the Supreme Court Decision Directory Site. However, supervision remains on the hand of the Supreme Court as the main institution in charge. In this case, the supervision carried out by the Supreme Court has certain characters stated below:

- a. Functional supervision carried out by the regulatory agency
- b. Attached supervision, the attached supervision can be carried out directly by the head of the court.

However, supervision or monitoring of the authorized party to upload copies of child case decision on the Supreme Court Decision Directory Site is still not optimally carried out. Another obstacle is the supervision procedure that is still different or has not been harmonized with one another.

4. Lack of understanding by the publication officers about their main duty and function

The Supreme Court and the lower courts are places to distribute information or knowledge to parties who want to know the performance of the work unit in the Supreme Court or the lower court, such as apprentice practitioners or other. In addition, these parties also

want to know how the performance of the clerk’s office too. Lack of understanding by publication officers regarding their main duty and function can be seen and occur if the party who uploaded a copy of the child’s case decision is not the management team but an employee who is not authorized or can be said to be someone who is an apprentice.

5. Only few people, especially the victim or the victim’s family, reported it, so the situation was considered normal.

### **The Implication of Identity Disclosure of Children in Conflict with the Law on the Supreme Court Decision Directory Site**

There are many considerations regarding why the identity of children in conflict with the law must be kept secret both in printing press and electronic media. Children are the future generations of nation and figures who are very influential on the sustainability of nation. They have rights and their rights must be protected, respected and fulfilled. According to the Judicial Judge/Head of Data and Information Coordinator at the Supreme Court Registry Office, the protection of the identity rights owned by children in conflict with the law has become an obligation of the state, the government, society, parents and other parties, and it is the children’s human rights.<sup>30</sup>

Some information provided by Advocates in the Agus Subyantoro, S.H & Partners Law Firm gives insight that protection of identity of children in conflict with the law is an obligatory effort. It must be carried out by law enforcers, including the victim’s family and the wider community in order to assist the children’s interest. Thus, the children can grow and develop in accordance with human dignity both in the social, educational

<sup>29</sup> Abdul Manan, *Penerapan Hukum Acara Perdata Di Lingkungan Peradilan Agama*, (Jakarta: Kencana Preneda Media Group, 2008).

<sup>30</sup> Hasil Wawancara dengan Hakim Yustisial/Kepala Koordinator Data dan Informasi Perkara pada Kepaniteraan Mahkamah Agung RI Bapak Asep Nursobah, S.Ag.,M.H pada Rabu, 22 Desember 2021.

and other aspects. It is important because children are susceptible and they need to be under special supervision and treatment from people who are more mature and understand their condition.<sup>31</sup> It means that all parties have an obligation to protect children rights in accordance with human dignity. Thus, children's rights can still be experienced by them without any slightest reduction. Consequently, there must be a reporting mechanism or procedure provided on the Supreme Court Directory Site regarding how to report the disclosure of child's identity in a court decision. It is necessary for the victim, victim's family, or the public to do the report. Reporting the disclosure makes community participate actively in monitoring the fulfillment of children's interest.

Various provisions have regulated the prohibition of the identity disclosure of children in conflict with the law. Bearing in mind, to fulfill children's rights is the responsibility of a state and a form of realizing the best interest of the children. Referring to the form of state responsibility, the state is always obliged to protect children's rights, it can be seen in the body of the constitution which is the basis of all applicable regulations in Indonesia.<sup>32</sup> So, it is no longer an excuse if the state is negligent in protecting children's rights, especially the right to protect the identity of children in conflict with the law.

The protection of children rights is guaranteed in Law Number 23 of 2002 concerning Child Protection specifically contained in Article 4 to Article 18. The children rights are also guaranteed in Law Number 39 of 1999 concerning Human Rights, precisely in Article 52 to Article 66.

From the regulations above, they indirectly confirm that the protection of every children rights needs to be fulfilled, both in their life and in their existence. Although children are involved in a legal case, their rights are still upheld, especially the right to protect their identity which cannot be revealed publicly in print or electronic media.<sup>33</sup>

In Article 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is stated that the children rights in the criminal justice process include:

- a. Treated humanely by paying attention to the needs according to their age;
- b. Separated from adults;
- c. Obtaining legal and other assistance effectively;
- d. Carry out recreational activities;
- e. Free from torture, punishment or other cruel, inhuman, and degrading treatment;
- f. Not sentenced to death or life imprisonment;
- g. Not arrested, detained, or imprisoned, except as a last resort and for the shortest time;
- h. Obtaining justice before a juvenile court that is objective, impartial, and in a trial that is closed to the public;
- i. The identity is not published;
- j. Obtaining assistance from parents/guardians and people who are trusted by the child;
- k. Obtaining social advocacy;
- l. Obtaining a personal life;
- m. Obtaining accessibility, especially for children with disabilities;
- n. Obtaining education;
- o. Obtaining health service;
- p. Obtaining other rights in accordance with the provisions of the legislation.

The protection of the identity of children in conflict with the law is reaffirmed in Article

31 Hasil Wawancara dengan Advokat pada *Law Office Agus Subyantoro & Partners* Bapak Agus Subyantoro, S.H pada Jum'at, 14 Januari 2022.

32 Pratama, Sulastri, And Darwis, "Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum." *Jurnal Prosiding KS: Riset & PKM*. 2, No. 1(2017): 2442-4480

33 Alfian Mahendra and Beniharmoni Harefa, "Perlindungan Hukum Terhadap Identitas Anak Sebagai Pelaku Tindak Pidana Dalam Proses Peradilan Pidana," *Kertha Semaya : Journal Ilmu Hukum* 8, No. 10 (2020): 2303-0569.

19 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which states these following points:

- (1) The child's identity, Child's Victim, and/or Child's Witness must be kept confidential in printing or electronic media
- (2) The identity as referred to in paragraph (1) includes the child's name, the name of child's Victim, the name of child witness, the name of parent, address, face, and other matters that may reveal the child's identity, child victim and/or child witness.

So, it can be concluded that the protection of the identity of children in conflict with the law on the Supreme Court Decision Directory Website is none other than to realize the best interests of children with all special treatments that must be applied. The main goal of this protection is to assure their human rights are fulfilled. Meanwhile, the best interest for the children is to protect them from all forms of discrimination and to maintain their physical and psychological health.<sup>34</sup>

However, as there is the evidence of the decision which does not hide the identity of children in conflict with the law published on Supreme Court Decision Directory Site, rules that have been listed are violated, this condition makes the logical consequence that there will be some impacts arising from this violation. Moreover, there are background factors that caused the Supreme Court Decision Directory Website does not hide the child's identity in as explained above.

The explanation from Advocate Agus Subyantoro, S.H. provides the view that if there are any disclosures regarding children's identity, they are a form of law violation. The identity of children in conflict with the law should be kept in secret, because this is an effort to ensure the children rights. The

34 Sahputra, "Perlindungan Hak-Hak Anak Dalam Perspektif Komunikasi Massa." *Jurnal HAM* 10, No. 2 (2019): 2579-8553.

identity of children in conflict with the law is allowed to be published publicly only if it is legally necessary.<sup>35</sup>

Then, the regulations about prohibiting the disclosure of children identity are the ones that have been applied in Indonesia. These regulations must be obeyed. Conceptually, if the regulations are violated, then the consequences that arise are the imposition of sanctions on the violators or someone who has violated the rules. This is due to the coercive nature of the law that makes all elements of the state must obey and comply with law. Violation of the law that occurs is the same as actions that do not heed the purpose of the law itself, one of which is legal certainty for the welfare of society.<sup>36</sup>

According to Advocate at Agus Subyantoro, S.H & Partners Law Firm, psychological factor of the child becomes the main consideration of the prohibition of identity disclosure of children in conflict with the law. The psychological state of children compared with adults is very different. The difference can be seen from their mentality. Children are easily affected by the surrounding circumstances, susceptible to treatment from any environment and from anyone. So it can be ascertained that the violation of children identity rights gives negative effects to them.<sup>37</sup>

According to advocate at Agus Subyantoro, S.H & Partners Law Firm, the disclosure of identity of children in conflict with the law on copy of children case Decision published on the Supreme Court Decision Directory Website will have an impact on 3

35 Hasil Wawancara dengan Advokat pada *Law Office Agus Subyantoro & Partners* Bapak Agus Subyantoro, S.H pada Jum'at, 14 Januari 2022.

36 I Nengah Adi Drastawan, "Kedudukan Norma Agama, Kesusilaan, Dan Kesopanan Dengan Norma Hukum Pada Tata Masyarakat Pancasila" *E-Journal Komunitas Yustitia* 4, No. 3 (2021).

37 Hasil Wawancara dengan Advokat pada *Law Office Agus Subyantoro & Partners* Bapak Agus Subyantoro, S.H pada Jum'at, 14 Januari 2022.

(three) sides, among others are:<sup>38</sup>

a. Impact on the child itself

The violation of rights owned by children in conflict with the law regarding their identity will have an impact on the condition of the child concerned.<sup>39</sup> By violating their rights, consideration of the children's best interests either from the physical, psychological or mental is certainly not achieved.

Talking about this matter, the main consideration why it is not allowed to publish the child's identity is the psychological factor of the child. If there is a violation of the children identity rights, it indirectly affects the children, especially their psychology aspect. The identity of the children is an identification of the identity owned by them. With the identity of the children in conflict with the law being disseminated, indirectly the children in conflict with the law will be known as the children who have ever been involved in a legal case.

So, what will be experienced by them is an unstable mental and psychic state, the child is sensitive, easily getting labelled, trauma, or even they will act further beyond the limits of their previous case.

b. Impact on the family

Besides giving impacts on children, the implications for those violation, Advocate at the Agus Subyantoro, S.H & Partners Law Firm also explained that it will give some impacts to the child's family. The changes in attitude and condition of the children are certainly different from their previous case. The family has an important role for the child, the family acts as a guide, protector, and

supervisor for the children. Moreover, the family is a figure who understands the condition of the children in any circumstances.<sup>40</sup>

Referring to Article 23 Jo Article 24 of Law No. 35 of 2014 on Amendments to Law No. 23 of 2002 on Child Protection, the state and government guarantee the implementation of children protection. They are obliged to ensure the protection, maintenance, and welfare of children by taking into account the rights and obligations of parents, guardians or other persons who are legally responsible for children. It also does not forget the role of the Correctional Institution which is a part of law enforcement, that there is no exception for a role in protecting children's rights.<sup>41</sup>

More specifically, Article 26 of Law No. 35 of 2014 on amendments to Law No. 23 of 2002 on Child Protection explains the parents are obliged and responsible for:

- a) caring, nurturing, educating and protecting the children
- b) developing the children in accordance with the ability of the children, talents and interests
- c) preventing the marriage at the young age.
- d) providing the education and making children have the best character in them.

These obligations and responsibilities are also shared in the scope or field of religion, health, education, social and special protection to children as stated in Article 59 number 2 of Law

38 Hasil Wawancara dengan Advokat pada *Law Office Agus Subyantoro & Partners* Bapak Agus Subyantoro, S.H pada Jum'at, 14 Januari 2022.

39 Ulang Mangun Sosiawan, "Perspektif Restorative Justice Sebagai Wujud Perlindungan Anak Yang Berhadapan Dengan Hukum," *Jurnal Penelitian Hukum De Jure* 16, no. 4 (2016): 425-438.

40 Hasil Wawancara dengan Advokat pada *Law Office Agus Subyantoro & Partners* Bapak Agus Subyantoro, S.H pada Jum'at, 14 Januari 2022.

41 Oki Wahyu Budijanto, "Pemenuhan Hak Pendidikan Bagi Anak Didik Pemasarakatan Di Lembaga Pembinaan Khusus Anak," *Pemenuhan Hak Pendidikan Bagi Anak Didik Pemasarakatan Di Lembaga Pembinaan Khusus Anak* 7, no. 1 (2013): 1978-2292..

Number 11 of 2012 on the criminal justice system of children.

The development from the family, especially parents, will be able to help the development of the children's soul and needs. If the parents do not understand this role, then it will cause negative impacts in the development of the children's soul and it will form negative personalities in them.<sup>42</sup> Increasing awareness of legal order and stabilizing the child's condition not to be bad tempered are the aims of this development.<sup>43</sup> So the researchers concluded that the role of family in this case is needed to deal with the condition of children with situations that can change their psychic and mental. However, it is also undeniable that these efforts need to be done comprehensively, continuously and consistently involving various parties, whether from parents, teachers, and the community.<sup>44</sup>

c. Impact on applicable rules

Advocate at Agus Subyantoro, S.H & Partners Law Firm explained, the best rules are the rules that should be good in its application. If the application is not in accordance with the rules that have been set, automatically sanctions apply at that time.<sup>45</sup>

Andagium Fiat Justitia Ruat Caelum, let justice be done even though the sky is about to fall. It means that no matter how

its conditions, the law must be enforced in order to provide certainty to the parties concerned related to the violation of their rights. This also applies to violations of the non-secrecy of the identity of children in conflict with the law both in printed and electronic media.

Regarding Violation of Article 19 of Law No. 11 of 2012 on Juvenile Justice System, the consequences apply sanctions that have been set in Article 97 of Law No. 11 of 2012 on the Juvenile Criminal Justice System, which is imprisonment for 5 (five) years and fines. Efforts that can be done namely:

1. Subpoena
2. Filed a lawsuit.<sup>46</sup>

In addition, anyone can file a report if they discover an unlawful act. Without exception, the complainant cannot be prosecuted either civilly or criminally because that act is an ordinary offense and it has been regulated in the law.<sup>47</sup>

Judicial Judge/ Chief Coordinator Data and Information of the Supreme Court clerk stated that the imposition of sanctions that are still applied to the violators of these rules in this case is the publication officer of the decision. The sanctions are in the form of warning sanctions and accountability sanctions to re-upload the copy of the decision that has not kept the identity of children in conflict with the law.<sup>48</sup>

This study sets out on the Theory of Legal Certainty according to Gustav Radbruch. According to this theory, the law is positive which means that the positive law

42 Gaby Monica, eds, "Eksistensi Sistem Peradilan Pidana Anak Dan Perlindungan Hukum Anak Pelaku Tindak Pidana Menurut Undang-Undang Nomor 11 Tahun 2012," *Lex Crimen* Vol.XI/No.1/ Jan/2022 (2022).

43 Yul Ernis, "Diversi Dan Keadilan Restoratif Dalam Penyelesaian Perkara Tindak Pidana Anak Di Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 10, no. 2 (2016): 163-174.

44 Faisal Faisal and Nursariani Simatupang, "Kebijakan Nonpenal Dalam Rangka Upaya Preventif Anak Sebagai Korban Kekerasan Fisik Dan Psikis Di Sekolah," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 2 (2021); 287-304, <http://dx.doi.org/10.30641/kebijakan.2021.V15.287-304>.

45 Hasil Wawancara dengan Advokat pada *Law Office Agus Subyantoro & Partners* Bapak Agus Subyantoro, S.H pada Jum'at, 14 Januari 2022.

46 Hasil Wawancara dengan Advokat pada *Law Office Agus Subyantoro & Partners* Bapak Agus Subyantoro, S.H pada Jum'at, 14 Januari 2022.

47 Joshefin Mareta, "Analisis Kebijakan Perlindungan Saksi Dan Korban," *Balitbangham.Go.Id* 10, no. 1 (2016): 105-115.

48 Hasil Wawancara dengan Hakim Yustisial/Kepala Koordinator Data dan Informasi Perkara pada Kepaniteraan Mahkamah Agung RI Bapak Asep Nursobah, S.Ag.,M.H pada Rabu, 22 Desember 2021

is legislation. The law is based on the facts which means it is based on a reality. And the facts formulated must be in a clear way to avoid errors in meaning and to facilitate the implementation.<sup>49</sup>

From this opinion, the principle of the theory states that one of the objectives of the law is to achieve legal certainty. Gustav Radbruch emphasized that legal certainty can be achieved only if the implementation and enforcement of laws against a person are implemented fairly and without discrimination. It can be said that if what is set forth in a legislation, it is implemented in harmony to guarantee the equal rights and legal protection against someone who is in conflict with the law.

In addition, as what has been stated before, if the law is a legislation that must be implemented in accordance with what is stated, then the legal certainty must also be based on the observance of law enforcement on formal legal mechanisms that have been regulated in a legislation.

Legal certainty is one of the objectives of law where the output of legal certainty is to materialize justice in society. The existence of these rules and the implementation of the rules give assurance to legal certainty. Legal certainty will exist if the implementation and enforcement of the law does not discriminate an act committed by the subject of law.<sup>50</sup> Because, if the law exists, then legal certainty must be materialized without being engineered. If the law has no certainty, then the law can be biased/ambiguous and gives a lot of interpretations.

Legal certainty has two aspects. First, regarding the matter that law can be established in concrete matters. It means that the parties seeking justice want to know the law in a specific matter before starting a case. Second, legal certainty is legal security. It means protection for the parties against the implementation of the judges' authority. The definition of law must prohibit all rules that are similar to law, but it does not have characteristic as command from the sovereign authority. Legal certainty must always be upheld regardless of the consequences and there is no reason not to uphold the law because positive law is the only law.<sup>51</sup>

Therefore, it can be concluded that legal certainty in maintaining the confidentiality of the identity of children in conflict with the law has not been fully implemented as what it initially aimed. As the facts, the identity of children in conflict with the law is still clearly listed on the copy of the decisions published on the Supreme Court Decision Directory Site.

This violation certainly has an impact on the future of the children. As the concrete evidence, protecting the child's welfare have not yet been materialized and causing injustice and protection of the children's identity rights. Without exception, children in conflict with the law require a special action in protecting their rights. However, this study still shows the gap between *das sein* and *das solen*, where regulations aimed at protecting the identity rights of children in conflict with the law from being published in any media both in electronic and others has not been implemented optimally. Overall, it cannot provide a form of legal certainty and legal protection as it should be.

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49 Mario Julyano and Aditya Yuli Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum," *Jurnal Crepido* 1, no. 1 (2019): 13–22.

50 Hasaziduhu Moho, "Penegakan Hukum Di Indonesia Menurut Aspek Kepastian Hukum, Keadilan, Dan Kemanfaatan," *Universitas Dharmawangsa* 13, No. 1 (2019): 1829-7463.

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51 Ibid.

## CLOSING

### Conclusion

Based on the description of the discussion and analysis above, this study concludes that

the efforts to protect the identity rights of children in conflict with the law from being published in print or electronic media does not provide legal certainty. By the discovery of several factors that caused the Supreme Court Decision Directory Site do not hide the identity of the children in conflict with the law as described above, clearly it has shown that legal certainty in complying with the provisions of legislation is not fully implemented. Therefore, the violation would cause problems to the applicable rules and have implications for children and families that cause discriminatory treatment to children as a vulnerable group that should be given special attention by all parties.

Regarding the embodiment to maintain the honour and dignity of children in conflict with the law as stipulated in Article 19 of Law No. 11 of 2012 on the Criminal Justice System of Children, there is the application of sanctions for violators regulated in Article 97 with the threat of sanctions in the form of fines and prison sanctions. However, they are not applied as it should be. Given the existence of the rule intended to protect the identity rights of children in conflict with the law from being published in any media both electronic and other. In reality, the rule to protect children's identity has not been implemented optimally so it has not provided a form of legal certainty and legal protection.

Thus, regarding the non-implementation of the rules with all its consequences, it can be said that those rules do not provide legal certainty to the children in conflict with the law as they are the ones who own the rights of identity that is revealed in public.

### Suggestions

Based on the description of conclusions above, the researchers would like to give suggestions as follows:

1. Legal protection of the children's rights is no exception to legal protection for children in conflict with the law. It is the responsibility of all elements of the state to protect children, including the responsibility of the Supreme Court Decision Directory Site management as the platform which is used to upload the copy of the decision of the children's case. Therefore, the Supreme Court needs to socialize the importance of respecting the rights of children to each staff and conduct optimal and massive monitoring in order to facilitate the performance of the Supreme Court Decision Directory Site Management Officer. It is also necessary to establish a clearer copy of the child case decision format so that the copy version can follow the provisions in order to protect the identity of the children in conflict with the law.
2. The official Site of the Supreme Court also needs to provide an electronic form that can be used by the community or family of the victim who is interested to participate in conducting surveillance and report if there is negligence in keeping the identity of children in conflict with the law as a secret.
3. For anyone who violates the provisions of Article 19 of Law No. 11 of 2012 on the Juvenile Criminal Justice System, the consequences are to get sanctions as determined in Article 97 of Law No. 11 of 2012 on the Juvenile Criminal Justice System, namely a fine of Rp. 500,000,000 and going to a prison. By doing this sanction, it will provide legal certainty to children in conflict with the law, the certainty that they have been affected by violations of their identity disclosure on electronic media, namely the Supreme Court Decision Directory Site.

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