

The Implementation of Measures Against 12-Year-Old Children as Perpetrators of Criminal Acts from the Perspective of the Best Interests of the Child

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ABSTRACT: This study analyzes the application of the principle of the best interests of the child in the juvenile criminal justice system in Indonesia, with a focus on the treatment of 12-year-old children who commit criminal offenses. Although Law No. 11 of 2012 on the Juvenile Criminal Justice System normatively stipulates an approach that prioritizes rehabilitation through diversion, corrective measures, and restorative justice, the research findings indicate that there are still practices of criminal punishment against children, particularly those aged 12, that contradict the spirit of child protection under the law. These findings indicate that the principle of the best interests of the child has not been fully internalized by law enforcement officials, leaving children at risk of becoming victims of the justice system itself. In this context, optimizing the role of Social Welfare Institutions (LPKS), such as the Handayani Center in East Jakarta, serves as a strategic means of providing comprehensive social rehabilitation services, from psychosocial assessment to spiritual guidance and post-rehabilitation monitoring. LPKS plays a crucial role in ensuring children receive treatment that upholds their rights and supports healthy social reintegration. Therefore, this study concludes that the implementation of the principle of the best interest of the child can only be effectively achieved through strong synergy between law enforcement officials and social institutions, as well as oversight of the implementation of the Child Criminal Justice System Act to ensure it does not deviate from the values of child protection and justice that are educational and humane in nature.

KEYWORDS: action, 12-year-old child, best interests of the child.

I. INTRODUCTION

Children are the nation's investment in realizing the ideals of independence as stated in the preamble of the 1945 Constitution. The definition of a child is a human being who is still young, for example 6 years old. This age is still general, it does not yet have a meaning that can be associated with juridical responsibility. Juridical responsibility means legal responsibility. Bunadi Hidayat, argues that "The Indonesian government classifies children into 4 groups, namely age 0 years to 5 years (toddler age), age 5 years to 10 years (child age), age 10 years to 20 years (adolescent or teenager age, juvenile), and age 20 years to 30 years (age before adulthood)".¹

Article 1 of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection states that "A child is a person who is under 18 (eighteen) years of age, including children who are still in the womb." Riben Achmad argues that "As legal subjects, children's rights are fully protected by law. In the Indonesian context, children are the heirs to a nation's aspirations. This strategic role has been recognized by the international community, leading to the creation of a convention that emphasizes the position of children as human beings who must be protected in terms of their rights."² Muladi and Barda Nawawi Arif argue that "The topic of children seems to be endless, and it has also become a concern for the world, starting with the Geneva Declaration on the Rights of the Child in 1924, followed by the United Nations General Assembly's adoption of the Declaration of the Rights of the Child in 1958. Furthermore, at the 1960 United Nations Congress in London, discussions were held on New Forms of Juvenile Delinquency and Special Police Services for the Prevention of Juvenile Delinquency. Subsequently, the focus shifted from the issue of Juvenile Delinquency to Juvenile Justice".³

¹ Bunadi Hidayat, 2010, *Pemidanaan di Bawah Umur*, PT Alumni Bandung: Bandung, hlm 55-56.

² Riben Achmad, 2005, *Upaya Penyelesaian Masalah Anak yang Berkonflik dengan Hukum di Kota Palembang*, dalam Jurnal Simbur Cahaya Nomor 27 Tahun X, Januari, hlm.24.

³ Muladi dan Barda Nawawi Arif, 2007, *Bunga Rampai Hukum Pidana*, Alumni: Bandung, hlm.114

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This was further reinforced in 1980 when the issue of juvenile justice was discussed at the Sixth United Nations Congress on Crime Prevention and Criminal Justice in Venezuela. The outcome of the congress was the “Resolution on the Development of Minimum Standards of Juvenile Justice,” which laid down the basic principles for the administration of juvenile justice in order to protect the human rights of children involved in legal proceedings. Subsequently, the UN Committee on Crime Prevention and Control developed the Minimum Standards Rules for the Administration of Juvenile Justice, hereinafter referred to as SMR-JJ, which were also discussed at a meeting in Beijing in 1984. In 1985, at the Seventh United Nations Congress on Crime Prevention and Control in Milan, the concept was approved and subsequently became known as the Beijing Rules.

Guided by Rule 11.1, the Beijing Rules state that “Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority (in this context, law enforcement officials are given the authority to handle children's legal cases without going through the courts as much as possible)”.

In a broader context, Rule 5.1 states that the welfare of the child is the primary concern. It is also important to consider proportionality in the process the child will face. This principle is part of the best interests of the child principle, which prioritizes the protection, education, and rehabilitation of the child over legal retribution. Bambang Waluyo argues that “Children have different rights from adults because of their different physical and mental conditions. Therefore, priority must be given to their rights. In situations like this, it is important for everyone to protect and care for children well, especially from actions that can interfere with their development.”⁴

In the context of law enforcement against children in conflict with the law, the application of legal norms must uphold substantive justice and humanitarian values that prioritize the best interests of the child.⁵ Handoyo Prasetyo argues that “Although the law applies to all citizens, the treatment of child offenders must be different from that of adults because children have not yet reached the same level of moral and psychological maturity.”⁶

This principle of special treatment is a manifestation of the principle of differentiated justice that respects the dignity and worth of children as individuals who are still in the process of development. Therefore, the application of law to children must take into account psychological, social, and moral aspects, as stipulated in the Law on the Criminal Justice System for Children.

The criminal justice system in Indonesia was previously regulated by Law No. 3 of 1997 on Children's Courts. However, as it was deemed insufficient in protecting children, it was replaced by Law No. 11 of 2012 on the Juvenile Criminal Justice System. In line with these provisions, Marjono Reksodipuro, as quoted by Marlina, stated that “The criminal justice system is a system in society to combat crime, with the aim of controlling crime within the limits of tolerance. The criminal justice system is a legal mechanism to combat various forms of crime that arise in society, and the use of this justice system is a manifestation of law enforcement.”⁷

To protect children, Law No. 11 of 2012 on the Criminal Justice System for Children contains comprehensive regulations covering everything from investigation to post-conviction. One of the most essential aspects is the avoidance of formal proceedings against children, by providing space for diversion, as a manifestation of the principle of the best interests of the child. Article 1 paragraph (3) of Law No. 11 of 2012 on the Criminal Justice System for Children states: “A child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years of age but not yet 18 (eighteen) years of age who is suspected of committing a criminal offense.”

Every child has the right to legal protection, and imprisonment should only be imposed as a last resort. This aligns with the principle of the best interests of the child, as premature or excessive detention can disrupt the child's developmental and mental processes. Forms of protection include assistance from social workers, separate detention facilities, and restrictions on the length of detention. However, there are still practices that treat children as “little adults” and impose sanctions on them as if they were adults.

The juvenile criminal justice system prioritizes a restorative justice approach and diversion efforts. Beniharmoni Harefa stated that “In a criminal case where the perpetrator is a child, in order to divert the child from the formal criminal justice process, communication is sought between the child (perpetrator), the child's parents/guardians, the victim, and the community. This communication is expected to serve as a platform to reach a resolution in the criminal case, thereby avoiding the need to bring the case to formal criminal proceedings. Conflict resolution through communication, as the guiding principle of penal mediation, aligns well with the concept of diversion in resolving juvenile criminal cases. Therefore, penal mediation can be utilized as an implementation of diversion in resolving juvenile criminal cases”.⁸

⁴ Bambang Waluyo, 2004, *Pidana dan Pembinaan*, Sinar Grafika: Jakarta, hlm. 245.

⁵ *Ibid.*, hlm. 18-20.

⁶ Handoyo Prasetyo, 2010, *Prinsip Keadilan dan Perlakuan Khusus dalam Hukum Pidana Anak*, Rajawali Pers: Jakarta, hlm. 45.

⁷ Marlina, 2009, *Peradilan Pidana Anak di Indonesia*, Refika Aditama: Bandung, hlm. 5.

⁸ Beniharmoni Harefa, 2018, *Mediasi Penal Sebagai Bentuk Diversi Dalam Penyelesaian Perkara Pidana Anak Berbasis Keadilan Restoratif*, dimuat dalam *Jurnal Komunikasi Hukum (Jkh)*, Volume 4 Nomor 1, hlm.22.

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This system emphasizes the principles of protection, justice, non-discrimination, and the best interests of the child. Children should not be treated solely as objects of punishment, but as subjects of rehabilitation. Therefore, this system differs from the conventional criminal justice system, which has minimal participation from victims and the community. For children aged 12–13 years, only measures may be imposed; while for children aged 14–17 years, both criminal sanctions and measures may be imposed, provided that the principle of the best interests of the child is always considered.

Pursuant to Article 21(1) of Law No. 11 of 2012 on the Juvenile Criminal Justice System, it states that “A child under the age of 12 (twelve) who commits or is suspected of committing a criminal offense is deemed not yet capable of being held accountable for their actions. Therefore, it is stipulated that investigators, social workers, and professional social workers shall make decisions regarding:

1. “Return to parents/guardians; or
2. Participation in education, training, and guidance programs at government agencies or Social Welfare Institutions, hereinafter referred to as LPKS, at agencies that handle social welfare, for a maximum of 6 months.”

Then, in the explanation of Article 21 of Law Number 11 of 2012 concerning the Criminal Justice System for Children, it states: “Children who can be brought to trial are those who are 12 years of age or older but not yet 18 years of age.” Regarding criminal liability, researchers are interested in a case that has attracted public attention, namely a rape and murder committed by four children, namely IS (16 years old), IS (16 years old), MZ (13 years old), NS (12 years old), and AS (12 years old). In response to this case, the general public demanded that law enforcement authorities hold the 12-year-old perpetrator accountable for the criminal act committed, rather than simply handing him over to his parents, as this would not provide a sense of justice for the victim or the family who had lost a loved one.⁹

In relation to the case of a child who committed serious crimes of rape and murder in Palembang, it is important to understand the normative basis governing the criminal responsibility of children in the Indonesian legal system. According to the provisions of Article 20 of Law Number 11 of 2012 concerning the Criminal Justice System for Children (SPPA Law), it is stated that “In cases where a criminal offense is committed by a child before reaching the age of 18 and is brought before a juvenile court after the child in question has exceeded the age of 18 but has not yet reached the age of 21, the child shall still be brought before a juvenile court”.

This provision indicates that the status of a child remains intact as long as the criminal offense was committed before the age of 18, so that the treatment of children in the criminal justice system must remain based on the principle of child protection, including the application of the principle of the best interests of the child. In this context, the classification of children who can be held criminally responsible is divided into three categories, namely: (1) children under the age of 12; (2) children between the ages of 12 and 14; and (3) children between the ages of 14 and 18.¹⁰

Then, Article 21 of Law Number 11 of 2012 concerning the Criminal Justice System for Children states that: “An investigator, social worker, and professional social worker shall decide to return the child to their parents/guardians or enroll them in an educational, training, and guidance program at a government agency or Social Welfare Institution at an agency that handles social welfare, both at the central and regional levels, for a maximum of six months.”

Children aged between 12 and 14 who commit criminal offenses may be held criminally liable. Children in this age category may only be subject to the measures specified in Article 82(1) of Law No. 11 of 2012 on the Juvenile Criminal Justice System, which states:

- (1) “Measures that may be imposed on Children include:
 - a. Return to parents/guardians;
 - b. Surrender to another person;
 - c. Treatment in a mental hospital;
 - d. Treatment in a correctional facility;
 - e. Obligation to attend formal education and/or training organized by the government or private agencies;
 - f. Revocation of driver's license; and/or
 - g. Reparation for criminal acts”.

In the case of rape and murder in Palembang, involving a 12-year-old perpetrator, the panel of judges decided to place the child in LPKS care and return him to his parents, in accordance with normative provisions. However, this decision sparked reactions and debate from various groups, including the general public, academics, and legal practitioners. From the public's

⁹ Tim BBC News Indonesia, *Empat anak pelaku pemerkosaan dan pembunuhan siswi SMP di Palembang divonis bersalah – 'Pelaku terpapar konten pornografi'* dimuat dalam <https://www.bbc.com/indonesia/articles/czx1xx41z04o>, diakses pada tanggal 06 November 2024.

¹⁰ I Ketut Arjuna Satya Prema, Masruchin Ruba'i, Nurini Aprilianda, 2019, *Pembatasan Usia Pertanggungjawaban Pidana Anak Dalam Peraturan Perundang-Undangan The Limitation Of Children's Criminal Liability In Indonesian Law*, dimuat dalam Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan Volume 4, Nomor 2, hlm. 232-241.

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perspective, there is a perception that justice has not been served for the victim's family, given the severity of the crime committed. The public believes that the perpetrator's child is no longer deserving of special protection due to the brutality of his actions and should therefore be subject to criminal punishment akin to that of an adult.

Nevertheless, when viewed from the perspective of the national legal system and the principle of the best interests of the child, the court's decision in this case has actually followed the constitutional and legal mandate. The juvenile criminal justice system is not intended to punish children, but rather to protect, reform, and rehabilitate them, as stipulated in Article 3(a), which states: "This system aims to 'ensure the protection of children in conflict with the law so that they may live, grow, develop, and participate optimally in accordance with the dignity and worth of humanity'".

In this case, the principle of best interests is the main foundation. This principle has been universally recognized in Article 3 paragraph (1) of the Convention on the Rights of the Child (CRC), which reads: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

The implementation of care measures at the Social Welfare Institution (LPKS) in this case demonstrates an effort to rehabilitate the child through a nurturing approach, rather than retribution. This is in line with the principle of restorative justice, which emphasizes the rehabilitation of victims, perpetrators, and society rather than simply imposing punishment. The role of LPKS is very important in carrying out the function of rehabilitating child offenders, including in building moral awareness, social responsibility, and behavioral change in children. LPKS is not merely a shelter, but an institution that carries out rehabilitative and educational functions for children.

However, from the perspective of victims and their families, it is often difficult to accept that serious crimes such as murder are only responded to with non-punitive measures. In this context, the challenge of implementing the principle of the best interests of the child arises: how to balance the protection of the rights of the child offender with justice for the victim? This requires a progressive and integrative legal approach, where justice is not narrowly defined as punishment but as a fair rehabilitation process for all parties.

Based on the above description, the author considers that the theme "The Application of Measures Against Children as Perpetrators of Criminal Offenses Aged 12 Years as Viewed from the Perspective of the Best Interests of the Child" is important to be studied in greater depth. This theme reflects the legal and ethical dilemmas within the juvenile criminal justice system, while also emphasizing the need to optimize the role of LPKS as a key institution in implementing the principle of the best interests of the child, with the research question being: How are legal provisions regarding actions against children aged 12 who commit criminal offenses within the juvenile criminal justice system formulated? The objective of the study is to examine and analyze how the legal framework addresses the issue of children aged 12 committing criminal offenses within the juvenile criminal justice system.

II. RESEARCH METHODS

Research, which in English is referred to as research, is essentially an effort to seek knowledge.¹¹ This research is normative empirical legal research, which is a type of legal research that combines a normative (doctrinal) approach with empirical elements as a complement.¹² Normative legal research is conducted by examining and reviewing secondary legal materials in the form of legislation, doctrine, legal theory, and court decisions relevant to the subject matter.¹³ Meanwhile, empirical elements are carried out by collecting primary data through interviews or limited observations to support and strengthen the results of normative studies.

In this study, the author will conduct research at LPKS/BMPK Handayani as part of an effort to obtain primary data that serves as a complement to the secondary data obtained through literature studies. Thus, the main approach remains normative, while the empirical element only plays a supporting role, not as the main approach.

The normative legal research method is used to examine the application of the principle of the best interests of the child in the juvenile criminal justice system, particularly for children who commit serious crimes such as premeditated murder. Meanwhile, the empirical method is used to explore information related to the implementation of this principle in the field, particularly at LPKS/BRSAMPK Handayani, in terms of guidance, protection, and rehabilitation of children in conflict with the law.

The author uses three approaches as guidelines to facilitate data collection. The research approaches used include the Statute Approach, the Case Approach, and the Conceptual Approach. With these approaches, the author will obtain information from

¹¹ *Ibid.*

¹² Soetandyo Wignjosebroto, 2002, *Hukum: Paradigma, Metode dan Masalah*, (Lembaga Studi dan Advokasi Masyarakat (ELSAM) dan Perkumpulan untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologi, HUMA: Jakarta, hlm. 139.

¹³ Soerjono Soekanto dan Sri Mamudji, 2009, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Raja Grafindo Persada: Jakarta, hlm. 13-14.

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various aspects of the issue being studied.¹⁴ Normative legal research places law as a system of norms. The legal research approach in this study is as follows:

1. The case approach in this study concerns a 12-year-old child who committed a criminal offense, for example, a case that occurred in Palembang. Through empirical elements, it is possible to compare what the judge decided with what actually happened to the child after entering the LPKS, whether it was in accordance with the principles of restorative justice and child protection.
2. Statutory approach (status approach) or juridical approach, namely research on legal products¹⁵ This statutory approach is carried out by examining various laws and regulations that form the basis of law in the juvenile criminal justice system.¹⁶ Then from the empirical element, it can assess whether the provisions can be implemented effectively in the field or there is still a gap between the written law and the reality of implementation.
3. A conceptual approach is taken because there is no law for the problem at hand. This approach conceptually draws on doctrines and theories (e.g., theories of justice, theories of children's best interests, and the double track system) to build legal arguments. From the results of interviews or empirical observations, it can be seen whether these theories have been internalized in the policies and practices of the LPKS, or are still ideal-normative without real implementation.

III. DISCUSSION AND RESULT

Legal Arrangements Regarding Measures Against 12-Year-Old Children Committing Crimes in the Juvenile Justice System

Azriadi, Mairu, argued that¹⁷ "Children are creatures of God Almighty and therefore, have human rights or basic rights from birth, namely the guarantee to grow and develop fully both physically, mentally, and socially. It is important to make efforts to protect and realize the welfare of children, which guarantees the fulfillment of their rights and discriminatory treatment so that no human or other party can deprive them of these rights".

Children have the right to protection under the Constitution, Article 28 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia reads that "Every child has the right to survival, growth and development and the right to protection from violence and discrimination."

From the above provisions, that children have the right to protection under the Constitution, then children must be guided, protected, cared for and educated as well as possible. They are very valuable for the future of our country. The existence of children is very important for human life and the survival of a country. They are the next generation that will determine the future of the country. As adolescents, children bear great responsibility for the existence of the country. Yet they are often limited in their ability to understand and protect themselves from outside influences. As a consequence, the state has an obligation to provide protection to children involved in crimes or violations of the law through various laws and regulations. One example is Law No. 11/2011 which regulates the Juvenile Criminal Justice System. This system consists of several elements that integrate with each other, namely juvenile investigators, juvenile prosecutors, juvenile judges, and juvenile correctional officers. In the process of drafting legislation related to juvenile justice, children's rights are used as the main foundation. This indicates that a fair trial will protect the rights of all children, whether they are suspects, defendants or convicts. Protection of children's rights is one of the important pillars of law enforcement in the field of juvenile justice.¹⁸

Then Maidin Gultom, argues that "The purpose of juvenile criminal justice is to ensure the welfare of children. As a result, the law serves as the foundation, manual, and set of recommendations to achieve welfare as well as a source of assurance for the care of all children, especially those who are delinquent. Do not forget the future of children in the legal process when they are victims of crime, and continue to uphold the rule of law for the sake of justice".¹⁹

The juvenile criminal justice system differs from the adult criminal justice system in many ways. Juvenile justice involves the investigation and resolution of all cases involving the best interests of the child. There are several interrelated elements of juvenile justice, namely: Juvenile investigators, juvenile prosecutors, juvenile judges and correctional officers.

In relation to this matter, Indonesia adheres to a double track system where there are 2 sanctions, namely criminal sanctions and action sanctions. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in Article 69 paragraph (2) states that

¹⁴ Peter Mahmud Marzuki, 2016, *Penelitian Hukum Edisi Revisi*, Cet. 9, Kencana Prenada Media Group: Jakarta, hlm. 93.

¹⁵ Bahder Johan Nasution, 2008, *Metode Penelitian Ilmu Hukum*, Mandar Maju: Bandung, hlm. 92.

¹⁶ Peter Mahmud Marzuki, 2010, *Penelitian Hukum*, Kencana Prenada Media: Jakarta, hlm. 93.

¹⁷ Azriadi, Mairul, 2019, *Peran Pembimbing Kemasyarakatan dan Pekerja Sosial Profesional Dalam Upaya Diversi Terhadap Anak di Bukittinggi, Fairness and Justice: Jurnal Ilmiah Ilmu Hukum*, Volume 17 Nomor II Bulan November, hlm.2.

¹⁸ Farhan Taufiqurrahman, dan Handar Subhandi Bakhtiar. 2025. "A SCIENTIFIC JOURNAL OF CHILD CRIMINAL LAW: (Juvenile Justice Criminal Law Policy in Indonesia and Malaysia: A Comparison)". *Journal of Ius Comparatum Law Studies* 1 (1):24-35.

¹⁹ Maidin Gultom, 2006, *Perlindungan Hukum Terhadap Anak, dalam Sistem Peradilan Pidana Anak di Indonesia*, Refika Aditama: Bandung, hlm. 75

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“Children who are not yet 14 (fourteen) years old can only be subject to action. Because at that age it is considered that they are not yet able to take responsibility for their actions. Whereas children aged 14 (fourteen) years to 18 (eighteen) years can be sentenced and subject to action because they are considered capable of taking responsibility for their actions”.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in Article 82 paragraph (1) regulates the action sanctions that can be imposed on children including:

a. Return to parents or guardians;

The action of returning to parents or guardians as regulated in the provisions of Article 31 paragraph (1) to paragraph 4 of Government Regulation (PP) Number 58 of 2022 concerning Forms and Procedures for the Implementation of Crimes and Actions against Children states that:

- 1) Children who are returned to their parents/guardians must be given assistance and guidance.
- 2) The action of returning the child to parents/guardians is carried out by the Prosecutor and accompanied by a Community Counselor.
- 3) Assistance and guidance as referred to in paragraph (1) shall be carried out by Social Workers and / or Social Welfare Workers for a maximum period of 6 (six) months from the time the child is returned to the parents / guardians.
- 4) Social Workers and / or Social Welfare Workers submit the progress of the results of mentoring and guidance to the Community Supervisor and the Prosecutor.

b. Submission to someone;

The action of handing over to someone as regulated in the provisions of Article 32 paragraph (1) to paragraph 5 of Government Regulation (PP) Number 58 of 2022 concerning Forms and Procedures for the Implementation of Crimes and Actions against Children states that:

- 1) The act of surrendering a child to a person shall preferably come from the child's closest relative.
- 2) A person as referred to in paragraph (1) shall be required to be:
 - a. an adult person;
 - b. capable;
 - c. has good behavior;
 - d. responsible; and
 - e. trusted by the child.
- 3) The actions as referred to in paragraph (1) are carried out to assist parents/guardians in educating and providing guidance to children.
- 4) The actions as referred to in paragraph (1) are carried out based on community research and the results of the Social Worker assessment.
- 5) The assessment of Social Workers is based on the requirements specified in the provisions of laws and regulations.

Then in the provisions of Article 33 paragraph (1) to paragraph (4) of Government Regulation (PP) Number 58 of 2022 concerning Forms and Procedures for the Implementation of Punishment and Action against Children states that:

- 1) Children who are handed over to someone must be provided with assistance and guidance.
- 2) The assistance and guidance as referred to in paragraph (1) shall be carried out by Social Workers and/or Social Welfare Workers for a maximum period of 6 (six) months from the time the Child is handed over to someone.
- 3) The period as referred to in paragraph (2) is intended to make observations in the context of the feasibility of providing further care.
- 4) Social Workers and / or Social Welfare Workers submit the results of the progress of assistance and guidance to the Community Supervisor and the Prosecutor.

c. Treatment in a mental hospital;

Treatment in a mental hospital as regulated in the provisions of Article 34 paragraph (1) to paragraph (5) of Government Regulation (PP) Number 58 of 2022 concerning Forms and Procedures for the Implementation of Crimes and Measures against Children states that:

- 1) Treatment in a psychiatric hospital shall be imposed on a juvenile who at the time of committing a criminal offense suffers from mental disorder or mental illness.
- 2) The measure as referred to in paragraph (1) is intended to carry out medical rehabilitation.
- 3) The measures as referred to in paragraph (2) shall be implemented until the Child recovers.
- 4) The head of the psychiatric hospital shall submit the progress of the results of the Child's treatment to the Community Supervisor and the Prosecutor periodically or at any time.
- 5) If necessary, the head of the psychiatric hospital may request a Social Worker to provide assistance and guidance to the Child.

d. Care at the Social Welfare Institution (LPKS);

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The action of handing over to someone as regulated in the provisions of Article 35 paragraph (1) to paragraph (5) of Government Regulation (PP) Number 58 of 2022 concerning Forms and Procedures for the Implementation of Crimes and Actions against Children states that:

- 1) The treatment measures in LPKS imposed on children are intended as social rehabilitation efforts.
- 2) Social rehabilitation as referred to in paragraph (1) is carried out in the form of:
 - a. psychosocial motivation and diagnosis;
 - b. nurturing care
 - c. mental and spiritual guidance
 - d. physical guidance
 - e. social guidance and psychosocial counseling;
 - f. skills guidance and entrepreneurship coaching
 - g. accessibility services
 - h. social assistance and assistance
 - i. further guidance; and/or
 - j. resocialization guidance; further guidance; and/or
 - k. referral.
- 3) The form of social rehabilitation as referred to in paragraph (2) is adjusted to the needs of the Child.
- 4) Social rehabilitation as referred to in paragraph (2) is carried out through stages:
 - a. initial approach;
 - b. problem disclosure and understanding;
 - c. developing a problem-solving plan;
 - d. problem solving;
 - e. resocialization;
 - f. termination; and
 - g. further guidance.
- 5) The head of the LPKS or a designated official submits the progress of the Child's social rehabilitation results to the Community Supervisor and the Prosecutor.
- e. Obligation to attend formal education and/or training organized by the government or private entities;

The obligation to participate in formal education and/or training held by the government or private entities as stipulated in the provisions of Article 36 paragraph (1) to paragraph (5) of Government Regulation (PP) Number 58 of 2022 concerning Forms and Procedures for the Implementation of Crimes and Measures against Children states that:

- 1) The mandatory action of attending formal education and/or training held by the government or private entities is intended to fulfill the child's right to education and the compulsory education program.
- 2) Compulsory education is implemented in accordance with the provisions of laws and regulations in the field of education.
- 3) While the child is participating in formal education and/or training, social workers and/or social welfare workers provide assistance and guidance to the child.
- 4) The assistance and guidance as referred to in paragraph (3) shall be carried out for a maximum of 1 (one) year.
- 5) The head of the educational institution or a designated official submits the progress of the child's learning outcomes to the Community Supervisor and the Prosecutor.
- f. Revocation of driving license; and/or

The action of revoking a driver's license as stipulated in the provisions of Article 37 paragraph (1) to paragraph (5) of Government Regulation (PP) Number 58 of 2022 concerning Forms and Procedures for the Implementation of Crimes and Actions against Children states that:

- 1) The action of revoking a driver's license for a child shall be carried out for a maximum period of 1 (one) year.
- 2) The measures as referred to in paragraph (1) are intended to provide a sense of responsibility and increase traffic awareness.
- 3) In the event that the decision in the form of action as referred to in paragraph (1) has obtained permanent legal force.
- 4) The prosecutor shall immediately submit a copy of the court decision along with the driver's license to the Indonesian National Police.
- g. Reparation of the consequences of a criminal offense.

The action of revoking a driver's license as stipulated in the provisions of Article 38 paragraph (1) to paragraph (2) of Government Regulation (PP) Number 58 of 2022 concerning Forms and Procedures for the Implementation of Crimes and Actions against Children states that:

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- 1) Remedial action due to criminal offense by the child is intended as a form of legal responsibility of the child to the victim.
- 2) The measures as referred to in paragraph (1) shall be implemented based on a court decision in the form of repairing the damage and/or restoring the situation to its original state.

Facing and handling the judicial process of children in conflict with the law, the first thing that should not be forgotten is to see their position as children who have special characteristics and characteristics. Imposing imprisonment on children should be the last resort considering the long future of children and children still need guidance in their growth period, for this reason, action sanctions become an alternative to be given to children as an effort to return children to their parents or to be educated and fostered properly so that children can return to become better individuals.

In deciding a child's case, it must consider the circumstances of the child, whether the crime committed is a serious crime or a minor crime, how to commit a crime including ordinary delinquency or planned mode, see the consequences caused to the victim, consider the best interests of the child as well as the advice of the Community Supervisor in the form of the results of community research and the judge also has his own conviction. Regarding the sanction of action against the child, considering the child, the criminal act of the judge the circumstances committed are not a serious crime, the consequences caused to the victim and has never committed a criminal offense before.

The non-judicial aspects include philosophical, sociological, psychological and criminological aspects. The juvenile justice process involves not only judges but also other law enforcers such as prosecutors. Prosecutors in Indonesia have the main task of screening cases that are worthy of being submitted to prepare prosecutions, courts, files conducting prosecutions and implementing court decisions.²⁰

Law of the Republic of Indonesia Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, precisely in Article 1 number 2 states that "Prosecutors are civil servants with functional positions that have specialties and carry out their duties, functions, authorities and based on the Law".

Article 1 point 3 of Law of the Republic of Indonesia Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia states that "Public Prosecutors are prosecutors who are authorized by this Law to conduct prosecutions and carry out judicial decisions and other powers based on the Law". Article 14 of the Criminal Procedure Code, the public prosecutor has the authority to receive and examine investigation case files from investigators or assistant investigators and conduct pre-prosecution if there are deficiencies in the investigation by taking into account the provisions of Article 110 paragraph (3) and paragraph (4). Article 1 point 4 of Law of the Republic of Indonesia Number 11 of 2021 states that "Prosecution is a public prosecutor's action to submit a district court case to the competent authority in the case and in the manner provided for in the Criminal Procedure Law with a request that it be examined and decided by a judge at a court hearing".

The process of prosecuting children is different because the principle of *lex specialis derogat legi generalis* applies, children's cases are regulated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Article 41 paragraph (1) of Law No. 11/2012 on Juvenile Criminal Justice System stipulates that the prosecution of juvenile cases is conducted by a Public Prosecutor who is appointed based on a Decree of the Attorney General or other official appointed by the Attorney General. Paragraph (2) regulates the requirements to be appointed as a Public Prosecutor as referred to in paragraph (1) including:

- 1) has experience as a public prosecutor;
- 2) have interest, attention, dedication, and understanding of children's issues; and
- 3) have attended technical training on Children.

In the event that there is no Public Prosecutor who meets the requirements, the prosecution is carried out by the Public Prosecutor who carries out prosecution duties for criminal offenses committed by adults. The prosecution of children by the Public Prosecutor must consider the circumstances of the child, the offense committed, the criminal consequences caused to the victim and the results of community research for the best interests of the child by seeking the child not to be sentenced to imprisonment. Related to the sanction of action, the public prosecutor in the prosecution should pay attention to the condition of the child, the punishment is under 7 (seven) years and not a recidivist.

In accordance with Article 82 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it states that "The action as referred to in paragraph (1) may be submitted by the Public Prosecutor in his prosecution, unless the criminal offense is punishable by a minimum imprisonment of 7 (seven) years". In addition to judges and prosecutors, the application of sanctions also involves the Correctional Center, abbreviated as Bapas, which was originally called the Community Center for Child Guidance and Eradication (Balai BISPA).

²⁰ Handoyo Prasetyo, Bambang Waluyo, Subakdi Subakdi, & Beniharmoni Harefa. (2024). Identifikasi Simptom Penyebab Perundungan: Upaya Menciptakan Sekolah Ramah Anak. *ARDHI: Jurnal Pengabdian Dalam Negri*, 2(3), 80–90.

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Article 1 point 24 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, reads: "Correctional Center is a correctional technical implementation unit that carries out the duties and functions of community research, guidance, supervision and assistance. The duties and functions of Bapas are carried out by Community Counselors". Community Counselor (PK) is a general functional position in the Ministry of Law and Human Rights of the Republic of Indonesia. The process of handling children in conflict with the law with adults is not the same because both have different justice systems. Children still need help from adults to fulfill their needs, their choices determine and to get their rights.

In Article 64 paragraph (1) of Law Number 11/2012 concerning the Juvenile Criminal Justice System, it reads: "The handling of children in conflict with the law in Bapas states that the Community Supervisor (PK) is tasked with providing assistance during the judicial process and conducting community research on children in conflict with the law". In accordance with Article 23 paragraph (1) of Law Number 11 of 2012 concerning the Child Criminal Justice System, it reads that "at every level of examination, children must be provided with legal assistance and accompanied by Community Counselors or other assistants in accordance with statutory provisions".

The community research conducted by the community counselor said that the community counselor (PK) conducted community research to find out the child's condition regarding the child's identity, the child's attitude and behavior, family conditions, environmental conditions, find out the reasons or background of the child's attitude so that he committed a crime, the consequences of his criminal act and provide advice to the judge what decision is appropriate to be given to the child. Bapas only provides advice or input in accordance with what is obtained from litmas, related to the results of the decision is the authority of the judge.

Article 57 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, reads that "After the indictment is read out, the Judge orders the Community Counselor to read out the community research report on the child concerned without the presence of the child, unless the Judge is of another opinion". Furthermore, Article 57 paragraph (2) states that the community research report contains personal data of the child, family, education and social life, the background of the criminal offense, the condition of the victim in the event that there is a victim in a criminal offense against the body and life, other matters deemed necessary, minutes of diversion, conclusions and recommendations from the community supervisor.

Article 60 paragraph (3) reads that "The judge is obliged to consider the community research report from the Community Supervisor before issuing a case decision. Then in paragraph (4) states that in the event that the community research report as referred to in paragraph (3) is not considered in the Judge's decision, the decision is null and void". Every regulation or policy made has a goal to be achieved, including policies regarding the transfer of children. The short-term goal in the implementation of the Juvenile Criminal Justice System is resocialization or coaching to prepare for returning to society. The medium-term goal is to prevent children from committing further crimes, while the long-term goal is to realize the welfare of children and the welfare of society in general.

With the application of sanctions against children by the district court in accordance with the purpose of punishment, namely providing guidance to children in conflict with the law and providing a deterrent effect without depriving them of their rights as children to continue to receive education while providing protection to society, especially victims, children are also responsible for learning for their actions.

In the context of the juvenile criminal justice system in Indonesia, the application of a combined theory of punishment that combines absolute and relative elements is a very important approach to realizing the objectives of national law, especially in achieving the best interests of children. This theory places punishment not only as a form of retribution, but also as a preventive and rehabilitative instrument that aims to shape and change the behavior of the perpetrator, especially if the perpetrator is a child who is still in the stage of psychological and social development.²¹

In line with the above opinion, Muladi argues that "The concept of the best interests of the child has become a major foothold in various international and national legal instruments. In the context of Indonesian law, Article 1 point 3 of Law No. 12/2011 on the Formation of Legislation emphasizes that the law must be able to guarantee justice, order, and protection of human rights, including children in conflict with the law."²²

This principle is in line with the spirit of Law No. 11/2012 on the Juvenile Criminal Justice System (SPPA Law), which explicitly regulates the maximum protection of children, especially children under 14 years of age. According to Barda Nawawi Arief by quoting the views of R.M. Jackson, Arief, argues that "The effectiveness of the law can be measured by the success of the justice system in changing the behavior of criminal offenders so that they do not repeat their actions. and emphasizes the importance of reducing the recidivism rate as an indicator of the success of punishment."²³

²¹ Barda Nawawi Arief, 2010, *Bunga Rampai Kebijakan Hukum Pidana*, Kencana: Jakarta, hlm. 45-47.

²² Muladi, 2015, *Pengantar Ilmu Hukum*, PT. RajaGrafindo Persada: Jakarta, hlm. 29-30.

²³ Barda Nawawi Arief, 2013, *Efektivitas Hukum dan Kebijakan Pidana*, Pustaka Pelajar: Yogyakarta, hlm. 88-92.

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This approach is very relevant in handling children in conflict with the law, because children have unique developmental characteristics, where the aspects of education, rehabilitation, and guidance are more important than severe punishment that excessively restricts freedom. Furthermore, the principle of non-criminalization and de-institutionalization of children as stipulated in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) underlines the importance of avoiding excessive punishment of children and prioritizing alternative measures that foster and restore children's conditions.²⁴

In this case, the Social Protection and Welfare Institution (LPKS) plays an important role as one of the instruments implementing social and psychological child protection and guidance. LPKS not only functions as a facilitator for the fulfillment of children's rights, but also as a strategic partner for judicial institutions in providing appropriate social services and supporting children's recovery.

Normatively, the SPPA Law emphasizes child protection through the provisions of Article 21 which states that children under 14 years old cannot be subjected to punishment, but rather actions that are coaching and rehabilitation in nature. The choice of actions includes being returned to parents or guardians, placement in the Child Special Development Institution (LPKA), and the obligation to attend education and training. Related to this, Adami Chazawi argues that "This arrangement shows that national law has integrated the principle of the best interests of the child in its legal substance, by placing rehabilitation and education as the main priority in handling children in conflict with the law".²⁵

This is where the role of LPKS is increasingly crucial, especially in providing holistic social, psychological and protection assistance for children. Dendy Sugono argues that "LPKS functions as an institution that provides social welfare services, including rehabilitation, psychological recovery, and social reintegration, which are urgently needed by children as legal subjects who are still vulnerable and require special treatment".²⁶

LPKS also assists in the diversion process as an alternative case resolution that avoids the formal justice process, so that children can obtain restorative justice that is more humane and oriented towards restoring social relations. The legal structure of juvenile criminal justice has accommodated this aspect by giving authority to officials such as prosecutors, judges, and the Correctional Center (Bapas). Prosecutors have the authority to propose measures instead of punishment for children who have not committed serious crimes and are not recidivists, as stipulated in Article 82 paragraph (3) of the SPPA Law²⁷. Judges, in deciding children's cases, are also given the discretion to consider aspects of humanitarian justice, the psychological condition of the child, and their social background, which is a concrete implementation of the principle of the best interests of the child (Article 70 of the SPPA Law).

In addition, the role of Bapas as a companion and supervisor of children during the judicial process is very important. Article 65 letter d of the SPPA Law mandates community supervisors to provide assistance and make community research reports (litmas) as material for judges' consideration in determining appropriate sanctions. This report takes into account the child's psychosocial condition, family environment, and rehabilitative needs, so that the judicial process becomes more humane and in accordance with the needs of child development.

However, Nurul Huda argues that "The application of the principle of the best interests of the child in practice still faces serious challenges, especially from a legal culture that still tends to be punitive. Often children in conflict with the law are treated like adults, both in the process of investigation, detention, and trial. This condition is contrary to the principle of child protection which emphasizes a special and humanist approach".²⁷

Therefore, a change in legal culture is urgent. Awareness of law enforcement officials must be improved through continuous training that emphasizes the value of restorative justice, humanity and rehabilitation. In addition, the role of families and communities must also be strengthened in the process of fostering children, so that children not only receive legal protection but also optimal social support. Legal education that prioritizes these values is key in shaping a new paradigm that respects the rights and needs of children as a whole.²⁸

In conclusion, the punishment of 12-year-old children in the Indonesian juvenile criminal justice system should focus on coaching and rehabilitative measures, not just punishment. The Indonesian legal system has provided an adequate normative and structural basis to implement the principle of the best interests of the child, but it needs improvement in terms of legal culture so that the protection of children can be effective. The effectiveness of the law will only be achieved if all components of the legal

²⁴ United Nations Office on Drugs and Crime, 1985, *Beijing Rules: United Nations Standard Minimum Rules for the Administration of Juvenile Justice* United Nations: New York, hlm. 10-15.

²⁵ Adami Chazawi, 2014, *Perlindungan Anak dalam Sistem Peradilan Pidana* Sinar Grafika: Jakarta, hlm. 77-79.

²⁶ Dendy Sugono, 2017, *Lembaga Perlindungan dan Kesejahteraan Sosial Anak* Refika Aditama: Bandung, hlm. 123-127.

²⁷ Nurul Huda, 2015, *Budaya Hukum dan Perlindungan Anak* LKiS: Yogyakarta, hlm. 54-60.

²⁸ Sri Endah Wahyuni, 2016, *Pendekatan Keadilan Restoratif dalam Penanganan Anak*, Airlangga University Press: Surabaya, hlm. 101-107.

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substance, structure and culture system work synergistically in realizing justice and protection for children in conflict with the law.

CONCLUSIONS

In the Juvenile Criminal Justice System (SPPA) based on Law No. 11/2012, the handling of children in conflict with the law is based on the principles of child protection and restorative justice as a manifestation of the principle of the best interests of the child. This approach emphasizes recovery, not punishment, in order to maintain the welfare and future of children. Specifically for children aged 12 to 14 years who commit criminal offenses, Article 21 paragraph (1) of the SPPA Law regulates that they are not necessarily subject to criminal sanctions, but rather action sanctions, except in cases of serious crimes. This approach reflects the realization that children at this age are morally and psychosocially immature, so they need to be fostered through educative and rehabilitative means. Action sanctions are non-punitive and aim to foster and prevent repetition of actions, without damaging the psychological development of children. Meanwhile, Article 21 paragraph (3) reads that children aged 12 years who cannot be held criminally responsible will be processed through diversion, involving BAPAS, parents, community leaders, and child protection institutions, in order to avoid children from formal justice processes that can stigmatize. This approach is in line with Article 3 paragraph (1) of the Convention on the Rights of the Child, which requires that the best interests of the child be the primary consideration in any legal action. Thus, the state not only enforces the law, but also carries out constitutional and moral obligations to protect and save the future of children through humanist and progressive treatment.

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