

## Implementation of the Criminal System for Children as Perpetrators of Criminal Acts from the Perspective of Law Number 11 of 2012 concerning the Criminal Justice System for Children

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### ARTICLE INFO

*Keywords:* Child Protection, Child Criminal System, Child Criminal Justice System

*Received :* 13, November

*Revised :* 27, November

*Accepted:* 24, December

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### ABSTRACT

This paper explains the basis of legal protection for children who commit crimes according to the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which refers to the Convention on the Rights of the Child. The problems discussed also refer to the protection of children as perpetrators. The research method applied for this study is normative legal research, which is included in the realm of legal dogmatics and focuses on the analysis or study of legal regulations. This study, first, found that the provisions of punishment for children are in accordance with those regulated in Law Number 35 of 2014 which amends Law Number 23 of 2002 concerning Child Protection, which states that imprisonment may be imposed on children only if there is no other alternative, and must be separated from adult prisons. Second, efforts to protect children are carried out through the application of restorative punishment and diversion, if they meet the requirements stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

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## **INTRODUCTION**

Deviant behavior of teenagers in the sense of juvenile delinquency is when minors intentionally resist the law so that the person is threatened with sanctions and criminal penalties for their actions.

SPPA covers all methods of handling cases of children in conflict with the law, the process is based on the principles of protection, justice, non-discrimination, optimal essentials, respect, and considering the sustainability of life and development of children. The imposition of sentences and restrictions on freedom are carried out proportionally, as a last resort, to avoid acts of revenge. (Article 1 number 1 and Article 2 of Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System).

Even though children commit crimes, like adults they have the right to receive protection. What distinguishes the protection of children from adults is stated in Article 1 paragraph 2 of Law Number 23 of 2002 concerning Child Protection. This article regulates that a minor must receive protection as their rights to continue to develop because children have a long future and are the main source of the nation's successors.

Every child has the right to protection from regulations even if they commit a crime. Arrest or punishment can only be carried out if it is a final effort in child criminalization. Legal protection for a minor such as being accompanied by an authorized officer, reducing the time of detention, as well as distinguishing between underage convicts and convicts who are capable of acting.

The implementation of this system needs to prioritize the Restorative Justice process and strive for diversity to reach agreement from both parties:

- a. Non litigation cases.
- b. Prevent deprivation of liberty.
- c. Motivating community participation.
- d. And give children responsibility.

Based on the description, the author summarizes the problems, first, what is the criminal responsibility of children towards the method of child criminal justice in Indonesia? Second, what is the form of asylum rights for underage criminals based on Law Number 11 of 2012 concerning the Child Criminal Justice System reviewed from Law Number 23 of 2002 concerning Child Protection?

## **LITERATURE REVIEW**

Children are the next generation representing ideal opportunities and the successors of the nation's struggle, have a strategic role, and need comprehensive guidance and protection whether from physical, spiritual, or interaction in society. For Indonesian society, children are the subject and asset of national development to achieve justice and prosperity of the nation and state as stated in the 1945 Constitution. Therefore, children need special guidance so that they are able to develop, both physically, mentally, and psychologically. In shaping children into adults, in the process children go through the adolescent phase. This phase basically has an essential assessment because it affects relationships between individuals and correlations between others. The main aspects of the formation of adolescent values include family, religion, school, and environment. Of course, in its formation, negative impacts are often found on adolescents. One

of them is, free association that makes adolescents dragged into breaking the law, immoral acts, morals, and even being caught in criminal acts.

## **METHODOLOGY**

This study adopts a normative legal method, aiming to analyze legal norms embedded in relevant laws and legal doctrines. This method includes a study of primary legal sources, such as laws, government regulations, and court decisions, as well as secondary sources such as books, articles, and legal journals, namely discussing the issues being studied.

## **RESEARCH RESULT AND DISCUSSION**

### ***Criminal Responsibility of Children towards Juvenile Criminal Justice Methods in Indonesia***

As part of the community criminal justice system, juvenile justice is a branch of the legal system that deals with underage criminality. In addition to protecting children who are caught up in legal problems as juvenile delinquents, this approach also aims to eradicate juvenile delinquency. This is closely related to criminal acts in terms of criminal responsibility.

The reason is that criminal acts only have meaning when there is criminal responsibility, while criminal responsibility means continuing the objective blame attached to the criminal act.

(Afifah, 2014) Subjective responsibility is assigned to those who meet the requirements to receive punishment for their behavior.

The concept of legality serves as the essence of the existence of a crime, while the foundation of guilt serves as the fulcrum of punishment for the perpetrator. This means that punishment for a crime can only be imposed if the perpetrator is proven guilty of the crime. Criminal guilt is a factor in determining when a person is considered guilty. If a person's behavior at the time of committing a crime is reprehensible in the eyes of society, they are considered guilty.

If the perpetrator has committed a crime that meets the requirements of the law, criminal responsibility will result in punishment. When a prohibited act occurs, a person who violates the law will be criminally responsible. The only person who will be held accountable is those who have the capacity to be responsible. The court decides whether the defendant will be found guilty or not. It must be proven that the act was unlawful and that the defendant is capable of being responsible if found guilty. Since the abolition of Articles 45, 46, and 47 of the Criminal Code, the Criminal Code does not explicitly regulate the maturity of children in relation to their legal responsibility.

If a judge sentences a child who has committed a crime, the sentence usually varies, even three times the maximum amount. If the child's behavior is consistent with the death penalty, they can be sentenced to a maximum of 15 years. In addition, additional penalties stipulated in Article 10 of the Criminal Code letter b numbers 1 and 3 are not implemented (Article 47 of the Criminal Code) The difference in determining the minimum and maximum age for child criminal acts is not necessarily a bad thing. This determination is adjusted to the situation, conditions, historical background, and culture in each country.

Law No. 3/1997 on Juvenile Courts was replaced by Law No. 11/2012 on the Juvenile Criminal Justice System. According to the regulation, children aged 12 to 18 are considered children in trouble with the law. This shows that lawmakers still believe that children under the age of eight should not be held responsible for their actions because they do not fully understand what they are doing. Juvenile courts will still try children under the age of twelve who have committed or are accused of committing crimes. According to Article 20, a child will still be tried in a juvenile court if the crime was committed before the child was 18 years old, but was brought to the juvenile court after the child was 18 years old, but not yet 21 years old.

### ***Implementation of Criminal Sanctions Against Children Who Commit Crimes***

(Pangemanan, nd) Juvenile criminal justice aims to create prosperity for children by trying them separately. The entire process in this trial must be carried out by Child Investigators, Child Public Prosecutors, Child Judges, or Juvenile Correctional Institution officers, while still prioritizing the basis of child welfare. Criminal sanctions imposed on children must be based on truth, justice, and child welfare.

(Mahmud, 2019) The function of juvenile criminal justice is to make improvements and rehabilitation, until they are accepted back as before, not to end their hopes and future potential. To avoid negative consequences, it requires moral principles, where justice is the main basis. It requires another assessment that does not only look at one side, but from the aspect of harmony that is to be achieved, because justice is also reflected in harmony. Punishment is an action against children who behave naughty and can be held responsible for the act. Thus, for naughty children it is not always based on spiritual and psychological capabilities when the incident occurs, but rather the ability to accept punishment.

Thus, judges are prohibited from imposing cumulative sentences on defendants, but in cases of juvenile delinquents, the principal and additional sentences can be imposed simultaneously, such as imprisonment or compensation. Judges must consider the severity of the criminal or delinquent acts committed by the child, as well as the child's circumstances, household conditions, parents/guardians/foster parents, relationships between family members, and the surrounding environment, including the Community Guidance Report. In essence, in accordance with general criminal law, juvenile courts only recognize one type of principal crime. In other words, the combination of two principal crimes is not permitted.

### ***Diversion as an Alternative to Child Punishment***

The concept of diversion was first used by the United States in presenting a report on juvenile justice. Diversion aims to prevent negative consequences from mental and child development related to the criminal law system. Its implementation by law enforcement officers is based on the authority they have, known as discretion.

(Rahayu, 2015) The implementation of diversion in the formal justice system focuses more on protecting children to avoid imprisonment. The diversion policy can actually be applied at every level of justice, and can even be

started in the community through prevention efforts before a crime occurs. Therefore, a child who commits a crime is not required to go through the justice system. The basic idea behind the use of diversion is that it is a non-penal or persuasive strategy that gives children the opportunity to atone for their wrongdoing without having to go through the formal legal system.

Diversion aims to provide justice for children who have been involved in criminal acts and are undergoing legal proceedings by law enforcement officers. This justice is achieved by evaluating the circumstances and conditions of the child to choose the best course of action. Several groups of diversion programs that can be used include:

1. Application to social control

Where law enforcement officers leave the perpetrators responsible for the supervision of the community, through a process that is obeyed by the warnings that have been imposed. The community does not expect the perpetrators of crimes to be given another chance, and the perpetrators are responsible for their actions.

2. Emphasis on social services

It is a strategy in which the community monitors, helps, and supports criminals and their families. The community offers the necessary support and takes part in improving the circumstances of the perpetrator's family.

3. Emphasis on restorative justice

(Surya & Dua, 2016) Protecting the community while holding the perpetrator directly accountable to the victim and the community is the goal of restorative justice, also known as balanced justice. To choose the best course of action for the perpetrator of a crime, the community, the perpetrator, and the victim collaborate throughout the process toward restorative justice, which protects the community, and fosters a working relationship between the victim, the perpetrator, and the community.

Implementing the diversion clause is crucial because it can better protect children's human rights and keep them away from the classification of "bad children". in the context of aiming to handle alleged criminal acts involving minors without going through the court system (Setyorini et al., 2020).

Thus, the accountability of children who commit crimes has given significant attention to the accountability of minors who commit crimes. In order to hold all parties accountable in resolving criminal cases involving children, it is also important to include the idea of restorative justice.

The main objects of diversion are:

- a. Keeping children out of prison
- b. Discouraging the labeling of children as criminals
- c. Stopping child criminals from repeating the same crime
- d. Holding them accountable for their actions
- e. Protecting them from the consequences and negative impacts of the justice system

Thus those who are in contact with the law will be protected when diversion is used. The main principle of both concepts is to provide an opportunity for them

to resolve their problems without having to go to prison, but still undergo the process in the formal justice system.

***Basylum Rights for Underage Criminals Based on Law Number 11 Of 2012 Concerning the Juvenile Criminal Justice System Reviewed From Law Number 23 Of 2002 Concerning Child Protection***

a. Children's Rights in Conflict with the Law

In essence, every living person has certain rights. Without exception, the perpetrators of crimes who are defendants. According to Law Number 8 of 1981, the Criminal Procedure Code regulates the rights of the defendant. Such as the defendant has the right to be tried in court, the defendant has the right to receive legal assistance, the defendant has the right to file an appeal, the defendant has the right to receive medical treatment if sick during the trial, the defendant has the right to bring witnesses or experts who are useful for his interests (witnesses a de charge), etc.

In the prosecution stage, children have rights, namely: determination of detention time based on investigation interests, preparation of cases that can be understood by children, quick transfer of litigation cases, and implementation of judge's decisions with a spirit of guidance or rehabilitation. During the examination at the prosecutor's office, children's rights include obtaining a reduction in detention time, being protected from intimidation and oppression, the right to facilities during the investigation and prosecution process, and obtaining legal counsel as a companion.

In the trial stage, there are differences in children's rights based on their status as perpetrators, victims, or witnesses. As perpetrators, children's rights include: explanation of trial procedures, assistance and counsel during the trial, facilities to participate in the process, protection from physical, mental, and social losses, expressing opinions, requesting compensation due to unlawful arrest, detention, charges, or trials, the right to positive treatment that supports self-development, and the right to a closed trial in the interests of the child. In considering the protection of children's dignity, there is special protection that regulates the rights to distinguish between underage and adult convicts. As stated in Law Number 11 of 2012, there are differences regarding a minor, namely:

a. Children who break the law

Minors who are suspected of committing a crime and aged between 12 and 18 years.

b. Children who have become victims of crime

Minors under the age of eighteen who have suffered financial, physical, or psychological harm as a result of a crime.

c. Children who observe criminal activity

A child under 18 years of age who submits a witness statement for the essential purposes of investigation, prosecution, and examination in court of a criminal case that he/she has heard, seen, and experienced himself/herself.

The following are some of the rights of children in the court process as perpetrators of criminal acts:

a. Obtaining legal aid effectively

- b. Not sentenced to life imprisonment or the death penalty
- c. May not be detained, arrested, or imprisoned unless absolutely necessary, and the penalty is half that of an adult.
- d. Unidentified/Protected
- e. Away from adults
- f. Get education
- g. Accessibility and health services, especially for children with disabilities.

The purpose of enforcing children's rights is to protect children and their future. Because in addition to children being the successors of the nation's struggle, many children are caught in criminal acts due to the influence of their environment and not purely because of their mistakes. It should be remembered that in adolescence, children are susceptible to increased emotional intensity which results in easily inflamed emotions and makes them take actions that are contrary to the law and often end up being convicted. Therefore, it is important to understand psychologically that when children are influenced by various environments around them, their emotional and mental state is still unstable or weak. Based on this, children become easily offended, resulting in behavioral deviations.

The organizer of the rights of minors to the criminal justice stage is the acquisition of relationships between families, mutually influential associations. They are required to prioritize attention and asylum to the rights for the prosperity and future of the nation.

#### b. Determination of Sanctions Against Children Who Become Perpetrators of Crimes

As explained, Article 1 point 2 provides a definition of Children in Legal Matters. However, criminal and delinquent acts committed by children are not specifically defined by law.

The regulation regarding a minor as a victim and/or witness is regulated in the SPPA Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Paragraph 8 General Section, which states that a child can act as a witness and/or victim in certain situations. Children under the age of 12 are given action only, while those aged between 12 and 18 can be subject to action and punishment. This is especially true for sanctions, which are decided based on the child's age.

The formulation of criminal actions and penalties in Law No. 11/2012 for the juvenile justice system shows that this law applies a Double Track System or dual system. This means that this law specifically regulates a number of consequences, including criminal behavior and penalties. Muladi (2002) emphasized that the Neo-Classical school is responsible for the use of the two-track system (Zweipurigkeit). It is important to abandon the assumption that the policy only affects people who are unable to pay. Although the Criminal Code follows the Single Track System, which organizes a type of sanction, the action is recognized as an alternative to criminal sanctions (Article 10 of the Criminal Code). With the existence of strict action in Law Number 11/2012, there are other options besides criminal sanctions (penal) to deal with crimes.

Criminal penalties and disciplinary sanctions vary in their justifications based on the purpose for which they are used. The purpose of criminal penalties is to make the offender suffer as a consequence of his actions, as well as to be a strong statement that the action is rejected. The rejection of the offending act is the main difference between criminal penalties and disciplinary sanctions, not just the suffering caused. The disciplinary sanctions focus more on educational aspects and are not retaliatory, with a specific preventive purpose to defend people from dangers that could endanger the public welfare.

Minors cannot be sentenced to death under the SPPA Law. Only selected essentials for children are considered when examining them in conflict with the law. Because children are our future successors, they should not be executed because they need protection and guidance for the sake of their physical, spiritual, and social well-being. Guidance and protection efforts are impossible if the child is sentenced to death, especially if imprisonment is a real possibility, which means the child will spend his entire life in a correctional institution. The SPPA Law does not intend this.

Three forms of additional punishment are outlined in Article 10 of the Criminal Code: notification of the judge's decision, confiscation of certain property, and revocation of certain rights. However, it appears that this law does not allow child perpetrators to be subject to further punishment in the form of loss of certain rights, such as notification of the judge's decision, when compared to the provisions in the SPPA Law.

Children should not be denied their rights because their rights should come before their responsibilities. For example, if a child's right to education is revoked, the child will be deprived of the opportunity to develop, which is in stark contrast to the state's mission to educate the public. About other sanctions, such as rejecting the proceeds of illegal activities.

Because it can further burden children who have previously experienced the legal system, the SPPA Law also prohibits perpetrators of child crimes from receiving further punishment in the form of publication of judge's decisions. Even if a child has made a mistake, the statement of a verdict by a judge can have a negative impact on their physical, social, and mental development, which is undesirable.

In addition, action is the second punishment for children who break the law. Article 82 paragraph (1) of the SPPA Law lists 3 different forms of punishment, namely being returned to parents or guardians, being given to the authorities, and receiving treatment at a mental health facility, receiving recovery at a Special Social Handling Institution, being required to participate in education or training organized by the state or non-governmental institutions, having their driving license revoked, and atone for the mistakes they have made.

Returning a child to a parent, guardian, or other custodian does not mean that they have full supervision of the child. The Community Guidance Officer continues to supervise and guide the child. Children can be transferred to LPKA to receive education, guidance, and job training if the judge decides that the parent, guardian, or other party cannot provide adequate education and



guidance. The purpose of this vocational instruction is to provide skills to children.

## **CONCLUSIONS AND RECOMMENDATIONS**

### ***Conclusions***

From the explanation of the problem formulation above, it can be concluded that:

1. Minors have a conflict with the law and their criminal responsibility is commensurate with the applicable rules, namely the Criminal Code and Law Number 11 of 2012. Children who resist the law to the point of being a perpetrator of a crime will still be tried but with half the punishment of adults. Minors will be arrested, detained, and imprisoned when this is the last resort and there are no other efforts.
2. Based on Law Number 11 of 2012, the policy implements criminal law efforts that have stages, investigation, prosecution, trial, and coaching in institutions. This regulatory policy is only applied to children under 18 years old, however, only children aged 14 years and over can be arrested and are threatened with a minimum prison sentence of 7 years or more.

### ***Recommendation***

Even though children commit crimes and are threatened with imprisonment, there are still rights that protect both their future and the conditions when they receive punishment. Law enforcers and officers must also prioritize the interests of children because after all children are the future of the nation.

The handling of children's problems as perpetrators of crime needs to be considered growth balanced by the deterrent aspect for children but still not forgetting to give them the opportunity to grow and develop better. Like KPAI also plays an important role in protecting minors as perpetrators of criminal acts (Perkasa et al., 2024).

## **ADVANCED RESEARCH**

In the context of juvenile justice in Indonesia, the legal framework governing minors involved in criminal activity, as outlined in the Criminal Code and Law Number 11 of 2012 on the Juvenile Criminal Justice System, reflects a balanced approach between accountability and rehabilitation. While minors who commit criminal acts are held legally responsible, the law establishes a differentiated system of punishment, emphasizing the principle of restorative justice rather than retribution. Specifically, minors who are deemed perpetrators of crimes face a penalty that is reduced by half compared to that of adults, and detention is considered a last resort, applied only when alternative measures are insufficient. Law Number 11 of 2012 structures the juvenile justice process through clear stages, including investigation, prosecution, trial, and rehabilitation, with an emphasis on reintegration and guidance in correctional institutions. However, the law specifies that only minors aged 14 years and older can be subject to arrest, with those facing crimes punishable by at least seven years imprisonment being eligible for incarceration. This legal distinction raises

critical questions about the efficacy of punitive versus rehabilitative measures, especially in light of the age-based thresholds and the overarching goal of fostering social reintegration rather than merely penalizing youth offenders. Further research could explore the long-term outcomes of this legal framework, evaluating its impact on recidivism rates, societal reintegration, and the broader implications for juvenile justice in Indonesia.

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