

Policy on Formulation of Criminal Responsibility for Children in Conflict With the Law

by Dedy Ananta Ginting

Submission date: 12-Sep-2024 01:43PM (UTC+0700)

Submission ID: 2451792020

File name: Rev_Jurnal_Dedy_ananta_1_1.docx (42.65K)

Word count: 6573

Character count: 35164

POLICY ON FORMULATION OF CRIMINAL RESPONSIBILITY FOR CHILDREN IN CONFLICT WITH THE LAW

Name: Dedy Ananta Ginting

NPM 2016000490

T. Riza Zarzani. N

Rahul Ardian Fikri

Panca Budi Development University

Abstract

⁴ Children are the next generation of the nation who need to receive guidance and protection to ensure their optimal physical, mental and social development. In its development, efforts to guide and protect children are often faced with problems and obstacles that ultimately lead to deviations in children's behavior.² These deviations are often violations of legal norms and crimes by children. Children who are in conflict with the law must be held accountable for their actions, either through non-penal or penal processes. Regulations on child criminal acts are regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. In principle, child protection is carried out based on the best considerations for children. The purpose of this study is to²⁰ determine and analyze how the policy of formulating criminal responsibility for children in conflict with the law according to Law No. 11 of 2012 concerning the Juvenile Criminal Justice System; and to determine and analyze the policy of formulating criminal responsibility for children in conflict with the law in the future. This study uses a normative legal approach. The specification¹⁴ of this study are descriptive analytical. The type of data in this study, namely secondary data includes primary legal materials in the form of laws and regulations and secondary legal materials in the form of book references and expert opinions. The data collection method used is the¹⁶ method of collecting data through literature studies. The analysis method used is qualitative analysis. The results of the study indicate that the criminal liability of children in conflict with the law according to Law No. 11 of 2012 is regarding the age limit of children who can be punished is 12 years, in the law there are also diversion efforts carried out before or even during the trial process, this is intended to minimize the punishment imposed on children (ultimum remedium). This process is carried out for the best consideration for children, because the effects of criminal law (stigmatization) are very bad for child development.

Keywords : accountability , criminal, children, conflict with the law

**POLICY ON FORMULATION OF CRIMINAL LIABILITY FOR CHILDREN
IN CONFLICT WITH THE LAW**

Name: Dedy Ananta
NPM 2016000490
T. Riza Zarzani. N
Rahul Ardian Fikri
Panca Budi Development University

Abstract

Children are the next generation of the nation who need to receive guidance and protection to ensure their optimal physical, mental and social development. In its development, efforts to foster and protect children are often faced with problems and obstacles that ultimately cause deviations in children's behavior. These deviations are often violations of legal norms and crimes by children. Children who are in conflict with the law must certainly be held accountable for their actions both through non-penal and penal processes. Regulations on juvenile crimes are regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. In principle, child protection is carried out on the basis of the best consideration for the child. The purpose of this research is to find out and analyze how the policy of formulating child criminal liability that conflicts with the law according to Law No. 11 of 2012 concerning the Juvenile Criminal Justice System; and to find out and analyze the policy formulation of child criminal liability that conflicts with the law in the future. This study uses a normative juridical approach. The specification of this study is descriptive and analytical. The type of data in this study, namely secondary data, includes primary legal materials in the form of laws and regulations and secondary legal materials in the form of book references and expert opinions. The data collection method used is a collection method through literature studies. The analysis method used is qualitative analysis. The results of the study show that the criminal liability of children who are in conflict with the law according to Law No. 11 of 2012 is regarding the age limit of children who can be convicted is 12 years old, in the Law, there are also diversion attempts that are carried out before even during the judicial process, this is intended to minimize the crime imposed on children (ultimum remedium). The process is carried out for the best consideration for the child, because the criminal effect (stigmatization) is very bad for the child's development.

Keywords: liability, Criminal, children, conflict with the law

A. Introduction

The criminal law formulation policy is the most strategic policy in terms of implementing criminal law. If there are errors or weaknesses in this legislative policy stage, it can hinder efforts to prevent and overcome crime at a later stage, namely the application stage and the execution stage. According to Marc Ancel in Barda Nawawi Arief, that penal policy is a science as well as an art which ultimately has the practical aim of enabling positive legal regulations to be

formulated better and to provide guidance not only to law makers, but also to courts which implement laws and also to law enforcers. or the executor of a court decision.

According to Sudarto, penal policy is a form of implementation of criminal law policy, namely an effort to realize criminal legislation that is in accordance with the circumstances and situations at a certain time and for the future. The problem of child criminal acts has been regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which replaces Law Number 3 of 1997 concerning Juvenile Courts which is considered no longer in accordance with the development and legal needs of society. In Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, everything related to child criminal acts has been regulated.¹

According to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is stated in Article 1 point (2) that children in conflict with the law are children in conflict with the law, children who are victims of criminal acts and children who are witnesses to criminal acts. Meanwhile, according to Law Number 23 of 2002 Article 64 paragraph (1) states that children in conflict with the law include children in conflict with the law and children who are victims of criminal acts.

Law Number 11 of 2012 is a follow-up to the Indonesian Government's participation in signing the MU-UN Resolution 44/25 on the "Convention on the Rights of the Child" in New York, United States on January 26, 1990. On August 25, 1990, Presidential Decree Number 36 of 1990 was issued on the Submission of the "Convention on the Rights of the Child." Affirmation of the importance of child protection issues is contained in: Principle 2 of the Declaration of the Rights of the Child 1959: "The child shall enjoy special protection and be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy manner and in a normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose the best interest of the child shall be the paramount consideration."

The child shall enjoy special protection and shall be given opportunities and facilities by law and other regulations to enable him to grow physically, mentally, spiritually, emotionally and socially in a healthy and normal manner and in conditions of freedom and dignity. In establishing laws for this purpose, the best interests of the child shall be a primary consideration.

¹Mohammed Taufiq Makarao, Law Protection Child And Deletion Violence in Household, Rineka Cipta, Jakarta, 2014, matter 108

Regulations related to juvenile delinquency, also called juvenile criminal acts, are defined as crimes committed by children according to special categories in the Criminal Code and/or laws and regulations. The Juvenile Court was established due to concerns in European and American countries about the criminalization of children and adolescents, the number of which is increasing every year. However, the treatment of adult criminals requires special protection for juvenile criminals.²

Based on the principle of the best interests of the child, there needs to be a process for handling child cases outside of litigation, for example by using a diversion model. Be aware that correctional institutions are not the only means of resolving children's problems, even correctional institutions can be targets for violations of children's rights. Therefore, diversion, especially through the concept of restorative justice, is a very important factor to consider in resolving criminal cases committed by children.

Remember that children are creatures who must continue to learn responsibility, but cannot be ignored like adults. For the sake of children's mental growth and development, it is necessary to identify the differences in how to handle criminal threats and legal processes. In the criminal justice system, cases of child crimes are handled starting from investigators, public prosecutors, and judges who try the case.

In this regard, the regulation of exceptions from the provisions stipulated in Law No. 8 of 1981 concerning Criminal Procedure Law, and Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. The implementation of detention is determined in accordance with the interests of the child, and the differentiation of criminal threats for children as determined by the Criminal Code. Where the imposition of the sentence is determined (half) of the maximum criminal threat imposed on adults, while the imposition of the death penalty and life imprisonment are not imposed on children.³

The approach of the criminal justice system must be adjusted to the characteristics of the community where the crime occurs, because the factors causing crime are very complex, especially in the very unstable psychological condition of children. At the 6th UN Congress in 1980, when considering the resolution on crime trends and crime prevention strategies, it was stated:

1. Crime hinders progress towards a satisfying quality of life for all.
2. Crime prevention strategies must be based on eliminating the causes and conditions that give rise to crime.

²Bemmelen, Van. (1979). Criminal Law I Criminal Law Material General Part. Bandung: Bina Cipta. p. 53

³Chazawi, Adami. (2018). Criminal Law Lesson Part 1: Criminal System, Theories of Punishment & Limits of the Applicability of Criminal Law. Jakarta: Raja Grafindo Persada. p. 42

3. The main causes of crime in many countries are: social inequality, racial and national discrimination, low living standards, unemployment and illiteracy (lack of knowledge) among large groups of the population.

The differences in the causes of these crimes provide an illustration that there must be differences in the treatment of children as individuals who are different from adults and are more vulnerable to becoming victims (children in conflict with the law are considered by the author to be victims of unfair parenting on the part of the child). parents or an environment that does not contribute to strengthening the child's mental and moral character). A child who commits a crime and is punished will encounter a second obstacle in improving his life, the first because of poor parenting and a bad environment that hinders better development, the second is that children cannot develop because they are imprisoned and discriminated against.

Therefore, the juvenile criminal justice system must be differentiated from the adult criminal justice system if justice is to be the main alternative to punishment for children. The differences in treatment and threats are regulated in Law No. 11 November 2012 aimed at better protecting and safeguarding children so that they can plan their future. In addition, this difference is also intended to provide opportunities for children to develop spiritually, morally, and prepare for social integration to become independent, responsible individuals, and useful to the body, family, society, state and country.

The enactment of Law Number 23 of 2002 concerning Child Protection, in general provides protection for children's rights based on Pancasila and based on the Constitution and the basic principles of the Convention on the Rights of the Child, which include:⁴

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

The imposition of sanctions on naughty children (child delinquency) is based on considerations for the best interests of the child. Criminal law is a negative sanction system. The application of criminal sanctions is a suffering that is felt unpleasantly by those who experience it. In addition, criminal sanctions can also cause consequences, namely "the stamp "(stigma) given by society to former child prisoners. Ironically, if this stigma cannot be removed, then it is as if he is sentenced to life imprisonment. Therefore, if it is not absolutely necessary, it is

⁴Dellyana, Shanty. (2019). Women and Children in the Eyes of the Law. Yogyakarta: Liberty. p. 69

better not to impose a sentence and only determine it when other means are no longer available. adequate (ultimum remedium).⁵

B. Formulation of the problem

Based on the background description above, the problem can be formulated as follows:

1. What are the Legal Provisions Regarding the Rights and Legal Protection for Children of Criminal Offenders ?
2. What is the policy for formulating criminal responsibility for children in conflict with the law according to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System?

C. Research methods

1. Approach Method

This research is a research that uses a normative legal approach. The normative legal approach is used to determine the extent to which legal principles, vertical or horizontal synchronization and systematic law are applied ⁶. This research is directed at legal principles, application or implementation including good relationships vertically and horizontally to find the consistency of a regulation or legal norm in society.

2. Research Specifications

This research is descriptive analytical, namely a type of research to provide the most accurate data possible about a symptom or phenomenon, in order to help strengthen existing theories, or try to formulate new theories.⁷

3. Data Types

The data used in this study is secondary data, namely data that is not obtained from primary sources such as citizen behavior or through research, but is obtained from official documents, books, research results and so on.²³ Secondary data in this study includes:

- a. Primary legal materials are materials obtained from several laws and regulations in force in Indonesia, such as the 1945 Constitution of the Republic of Indonesia, Law Number 23 of 2002 concerning Child Protection, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System;
- b. Secondary legal materials are materials that provide explanations regarding primary legal materials such as statements, expert studies, books, analyses of applicable laws and so on;

⁵

⁶Soetandyo Wigjosoebroto, Law: Paradigms, Methods and Dynamics of the Problems, ELSAM HUMA, Jakarta, 2002, p. 146

⁷Soerjono Soekanto, Introduction to Legal Research, Publisher University of Indonesia (UI Press), Jakarta, 2005, p. 10.

- c. Tertiary legal materials are materials used to provide guidance or explanations for primary legal materials and secondary legal materials such as Indonesian dictionaries, English dictionaries, and legal dictionaries.

4. Data Analysis Techniques

The data analysis used in this study is a normative qualitative analysis. Where this analysis is carried out on primary legal materials, secondary legal materials, and tertiary legal materials which include legal principles, legal rules, and applicable regulations related to policies on the limitations of criminal liability for children.

D. Discussion Analysis

1. Legal Provisions Regarding Legal Protection and Rights for Children Who Perpetrate Criminal Acts

Several new concepts and definitions have been created in the SPPA law. One of the new concepts that emerged was to eliminate the concept of “children as perpetrators” and replace it with the concept of “children as victims”. This was driven by the perception that a child is basically considered incapable and immature, so that he becomes a victim of the imperfection of the conditions or education system and the environment around him.⁸

As is known, the age limits for children in Indonesian law vary, including:

1. The Civil Code (KUHPer) does not define children specifically, but categorizes them as minors, namely those who have not reached the age of 21 years and have never been married (Article 330 in conjunction with Article 1330 of the Civil Code).
2. Law No. 1 of 1974 concerning Marriage does not define children specifically, but regulates **5** that children who have not reached the age of 18 or have not yet entered into marriage are under the authority of their parents (Article 47 paragraph 1);
3. UU no. 11 of 2012 concerning the Juvenile Criminal Justice System, children are categorized as those under 18 years of age (Article 1 paragraphs 3, 4 and 5);
4. Law No. **5** 35 of 2014 concerning the Revision of Law No. 23 of 2002 concerning Child Protection, the age of a child is those who are not yet 18 years old, including those in the womb.

⁸ Sholeh, Soeaidy and Zulkhair. (2001). Legal Basis for Child Protection. Jakarta: Novindo Pustaka Mandiri. p. 112

In legal science, there is a principle that states that specific rules override general rules. Therefore, when children are faced with the law, the laws used are Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law) and Law No. 35 of 2014 concerning the Revision of Law No. 23 of 2002 concerning Child Protection (hereinafter referred to as the PA Law). Those who are not yet 18 years old when the crime occurs will be subject to this law.

An example that we can see is when Doel, the son of famous artist Ahmad Dhani, was driving a car and caused an accident that resulted in the loss of life. In Doel's case, law enforcement officers consisting of the police, prosecutors, and judges processed the case in accordance with the SPPA Law because when the accident occurred, Doel was still 11 years old.

Several new concepts and definitions have been created in the SPPA law. One of the new concepts that emerged was to eliminate the concept of "children as perpetrators" and replace it with the concept of "children as victims". This was driven by the perception that a child is basically considered incapable and immature, so that he becomes a victim of the imperfection of the conditions or education system and the environment around him.

Several definitions of Children in Conflict with the Law contained in the SPPA Law are as follows:

1. These are children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts (Article 1 number 2).
2. Children in Conflict with the Law; Are children who are 12 years old but under 18 years old who are suspected of committing a crime (Article 1 number 3).
3. Children who are Victims of Crime; Children who are under 18 years of age who are victims of a crime and thus experience physical, mental, and/or economic suffering caused by the crime (Article 1 number 4).
4. Children who become witnesses to criminal acts; Children who are under 18 (eighteen) years of age who can provide information for the purposes of investigation, prosecution, and examination in court regarding a criminal case that they have heard, seen, and experienced themselves (Article 1 number 5).

Based on the 1989 Convention on the Rights of the Child (UN Resolution No. 44/25 dated 5 December 1989), children's rights can generally be grouped into 4 (four) types of children's rights, namely: the right to survive (right to life), the right to grow and develop (right to development), the right to protection (right to be protected) and the right to participate (right to participate).⁹

⁹Harry E. Allen and Clifford E. Simonsen in Purniati, Mamik, Sri Supatmi, and Ni Made Martini Tinduk, 2003, Correction in America An Introduction, Analysis of the Situation of the Juvenile Justice System in Indonesia, Jakarta, UNICEF, p. 2

The 1945 Constitution regulates children's rights which are regulated in 2 (two) articles, namely: Article 28B paragraph (2) which reads: "Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination." Article 34 paragraph (2) which reads: "The poor and neglected children are cared for by the state."

Article 3 of the SPPA Law also regulates the rights of children who are in conflict with the law, as follows:

1. Treated humanely with attention to needs appropriate to age;
2. Separated from adults;
3. Obtain legal and other assistance effectively;
4. Doing recreational activities;
5. Free from torture, punishment or other cruel, inhuman or degrading treatment;
6. Not sentenced to death or life imprisonment;
7. Not be arrested, detained or imprisoned, except as a last resort and for a short time;
8. Obtain justice before a juvenile court that is objective, impartial, and in a hearing that is closed to the public;
9. His identity was not published;
10. Obtain support from parents/guardians and people trusted by the child;
11. Getting social advocacy
12. Getting a personal life
13. Achieving accessibility, especially for children with disabilities;
14. Getting an Education

Universal children's rights have also been established through the United Nations General Assembly (hereinafter abbreviated as UN) on November 20, 1959, by proclaiming the Declaration of the Rights of the Child. With the declaration, it is expected that all parties, both individuals, parents, social organizations, governments and communities recognize children's rights and encourage their implementation. The ten principles of children's rights according to the declaration are:¹⁰

1. principle : Every child shall enjoy all the rights set forth in this declaration without exception, without distinction or discrimination.
2. principle : Every child shall enjoy special protection, shall be given opportunities and facilities by law or by other means so that he or she is able to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner.
3. principle : Every child from birth must have a name and national identity.

¹⁰Muhammad Joni and Zulchaina Z Tanamas, 1999, Aspects of Child Protection in the Perspective of the Convention on the Rights of the Child, Bandung, PT Citra Aditya Bakti, p. 83

4. principle : every child must enjoy the benefits of social security.

For children who are handled through the courts, in the application of criminal law, children's rights and mental health often receive less attention from law enforcement, especially those whose parents' capacity is inadequate, without a lawyer to provide legal or personal advice. lawyers . And they simply accept the judge's decision, even though they have the right to appeal and reconsider.

However, they often do not use it because they do not know who to contact or how to obtain these rights. Protection of children in conflict with the law through criminal proceedings is often viewed as an object and tends to be detrimental to children. In the case of children, children sometimes become perpetrators, victims, and witnesses of an act so that it needs to be handled carefully, seriously and must be carried out by officials who understand children's problems. In Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Protection for children in conflict with the law has progressed. The process of resolving children's cases can not only be resolved through the court process but can also be resolved outside the court process through diversion with a restorative justice approach.

Meanwhile, in the provisions of Article 5 of Law Number 11 of 2012 concerning the Juvenile Justice System, it is expressly stated that:

1. The Juvenile Criminal Justice System must prioritize the Restorative Justice approach.
2. The Juvenile Criminal Justice System as referred to in paragraph (1) includes:
 - a. investigation and prosecution of children's crimes are carried out in accordance with the provisions of laws and regulations, unless otherwise specified in this Law;
 - b. Child trials conducted by courts in the general judicial environment; and
 - c. coaching , guidance, supervision and/or assistance during the process of implementing the criminal sentence or action and after serving the criminal sentence or action.
3. In the Juvenile Criminal Justice System as referred to in paragraph (2) letters a and b, diversion must be attempted.

Furthermore, in Article 6 of Law Number 11 of 2012 concerning the Juvenile Justice System, diversion aims to:

- a. achieve peace between the victim and the child;

- b. resolving children's cases outside the judicial process;
- c. protect children from deprivation of liberty;
- d. encourage the community to participate; and
- e. instill a sense of responsibility in children.

Protection of children in conflict with the law in its resolution involves all parties including the roles of parents, family, society, government, other state institutions that are obliged and responsible for improving child welfare, as well as special protection for the children concerned.

There are ten principles applied in the juvenile justice system based on Article 2 of Law No. 11 of 2012, namely: Protection, Justice, Non-discrimination, Best interests of the child, Respect for the child's opinion, Survival and development of the child, Guidance and guidance of the child, Proportional and Avoidance of retaliation.

²² The existing principles clearly indicate that there is special treatment for children in conflict with the law. For example, the first principle emphasizes the principle of child protection. This protection is based on the condition of the author who is still a child who cannot integrate with adults. Furthermore, in letter d it is stated that the legal process is carried out by considering the best interests of the child, their survival and development, and others. Based on these principles, special rules and ¹⁸ actions are needed to address children's problems.

Regarding legal protection for children who break the law, the result ¹⁸ of research into Law no. Law Number 11 of 2012 shows that there are many forms of protection for children who commit violations of the law. Here the form of protection is divided into four parts, namely the forms of protection. which occurs during the legal process – the terms litigation, forms of protection in non-litigation processes, law enforcement officers, and companions for children in conflict with the law are used.

²⁵ **2. Policy on Formulation of Criminal Responsibility for Children in Conflict with the Law According to Law Number 11 of 2012 Concerning the Juvenile Criminal Justice System.**

²⁴ Prevention and handling of crime by means of penal means is a penal policy or penal-law enforcement policy, according to Barda Nawawi Arief, its functionalization/operationalization is carried out through several stages:¹¹

1. formulation stage (legislative policy);

¹¹Barda Nawawi Arief, Problems of Law Enforcement and Crime Prevention Policies, Citra Aditya Bakti, Bandung, 2001, p.75.

2. application stage (judicial policy);
3. execution stage (administrative policy)

Implementation of the three policy steps above requires the authority to carry out these steps. This power is manifested in the form of legislative power (construction/legislative body), law enforcement power (executive/judicial body), and law enforcement power (executive/administrative body). Eradication of crime by means of criminal law (criminal), according to Nyoman Putra Jaya¹² in principle must go through the stages of developing criminal law norms (with their content, structure and culture), law enforcement by law enforcement officers, and law enforcement by law enforcement officers. The policy of preventing crime with criminal law requires synchronization of these three steps so that the application of criminal law can function optimally.

The first stage, the construction stage, is the most strategic stage in efforts to prevent crime through criminal action. This is strategic because at this stage guidelines are established for implementing the next stage, namely the application and implementation stage. In other words, errors in the development of legal regulations will have a negative impact on the implementation and enforcement of these regulations. The formulation stage is also called the application of abstract law by the legislative body as an organization authorized to develop policies. Policy formulation is a policy to formulate something in the form of a law. According to Barda Nawawi Arief, policy formulation is: "a plan or program for forming laws regarding what must be done to solve certain problems and how to implement or carry out something that has been planned or scheduled."

Formulation policy is the beginning of planning in an effort to combat crime, so it is natural that formulation policy is part of criminal policy which functionally can be seen as part of planning and procedures for efforts to combat crime. In general, planning or crime prevention policies outlined in legislation according to Barda Nawawi Arief include:

1. planning or policies regarding what prohibited acts will be dealt with because they are seen as dangerous or detrimental;
2. planning/policy regarding what sanctions can be imposed on perpetrators of prohibited acts (whether in the form of criminal penalties or actions) and the system for implementing them;
3. planning/policy regarding the procedures or mechanisms of the criminal justice system in the context of enforcing criminal law.

¹²Nyoman Serikat Putra Jaya, Selected Chapters on Criminal Law, UNDIP, Semarang, 2005, p. 30

Of all the stages of criminal law enforcement, the formulation stage is very important because it is at this stage that principles or guidelines are formulated which become the outline of policies relating to three basic problems in criminal law, namely criminal acts, mistakes, and punishment. In addition, it also serves as a legal basis for the operationalization of the next stages, namely the application stage by the judiciary and the execution stage by the executive body.

The problem of juvenile criminal acts has been regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which replaces Law Number 3 of 1997 concerning Juvenile Courts which is considered no longer in accordance with the development and legal needs of society. In Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, everything related to juvenile criminal acts has been regulated. Law No. 11 of 2012 states in Article 1 paragraph (1) that the juvenile justice system is the entire process of resolving cases of children in conflict with the law, starting from the investigation stage to the guidance stage after serving a sentence.¹³

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System states in Article 1 paragraph (2) that children in conflict with the law are children in conflict with the law, children who are victims of criminal acts and children who are witnesses to criminal acts. Furthermore, Article 1 paragraph (3), (4), (5) also regulates that the age limit for children in conflict with the law is 12 years, but not yet 18 years old. Children who are victims of criminal acts, hereinafter referred to as Child Victims, are children under 18 years old who experience physical, mental and/or economic suffering caused by criminal acts. Children who are witnesses to criminal acts, hereinafter referred to as Child Witnesses, are children under 18 years old who can provide information for the purposes of investigation, prosecution and examination in court regarding a case that they themselves saw, heard or experienced.¹⁴

Therefore, the formulation policy for handling children in conflict with the law contained in Law No. 11 of 2012 is through the policy stipulated in Article 5 (1) The juvenile criminal justice system must use a restorative justice approach. If observed, it turns out that the restorative justice approach contains three main elements. First, crime is viewed more substantively as a form of conflict between individuals that causes "injuries" (physical/non-physical) to the victim, society and the perpetrator himself. Second, the purpose and process of criminal justice must be able to create peace in society, through reconciliation of the parties and repair of "wounds" resulting from crime. Third, the criminal justice process must

¹³Mr. Amrunsyah, Amrunsyah. "Act Criminal Child Protection." *Al-Qadha: Journal of Islamic Law and Legislation* 4, no. 1 (2017): 79-94

¹⁴Kobandaha, Mahmudin. "Protection law to child victim violence in household in system law in Indonesia." *Journal Law Unsrat* 23, no. 8 (2017). Hal 83

be able to facilitate the active participation of victims, perpetrators and society in order to find a resolution to the conflict.¹⁵

The stages that will be passed in the restorative justice approach can be categorized into three stages, namely pre-mediation, mediation, and post-mediation stages⁶. The results of this restorative justice program are (a) improvement or reintegration of the perpetrator into society, (b) providing an understanding to the perpetrator of the impacts arising from his evil deeds, (c) encouraging the perpetrator's accountability, reducing the occurrence of criminal behavior in the future, (d) providing an understanding that he has been treated fairly and (e) increasing social competence on both sides.¹⁶

The concept of rational crime prevention reflected in the concept of criminal policy which can be operationally implemented through penal and non-penal approaches can encompass reconciliation or mediation programs between victims and perpetrators and the community as one way of resolving conflicts resulting from crimes in society.¹⁷

Mediation efforts in Law No. 11 of 2012 also regulate diversion, namely Articles 5 to 15. According to this law, diversion efforts must be implemented in the juvenile criminal justice system (Article 5 paragraph 3). Diversion is implemented with the aim of (Article 6); (a) achieving peace between the victim and the child, (b) resolving the child's case outside the judicial process, (c) preventing the child from the process of deprivation of liberty, (d) encouraging the community to participate, (e) instilling a sense of responsibility in the child. Diversion must be attempted in the process of investigation, prosecution and examination of the child's case in court.¹⁸

Diversion efforts are carried out in cases where the crime committed is threatened with imprisonment of less than 7 years and is not a repeat of the crime (recidive). The diversion process is carried out by considering (Article 8 paragraph 3); (a) the interests of the victim, (b) the welfare and responsibility of the child, (c) avoiding negative stigma, (d) avoiding retaliation, (e) social harmony, (f) propriety, morality, and public order. Regarding the criminal penalties and actions that can be imposed on children in conflict with the law are regulated in Article 69 to Article 83 of Law No. 11 of 2012. Sanctions for children in conflict with the law can only be criminal penalties or taking action. If the child is not yet 14 years old then only action can be taken. In terms of imposing

¹⁵Rini Fitriani, The Role of the Organizer Child Protection in Protecting and Fulfilling Rights Child, Journal Law OceanJustice Volume 2 Number 2, 2016, Page 250

¹⁶Maulana Hassan Wadong, Introduction to Advocacy and Child Protection Law, Grasindo, Jakarta, 2019. p. 61

¹⁷Maidin Gultom, Legal Protection for Children: In the Juvenile Criminal Justice System in Indonesia, Rafika Aditama, Bandung, 2019. p. 125

¹⁸Mardjono Reksodiputro, Human Rights in the Criminal Justice System (Jakarta: Center for Justice Services and Criminology Law Courts, University of Indonesia, 2018). p. 29

criminal sanctions, children under 14 years of age cannot be subject to criminal penalties, they can only be subject to action. This means that the minimum age of a child in conflict with the law is considered not yet capable of being responsible for their actions. This provision is made of course with the best consideration for the child's development.¹⁹

The lightness of the act, the child's personal circumstances, or the circumstances at the time the act was committed or what happened later can be used as a basis for the Judge's consideration not to impose a criminal penalty or to impose measures by considering aspects of justice and humanity (Article 70). This means that in this law, the process of individualization of criminal acts applies, meaning that criminal responsibility is personal and the punishment must be given to the guilty person, and the judge must also pay attention to the characteristics and conditions of the perpetrator.²⁰

The types of crimes regulated in Law No. 11 of 2012 are contained in Article 28 which reads;²¹

1. The main criminal penalties for children consist of:
 - a. Criminal warning
 - b. Criminal with conditions:
 1. Coaching outside the Institution
 2. Community Service
 3. Supervision.
 - c. Job training
 - d. Coaching in institutions
 - e. Prison
2. Additional penalties consist of:
 - a. Confiscation of profits obtained from criminal acts
 - b. Fulfillment of customary obligations.
3. If in material law cumulative penalties in the form of imprisonment and fines are imposed, the fines are replaced with job training.
4. Criminal penalties imposed on children must not violate the child's dignity and honor.
5. Further provisions regarding the form and procedures for implementing criminal penalties as referred to in paragraph 1, paragraph 2 and paragraph 3 are regulated by government regulations.

¹⁹M. Nasir Djamil, Children Are Not to be Punished Notes on Discussion of the Child Criminal Justice System Law (UU-SPPA), Sinar Grafika, Jakarta, 2013. p. 42

²⁰Hermawan, Sulhani. 2014. Islamic Law and Social Transformation of Jahiliyyah Society (Historical Study of the Egalitarian Character of Islamic Law). In *Peuradeun Scientific Journal*, Vol. 2, **S**. 3, September 2014.

²¹Marlina, *Juvenile Criminal Justice in Indonesia Development of the Concept of Diversion and Restorative Justice*, Aditama, Medan.h. 67

The types of criminal penalties for ¹ children in conflict with the law are regulated in Law No. 11 of 2012. Criminal sanctions for children that are imposed must still be with the best consideration for the child and not an attempt at retaliation. So that in imposing a sentence, it must be attempted as a last resort after all methods are considered inadequate (ultimum remedium).

Conclusion

1. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System has regulated diversion efforts and restorative justice approaches in resolving cases of children in conflict with the law. Legal protection for children in conflict with the law can be seen from the diversion process. Diversion plays a role as an effort to protect children's rights to protection. When children are faced with a formal criminal justice process, it is certain that children will lose their freedom. By being diverted, children's freedom is guaranteed, and deprivation of their freedom can be avoided. Diversion is a very meaningful effort to provide protection for children. In addition, protection for children in conflict with the law is available in various forms, namely that in Law No. 11 of 2012, the forms of protection include various elements, namely:
 - a. Elements of the rules related to litigation case resolution procedures
 - b. Elements of non-litigation case resolution
 - c. Elements of law enforcement officers
 - d. The parties involved in resolving the case.
2. Criminal liability policy for children in conflict with the law according to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System a. The establishment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is that every child involved in a criminal case receives different treatment and sanctions compared to adults. Criminal liability for children in this law is clearly regulated regarding age limits, criminal sanctions and actions. The minimum age limit for children who can be punished is 12 years. Diversion is regulated in this law as an effort to save children from criminal penalties. Criminal sanctions imposed on children must consider the best interests of the child. Criminal individualization must be a consideration for judges in imposing sanctions on children in conflict with the law. Such provisions are made in order.

Bibliography

- Mr. Amrunsyah, Amrunsyah. "Act Criminal Child Protection." *Al-Qadha: Journal of Islamic Law and Legislation* 4, no. 1 (2017)
- Barda Nawawi Arief, Problems of Law Enforcement and Crime Prevention Policy, Citra Aditya Bakti, Bandung, 2001
- Bemmelen, Van. (1979). Criminal Law I Material Criminal Law General Part. Bandung: Bina Cipta ..
- Chazawi, Adami. (2018). Criminal Law Lesson Part 1: Criminal System, Theories of Punishment & Limits of the Applicability of Criminal Law. Jakarta: Raja Grafindo Persada
- Dellyana, Shanty. (2019). Women and Children in the Eyes of the Law. Yogyakarta: Liberty

- Harry E. Allen and Clifford E. Simonsen in Purniati, Mamik, Sri Supatni, and Ni Made Martini Tinduk, 2003, Correction in America An Introduction, Analysis of the Situation of the Juvenile Justice System in Indonesia, Jakarta, UNICEF
- Hermawan, Sulhani. 2014. Islamic Law and Social Transformation of Jahiliyyah Society (Historical Study of the Egalitarian Character of Islamic Law). In *Peuradeun Scientific Journal*, Vol. 2, No. 3, September 2014.
- Kobandaha, Mahmudin. "Protection law to child victim violence in household in system law in Indonesia." *Journal Law Unsrat* 23, no. 8 (2017)
- M. Nasir Djamil, *Children Are Not to be Punished*, Discussion Notes on the Child Criminal Justice System Law (UU-SPPA), Sinar Grafika, Jakarta, 2013
- Maidin Gultom, *Legal Protection for Children: In the Juvenile Criminal Justice System in Indonesia*, Rafika Aditama, Bandung, 2019
- Mardjono Reksodiputro, *Human Rights in the Criminal Justice System* (Jakarta: Center for Justice Services and Criminology Law Courts, University of Indonesia, 2018)
- Marlina, *Juvenile Criminal Justice in Indonesia Development of the Concept of Diversion and Restorative Justice*, Aditama, Medan
- Maulana Hassan Wadong, *Introduction to Advocacy and Child Protection Law*, Grasindo, Jakarta, 2019
- Mohammed Taufiq Makarao, *Law Protection Child And Deletion Violence in Household*, Rineka Cipta, Jakarta, 2014
- Muhammad Joni and Zulchaina Z Tanamas, 1999, *Aspects of Child Protection in the Perspective of the Convention on the Rights of the Child*, Bandung, PT Citra Aditya Bakti
- Nyoman Serikat Putra Jaya, *Selected Chapters on Criminal Law*, UNDIP, Semarang, 2005
- Rini Fitriani, *The Role of the Organizer Child Protection in Protecting and Fulfilling Rights Child*, *Journal Law Ocean Justice* Volume 2 Number 2, 2016
- Rahul Ardian Fikri Pancabudi Development University, *Legal Protection for Children as Victims of Sexual Violence*, Authors Rajali Capah Pancabudi Development University,
- Sholeh, Soeaidy and Zulkhair. (2001). *Legal Basis for Child Protection*. Jakarta: Novindo Pustaka Mandiri
- Soerjono Soekanto, *Introduction to Legal Research*, Publisher University of Indonesia (UI Press), Jakarta, 2005
- Soetandyo Wigjosoebroto, *Law: Paradigms, Methods and Dynamics of the Problems*, ELSAM HUMA, Jakarta, 2002
- T. Riza Zarzani N *The Concept of Child Protection from Commercial Sexual Exploitation of Children in International Law and its Implementation in National Law*
- T Riza Zarzani Pancabudi Development University, *Legal Protection for Child Prisoners in Lubuk Pakam Penitentiary*, Authors, DOI : <https://doi.org/10.31004/innovative.v3i5.4808>
- Tengku Riza Zarzani, *The Law Enforcement of Corruption Crimes in Terms of Authority Abuse*

Policy on Formulation of Criminal Responsibility for Children in Conflict With the Law

ORIGINALITY REPORT

23%

SIMILARITY INDEX

27%

INTERNET SOURCES

23%

PUBLICATIONS

20%

STUDENT PAPERS

PRIMARY SOURCES

1	ejournal.undiksha.ac.id Internet Source	2%
2	repository.unimus.ac.id Internet Source	2%
3	www.scitepress.org Internet Source	2%
4	www.ijsrp.org Internet Source	1%
5	ejournal.stih-awanglong.ac.id Internet Source	1%
6	digilib.unila.ac.id Internet Source	1%
7	medicopublication.com Internet Source	1%
8	www.pjcriminology.com Internet Source	1%
9	archive-ouverte.unige.ch Internet Source	1%

10	digilib.uinsgd.ac.id Internet Source	1 %
11	journal.uad.ac.id Internet Source	1 %
12	eprints.umm.ac.id Internet Source	1 %
13	jurnal.iain-bone.ac.id Internet Source	1 %
14	Anang Zubaidy, Muhammad Addres Akmaluddin, Daffa Prangsi Rakisa Wijaya Kusuma. "The Adoption of Supportive Decision-Making System As a Substitute to Amnesty for People With Mental Disabilities in the Indonesian Legal System", KnE Social Sciences, 2023 Publication	1 %
15	44f39471-7f57-447d-b581-1d57a98c69c6.usrfiles.com Internet Source	1 %
16	repositori.uma.ac.id Internet Source	1 %
17	doaj.org Internet Source	1 %
18	yurisdiksi.unmerbaya.ac.id Internet Source	1 %

19	Edhei Sulisty, Pujiyono, Nur. "Restorative Justice as a Resolution for the Crime of Rape with Child Perpetrators", International Journal of Criminology and Sociology, 2021 Publication	1 %
20	Junaidi, Moh. "Supremasi Sistem Hukum Peradilan Pidana Anak dalam Melindungi Hak Anak yang Berhadapan Dengan Hukum", Universitas Islam Sultan Agung (Indonesia), 2023 Publication	1 %
21	ijsoc.goacademica.com Internet Source	1 %
22	www.ejournal.warmadewa.ac.id Internet Source	1 %
23	callforpaper.unw.ac.id Internet Source	1 %
24	www.al-kindipublisher.com Internet Source	1 %
25	jurnal.uisu.ac.id Internet Source	1 %
26	Mursyid Mursyid. "Implementation of Human Rights Protection Towards in Penitentiary of Children in Makassar", Substantive Justice International Journal of Law, 2019 Publication	1 %

27

ijssr.ridwaninstitute.co.id

Internet Source

1 %

28

jurnal.peneliti.net

Internet Source

1 %

Exclude quotes On

Exclude matches < 1%

Exclude bibliography On