

Children's Criminal System as Criminal Offenders Perspective of Law Number 11 of 2012 Concerning Children's Criminal Justice System

Ananda Alif Rizal FAHLAVI¹, Emma Dwi ASMARANI², Shelviana SHELVIANA³,
Debhiantho DEBHIANTHO⁴, Helmi HAMDANI⁵, Yayang ASIHAY⁶, Jovi JOVI⁷, Dody
DODY⁸, Mutia Evi KRISTHY⁹

^{1,2,3,4,5,6,7,8,9}Faculty of Law, University of Palangka Raya

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Corresponding Author:

Emma Dwi Asmarani

Email:

mutiaevi@law.upr.ac.id

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Abstract:

Purpose:

This study describes the principles system of legal protection against Children as criminal perpetrators in Law of the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System refers to the Convention on The Rights of The Child, and it has covered most of the principles of child protection perpetrator as well.

Methodology:

The research method used in this study is normative legal research because it includes the scope of legal dogmatic learning or researching legal rules.

Findings:

The study also found that the provision of punishment against the child has been following that stipulated in Law Number 23 of 2002 concerning Children Protection, which states that imprisonment can be applied to the child when there is no last effort any longer and shall be executed separately from the adult prison.

Implication:

The child protection efforts shall be implemented by imposing restorative sentencing (restorative justice) and diversion if completing the requirement of Law Number 11 of 2012 concerning the juvenile criminal justice system.

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INTRODUCTION

Children are part of the young generation as one of the human resources who are the potential successors of the ideals of the nation's struggle. They have a strategic role, unique characteristics, and traits, requiring complete physical, mental, and social guidance and protection. For Indonesians, children are the subject and capital of national development to achieve a just and prosperous society by the mandate of the 1945 constitution. Therefore, children need exceptional guidance to develop physically, mentally, and spiritually to the maximum. In this guidance and coaching process, the values of adolescent children will be formed. These values are formed from various factors, both internal and external. Therefore, families understand the process of forming their teenage children's values because they will face this aspect in everyday life. These values are important because they influence a person's relationship and interaction patterns with other people. The main factors that form a teenager's values include family, religion, school and environment. The environment always has a double impact on teenagers' values. For example, social interactions will positively impact because they bring good values if they are in the right corridor. However, social interactions also often drag teenagers into breaking the law and committing immoral, immoral and even criminal acts.

Deviant behavior committed by teenagers in the sense of juvenile delinquency is an act or action carried out by someone who is not yet an adult who deliberately violates the law, and the child himself realizes that his actions can be subject to sanctions or punishment (criminal).

International law has established standards of treatment that must and can be referred to by every country in dealing with children in conflict with the law. International law requires states to provide legal protection and respect for children in conflict with the law by developing laws, procedures, authority and institutions.

Article 1 number (1) of Law Number 3 of 1997 concerning juvenile courts states that a child is a person who, in a child case, has reached the age of 8 but has not yet reached 18 years and is not yet married. Years old but has been married, the child is still considered an adult even though he or she has not yet reached 18 years of age.

According to Law No. 11 of 2012 concerning the Juvenile Criminal Justice System Article 1 Paragraph 3, children who conflict with the law, after this, referred to as children, are 12 (twelve) years old but not yet 18 (eighteen) years old. Commit a criminal act.

Article 27, paragraph (1) of the 1945 Constitution states that all citizens have equal status under the law and government and are obliged to uphold the law and government, and there are no exceptions. However, special protection applies to a child who is a perpetrator of a criminal offense to protect the child's interests and future.

It is also explained in Article 1 paragraph (2) of Law Number 23 of 2002 concerning child protection that life, growth development and participation are optimal following human dignity and protection from violence and discrimination. Every child has the right to freedom following the law. Arrest, detention or imprisonment for children can only be carried out if following applicable law and can only be done as a last resort. Legal protection of children is an effort to protect various freedoms and human rights of children legally. Forms of legal protection for children, for example, assistance from community officials, shorter detention periods compared to adults, and facilities provided by special law enforcement officers for children, including the separation of child detainees from adult detainees, are one form of legal protection for children.

Criminal acts committed by children always attract criticism from law enforcers whom many groups consider not to heed the procedures for handling children who have problems with the law, and there is an impression that they are often treated as adults in a "small form" who commit criminal acts.

The current criminal system sometimes still treats children involved as perpetrators of criminal acts like perpetrators of criminal acts committed by adults. Children are placed in the position of criminals who deserve the same punishment as adults and apply in Indonesia.

Punishment is more oriented towards the individual perpetrator or what is usually called individual or personal responsibility (Individual responsibility), where the perpetrator is seen as an individual capable of taking full responsibility for the actions he or she commits. Meanwhile, children must still be fully aware of Child Protection Law Number 23 of 2002.

It is because the child is an individual who is not yet mature in thinking. Therefore, by treating children the same as adults, it is feared that the child will quickly imitate the behavior of those around them.

Meanwhile, in Law No. 11 of 2012, the principles adopted in the Juvenile Justice System include the best interests of the child; respect for children's opinions; survival and growth and development of children; coaching and mentoring children; deprivation of liberty and punishment as a last resort; and avoidance of retaliation.

Article 3 of the law states that every child in the criminal justice process has the right, among others: a. to be treated humanely by paying attention to needs according to age; b. Separated from adults; c. Carrying out recreational activities; d. Free from torture, punishment or other cruel, inhuman, and degrading treatment; e. Not sentenced to death or life imprisonment; and f. Not be arrested, detained, or imprisoned, except as a last resort and for the shortest time.

The Juvenile Justice System must also prioritize the Restorative Justice approach and must strive for diversity to achieve peace between the victim and the child, resolving children's cases outside the judicial process; resolve children's cases outside the judicial process prevent children from deprivation of liberty, encourage the public to participate, and instill a sense of responsibility in children.

Problem Identification. Based on the background that has been described, the main problem in this paper is how, First, the Implementation of the Child Criminal Justice System is linked to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and viewed from Law Number 23 of 2002 concerning Child Protection. Second, Efforts to protect children's rights as perpetrators of criminal acts according to Law Number 11 of 2012 concerning the Child Criminal Justice System and reviewed from Law Number 23 of 2002 concerning Child Protection.

Objectives and Use. Based on the main problem, the purpose of this writing is to find out the role of the government. To find out if the juvenile punishment system is linked to Law Number 11 of 2012 concerning the juvenile criminal justice system and reviewed from Law Number 23 of 2002 concerning child protection, To find

out about efforts to protect children's rights as criminals according to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and given Law Number 23 of 2002 concerning Child Protection and child criminal acts that can be continued with punishment.

METHODS

The research method used in this writing is a normative juridical method carried out through a literature study that examines secondary data in the form of laws and regulations relating to the child punishment system and child protection laws, as well as research results and other references.

This research uses a type of normative legal research because the provisions regarding sanctions against Children in Conflict with the Law as an alternative means of criminal loss of liberty have not been explicitly regulated regarding its implementation in the Juvenile Criminal Justice System Law, and there are vague norms or horizontal conflict of norms in its regulation. Secondary data is data obtained from library materials. 7 Secondary data in this study was obtained from primary and tertiary legal materials. What is meant by these three legal materials in this research includes books (including dictionaries) and various other sources such as basic regulations and legislation relating to children's rights to play and public green open spaces, articles, scientific magazines, letters news, and unpublished data/sources, materials from the internet, and other materials related to the title of this research.

RESULTS AND DISCUSSION

A Definition of Children. In positive law in Indonesia, children are defined as people who are not yet adults (*minderjarig*/person under age), people who are underage/*underage* (*minderjarigheid*/*inferiority*) or also commonly referred to as children who are under the supervision of a guardian (*minderjarige ondervoordij*). If we look further in chronological age according to law, the definition of a child can vary depending on place, time, and for what purposes; this will also influence the limits used to determine a child's age. The differences in children's understanding can be seen in the current laws and regulations. For example, the definition of a child according to Law Number 4 of 1979 concerning Child Welfare is someone who has not reached the age of 21 and has never been married.⁸

Article 1 of the Convention on the Rights of the Child defines a child as every person under 18 years unless maturity has previously been obtained according to the law applicable to children. What is meant by children is that those who are not yet adults and who become adults due to specific mental and physical regulations are still immature). Law Number 39 of 1999 concerning Human Rights explains the definition of a child as every human being under 18 (eighteen) years of age and unmarried, including children who are still in the womb, if this is in their interests.

This understanding is almost the same as the definition of a child in Law Number 23 of 2002 Article 1 Paragraph (1) concerning Child Protection, which states that a child is someone aged 18 (eighteen) years, including children still in the womb. Meanwhile, in Article 1 paragraph (1) of Law Number 3 of 1997 concerning the Juvenile Criminal Justice System, the definition of a child is a person who, in the case of a Child in Conflict with the Law, has reached the age of 8 (eight) years but has never been married. On July 30, 2012, the DPR-RI passed Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which will replace the Juvenile Justice Law two years after its promulgation and come into force on 30 July 2014. Law no. 11 of 2012 has adopted the Constitutional Court Decision no. 1/PUU-VII/2010, namely by defining a Child in Conflict with the Law as a child who is 12 (twelve) years old but not yet 18 (eighteen) years old who is suspected of committing a criminal act (Article 1 point 3 of Law no. 11 of 2012).

However, different things are shown in Constitutional Law, the right to vote in elections; for example, a person is considered capable of being responsible for the legal actions he or she commits if he or she has reached the age of 17 (seventeen) years. After considering various factors, setting an age limit for children is subjective and depends on their interests.

B. Children's Rights Contrary to the Law. The suspect's rights include The right to obtain a warrant for further detention or detention or a judge's decision (Article 21 paragraph (2) of the Criminal Procedure Code); The right to receive a copy of a warrant for further detention or detention or a judge's decision (Article 21 paragraph (3) of the Criminal Procedure Code); The right to object to the extension of detention (Article 29 paragraph (7) KUHAP); The rights of children that are the main focus in this process are as follows; as a suspect,

the rights obtained as a measure of protection against detrimental actions (physical, psychological and violence): (victim) rights for those served because of physical, mental and social suffering or deviant social behavior; the right to precedence in the audit process, receipt of reports, complaints and follow-up actions from the audit process; the right to be protected from forms of threats of violence as a result of reports and complaints given.

Children's rights in the prosecution process include the following: determining the child's detention period only based on the urgency of the examination, making charges that the child can understand, immediately transferring the case to court, implementing the judge's decision with the spirit and spirit of coaching or providing rehabilitation. Children's rights during examination at the Prosecutor's Office are as follows: the right to obtain a reduction in the period/time of detention, the right to change the status of detention from detention in a detention center (State Detention Center) to house arrest or city detention, the right to obtain protection from threats, abuse, blackmail from parties involved in the proceedings, the right to obtain facilities in the context of examination and prosecution, the right to be accompanied by legal counsel.

Children's rights in the trial process include the right to receive notification of coming to court (Article 145 of the Criminal Procedure Code), the right to receive a summons to attend a court hearing (Article 146 paragraph (1) of the Criminal Procedure Code), the right to obtain what is charged (Article 51 letter b of the Criminal Procedure Code), the right to obtain an interpreter language or translator (Article 53, Article 177, Article 165 paragraph (4) KUHAP), the right to seek or present witnesses (Article 65 and Article 165 paragraph (4) KUHAP) Children's rights during trials are still differentiated in their positions as perpetrators, victims and witnesses. The rights of children during the trial in their position as perpetrators are The right to receive an explanation regarding the procedures for the trial of their case, The right to receive companions and advisors during the trial, The right to obtain facilities to participate in expediting the trial regarding them, The right to obtain protection against actions that are detrimental to mental suffering, physical, social of anyone, The right to express an opinion, The right to request compensation for treatment that causes suffering due to being arrested, detained, prosecuted or tried without reason based on the law or because of a mistake regarding the person or the law applied, The right to receive treatment positive guidance/punishment, which still develops him as a complete human being. The right to a closed trial is in his interests.

Promoting children's rights in the criminal justice results from interactions between children and their families, communities and law enforcement who influence each other. Families, communities, and law enforcement need to increase awareness of the protection of and attention to children's rights for children's welfare.

The rights children receive in PKPA as perpetrators of crimes are Obtaining legal aid and other legal assistance in effect starting from the police process and prosecutor's office to the court; Identity not published; and not to be arrested, detained, or imprisoned except as a last resort.

C. Aims and Guidelines for Child Punishment. The best punishment for children in criminal justice is not imprisonment but compensation according to the seriousness of the crime. "The compensation in question is a sanction given by the criminal justice system/court which requires the perpetrator to pay a certain amount of money or work, either directly or in lieu." Criminal law for children is regulated in Law No. 3 of 1997 concerning Children's Courts, which is considered not to protect children who conflict with the law. Therefore, there is a need for change and renewal. The aims and rationale of juvenile criminal justice cannot be separated from the main aim of realizing children's welfare, which is an integral part of social welfare.

Talking about criminal matters indeed cannot be separated from discussing punishment. According to Prof. Soedarto said that: "The word punishment is synonymous with the term "punishment." Punishment itself comes from the word "law," so it can be interpreted as establishing the law or deciding on punishment (brighten). Establishing this punishment has a powerful meaning, not only in criminal law but also in other fields of law. Therefore, this term must be narrowed to mean punishment in a criminal case, often synonymous with punishment or the awarding or imposition of a sentence by a judge.

D. Application of Criminal Sanctions Against Children as Criminals. Juvenile criminal justice realizes the welfare of children, so children are tried separately. All activities in juvenile criminal justice should be carried out by juvenile investigators, public prosecutors, judges, or correctional institution officers based on the principle of the welfare of children. The judge imposes a sentence or action intended to provide the best for, without sacrificing the interests of society and upholding legal authority. Criminal sanctions imposed on children are based on truth, justice and the welfare of children.

Juvenile Criminal Justice is also about carrying out corrections and rehabilitation so that sooner or later, children can return to everyday social life and not end their future hopes and potential. Imposing a crime or action is an action that must be held accountable and can be beneficial for the child. In every criminal or action carried out, efforts will be made not to cause victims suffering and mental, physical, and social losses. In order to prevent negative consequences, it is essential to consider the ethical principles behind punishment. Justice should be the only basis for punishment. Every instance of punishment should be evaluated not only in terms of whether it is just but also in terms of whether it will promote harmony. It is because justice is reflected in harmony. Punishment is a way to hold accountable those who have misbehaved, much like disciplining naughty children. When assessing naughty children, it is not always necessary to consider their spiritual or psychological abilities at the time of the offense. Instead, the focus should be on their punishment and corrective action eligibility.

Judges may not impose cumulative sentences on defendants, meaning the crime and action cannot be imposed simultaneously. However, in the case of delinquent children, the main punishment and additional punishment can be imposed simultaneously, for example, imprisonment or compensation. When imposing a crime or action, the judge must pay attention to the severity of the criminal act or delinquency committed by the child. The judge must consider the child's condition, household conditions, parents/guardians/foster parents, relationships between family members, environmental conditions, and the Community Guidance Report. Gradually, the types of sanctions for children are regulated by the provisions of Article 22-32 of Law Number 3 and can be in the form of criminal acts or actions. If detailed further, the punishment is a primary and additional crime. The main punishment consists of imprisonment, Criminal Cage: V, Criminal fines, and Additional Criminal Supervision Crimes consisting of the Confiscation of certain items. Payment of compensation.

Actions that can be imposed on delinquent children are Returning them to parents, guardians, or foster parents; Submitting to the State to participate in education, coaching, and job training; Submitting to the Department of Social Affairs or social organizations engaged in education, development, and job training.

In principle, it is identical to the General Criminal Law (*Ius Commune*), so the Juvenile Court only recognizes the imposition of 1 (one) main crime. Strictly speaking, the compilation of the 2 (two) principal crimes was fabricated. Concretely, against Naughty Children who commit criminal acts (Article 1 number 2 letter a Law 3/1997) the Judge can impose one of the leading crimes or actions, while against children who commit acts that are declared prohibited for children, both according to statutory regulations and according to other legal regulations that exist and apply in the society concerned (Article 1 paragraph (2) letter b Law 3/1997) The judge can only impose action (Article 25 paragraph (1), (2) Law 3/1997. Furthermore, in determining the criminal action that can be imposed on a child, the judge pays attention to the severity of the criminal act or delinquency committed by the child concerned. The judge must also pay attention to the child's condition, household, parents, guardians, or foster parents, the relationship between family members, and their environment. Likewise, the Judge must pay attention to the Community Advisor's report.

E. Determination of Sanctions Against Children Who Are Perpetrators of Crime. Previously, we have explained the meaning of Children in Conflict with the Law as stated in Article 1 point 2. However, the law does not explicitly formulate the meaning of criminal acts or delinquency committed by children.

In the explanation of Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Paragraph 8 of the General Section states that from cases that arise, there are times when children are in the status of witnesses and victims so that child victims and child witnesses are also regulated in this Law. Specifically, sanctions against children are determined based on differences in the child's age; namely, for children who are less than 12 (twelve) years old, only action is imposed, while for children who have reached the age of 12 (twelve) years to 18 (eighteen) years can be subject to action and criminal charges.

Formulation of Criminal Sanctions and Sanctions This action shows that Law No.11/2012 concerning the Juvenile Criminal Justice System has adopted the Double Track System. In other words, this law explicitly regulates the types of criminal and action sanctions simultaneously. According to Muladi (2002) 18, using a two-track system (*Zweipurigkeit*) is a consequence of adopting the Neo-classical School. The idea that the traditional approach is as if the Action system is only imposed on people who cannot afford it must be abandoned. In the development of positive Indonesian criminal law, it has been recognized that the existence of sanctions for actions other than criminal sanctions, even though the Criminal Code adheres to the Single-track System, which

only regulates one type, criminal sanctions (Article 10 of the Criminal Code). The threat of action sanctions in Law 11/2012 shows that there are other means besides criminal (penal) means of dealing with crime.

Actually, at a practical level, the difference between criminal and criminal acts is often rather vague, but at the level of basic ideas, the two have fundamental differences. Both originate from different basic ideas. Criminal sanctions are based on the basic idea of "Why is there a punishment?" while action sanctions depart from basic ideas; "What is the purpose of this punishment?" In other words, criminal sanctions are reactive to try to take advantage of the strengths of the two previous schools (the Classical school and the Modern school) and leave behind the existing weaknesses. The principle of retaliation is improved by a theory of error that relies on age, apology, and environmental influences. Developed reasons for mitigating and aggravating punishment; expert testimony is highlighted; a two-track system is arranged (Double Track System). The perpetrator of this act. Suppose the focus of criminal sanctions is on the actions of one person through the imposition of suffering (so that the person concerned will be deterred). So, the focus of action sanctions is directed at efforts to assist so that he changes.

Criminal sanctions emphasize the element of retribution. It is suffering that is deliberately given to an offender. Meanwhile, action sanctions originate from protecting the community and coaching or caring for the person who created it. Alternatively, J.E. Jokers (1987) states that criminal sanctions focus on the punishment for the crime committed, while action sanctions have a social purpose.

Based on their objectives, criminal and action sanctions originate from different basic ideas. Criminal sanctions aim to provide extraordinary suffering (*bijzonder leed*) to the offender so that he feels the consequences of his actions. Apart from being aimed at imposing suffering on the perpetrator, criminal sanctions are also a form of expressing condemnation of the perpetrator's actions. Thus, the principal difference between criminal and action sanctions lies in the presence or absence of an element of reproach, not whether there is an element of suffering. Action sanctions are aimed at being more educational. If viewed from the perspective of theories of punishment, then action sanctions are sanctions that do not retaliate. It is solely aimed at unique prevention, namely protecting society from threats that could harm the interests of that society. In short, criminal sanctions are oriented to imposing sanctions on the perpetrator of an act, while action sanctions are oriented to the idea of protecting society.

The difference in the basic idea orientation of the two types of sanctions is also related to the underlying philosophical understanding, namely the philosophy of indeterminism as a source of ideas for criminal sanctions and the philosophy of determinism as a source of sanctions for action. Furthermore, it is related to sanctions for children in conflict with the law as criminal sanctions, consisting of primary and additional penalties. There are 5 (five) types of bare punishments as stipulated in Article 71 paragraph (1): warning punishment; criminal with conditions; coaching outside the institution; society service; or supervision; work training; coaching within the institution; prison. Meanwhile, regarding additional penalties based on Article 71 paragraph (2), there are two types: confiscation of profits obtained from criminal acts or fulfillment of customary obligations. If the material law carries a cumulative penalty of imprisonment and a fine, the fine is replaced with job training. The punishment imposed on the child is prohibited from violating the child's dignity and worth.

Further provisions regarding the form and procedures for carrying out criminal penalties, as referred to in paragraphs (1), (2), and (3), are regulated by government regulations. Compared with the provisions of Article 10 of the Criminal Code, which contains the main penalties in the form of the death penalty, imprisonment, criminal fine, cover-up crime, and criminal fines, and cover-up crime. So specifically for the death penalty, the Juvenile Criminal Justice System Law does not require that children who have committed delinquencies be threatened and sentenced to the principal penalty in the form of the death penalty. As is known, the examination of Children in Conflict with the Law is motivated by the philosophy that it is solely in the child's interests. It means that it is not desirable for children who are the next generation of the nation to be sentenced to death because children need guidance and protection in order to ensure growth that supports their physical, mental, and social development. Therefore, if the death penalty is threatened, then efforts to provide guidance and protection will never be provided while the age that a child will live is still very long. Likewise, the threat of life imprisonment is the same, which means that the punishment will be carried out throughout the child's life in a correctional institution. It is not what the Juvenile Criminal Justice System Law wants.

In connection with the above, the Juvenile Criminal Justice System Law confirms that for children in conflict with the law who have committed criminal acts that are punishable by the death penalty or life imprisonment, the maximum prison sentence that can be imposed on the child is 10 (ten) years.

Supervision is a new type of crime among the five main crimes intended for children in conflict with the law. What is meant by supervision crime is a crime imposed explicitly on children, namely supervision carried out by the Public Prosecutor over the child's behavior in daily life at the child's home and the provision of guidance carried out by the Community Counselor. So, supervision punishment is not a prison sentence or confinement carried out in the child's home but in the form of supervision of the convict for a specific time determined by the court's decision.

Regarding additional penalties, Article 10 of the Criminal Code formulates three types: revocation of certain rights, confiscation of certain items, and announcement of the judge's decision. Suppose the provisions regarding additional punishment in the Criminal Code are compared with those in the Juvenile Criminal Justice System Law. In that case, it shows that the Juvenile Criminal Justice System Law does not require that children who commit delinquencies be sentenced to additional punishment in the form of revocation of certain rights, other than the announcement of the judge's decision.

Regarding additional penalties in the form of revocation of certain rights, it should not be applied to children. A child whose rights are prioritized over his obligations will be at odds with the rights he should have as a child. For example, suppose the right to education is revoked. In that case, the child, as the nation's next generation, will automatically become stupid, which is not desired by all. Moreover, it is tied to the State's Goal, namely to make the nation's life more intelligent in achieving the ultimate goal, namely the welfare of society, including children.

About additional penalties in the form of confiscation of profits obtained from criminal acts, the Juvenile Criminal Justice System Law does not explain this further. The applicable provisions are returned to the Criminal Code as general law. Article 39 of the Criminal Code stipulates that:

- (1) Property belonging to the convict, which was obtained from a crime or was intentionally used to commit a crime, may be confiscated;
- (2) If a sentence is imposed because of committing a crime without intention or because of committing an offense, the punishment of deprivation can also be imposed in some instances as determined by law;
- (3) Confiscation can be carried out against guilty people who are handed over to the government, but it is only limited to the items that have been confiscated. As a comparison, Wvs Nederland included a new chapter (Chapter VIII A) relating to special provisions for children in 1961 based on Law Number 9 November 1961, S. 402 and then underwent several changes, most recently with Law 7 July 1994 No. 528,

In Article 35, paragraph (1) of the Criminal Code, the rights that can be revoked are:

1. The right to occupy certain positions;
2. The right to work in the Armed Forces;
3. The right to vote and be elected in elections held according to general regulations;
4. The right to be an advisor or proxy appointed by a judge. The right to be a guardian, supervising guardian, custodian, or supervising guardian of one's children;
5. Parental rights, guardianship rights, and guardianship rights over one's children;
6. The right to carry out specific work stipulates that the types of confiscation of goods (Article 33a) are:
 - goods owned by the convict or which can be used by him as a tool to commit a criminal act;
 - items related to the commission of a criminal act;
 - goods used to commit or prepare a criminal act;
 - the items used undermine the results of a criminal investigation;
 - goods produced or intended/expected;
 - right in rem and right in personal, which relate to points 1-5.

From what has been regulated in the Dutch Criminal Code, it appears that the provisions in the Dutch Criminal Code have specifically regulated additional penalties regarding the confiscation of certain items for children compared to the provisions regulated in the Juvenile Criminal Justice System Law.

Furthermore, regarding additional penalties in the form of fulfilling customary obligations, in the Juvenile Criminal Justice System law, what is meant by "customary obligations" are fines or actions that must be fulfilled

based on local customary norms that still respect the dignity of children and do not endanger the child's physical and mental health.

Apart from regulating the main crimes, the 2005 draft of the Criminal Code also regulates additional and special crimes. Regarding additional penalties, it has been planned to impose the penalty of paying compensation and add additional penalties in the form of fulfilling customary obligations and 3 (types of) additional penalties, which are the same as the Criminal Code. It means that the Juvenile Criminal Justice System Law has previously issued provisions relating to additional punishment in the form of compensation. However, no further explanation exists, and the Government Regulations envisaged by the Law have yet to be issued.

The Juvenile Criminal Justice System Law also does not want children who have committed delinquencies to be sentenced to additional punishment in the form of an Announcement of the Judge's Decision. It is indeed justified because even though a child has been sentenced to a crime which will, of course, affect his physical, social and mental development, his suffering will increase if it is added to the announcement of the decision that has been handed down by the judge which will then be known to the broader community including friends. -her friend. A child should not experience, even if he has committed a crime.

The second type of punishment for children in conflict with the law is in the form of action. Based on Article 82 paragraph (1) of the Juvenile Criminal Justice System Law, there are three types of sanctions, namely: return to parents/guardians; handover to someone; treatment in a mental hospital; treatment at LPKS; obligation to attend formal education and training provided by the government or private bodies; revocation of driving license; and reparations resulting from criminal acts.

If a child in conflict with the law, according to a court decision, is returned to his parents, guardian or someone, it does not mean that he is entirely under the supervision of the parent, but the child in question remains under the supervision and guidance of a community counselor. In the case of a child in conflict by law, if the judge thinks that parents, guardians, or someone else cannot provide better education and guidance, then the judge can determine that the child is placed in a juvenile correctional institution (as a civil child) to attend education, guidance and work training. Job training is intended to provide skills in carpentry, agriculture, workshops, and cosmetology so that you can live a better and more independent life after completing the course of action.

In principle, the Government in Juvenile Correctional Institutions or the Department of Social Affairs provides education, coaching and work training. However, in the interests of the child's wishes, the judge can determine that the child concerned be handed over to a social organization, such as an Islamic boarding school, social institution, or other social institutions, taking into account the religion of the child concerned. Imposing legal sanctions in the form of (a) returning them to parents/guardians; (b) delivery to someone; (c) treatment in a mental hospital; (d) treatment at LPKS; (e) the obligation to attend formal education and training provided by the government or private bodies; (f) revocation of driving license; and (g) reparation of the consequences of criminal acts. as stated in paragraph (1) letter d, letter e, and letter f are subject to a maximum of 1 (one) year, in paragraph (1) can be submitted by the Public Prosecutor in his demands, unless the criminal offense is punishable by imprisonment for a minimum of 7 (seven) year. Further provisions regarding the actions as intended in paragraph (1) are regulated by Government Regulation. (Article 82 paragraph (2, 3, 4) Law 11/2012). What is meant by handing over to someone is handing over to an adult who is deemed competent, well-behaved and responsible by the judge and is trusted by the child. What is meant by treatment in a mental hospital is an action given to a child who, at the time of the crime, was suffering from a mental disorder or mental illness, while what is meant by "repair due to a criminal act" is, for example, repairing the damage caused by the crime and restoring the situation to the state it was in before it occurred criminal act.

The aim of child protection contained in Law No. 23 of 2002 concerning Child Protection is to ensure the fulfillment of children's rights so that they can live, grow, develop and participate optimally following human nature and dignity, as well as receive protection from violence and discrimination in order to create Indonesian children who are of good quality, have noble character, and prosperous. The Children's Correctional Institution is one of the institutions used to educate children serving prison sentences. In providing legal protection for children who are being deprived of their freedom (children undergoing criminal punishment), what can be done is to fulfill the rights of children who are currently serving a criminal term. Based on an interview with Mr. Ketut Kawidana, SH as Head of the Head of Student Development and Work Activities (Kasi Binadik), stated that the form of legal protection given to children serving prison sentences is that they have the right to worship

following their respective religions and beliefs, have the right to receive care, whether physical or spiritual care, the right to receive education and teaching, the right to receive health services and adequate food, the right to submit complaints, the right to receive reading materials and follow other mass media broadcasts that are not prohibited, the right to visits from family, legal advisors, or other people. Certain other things are entitled to a reduction in the criminal term (remission), conditional release (assimilation), and leave (leave to visit family and leave to remain free). Providing legal protection for children who are undergoing punishment is limited to fulfilling their rights and not wanting to lose.

CONCLUSION

First, the criminal system policy for children who commit criminal acts in Indonesia from the perspective of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System can be carried out using penal or non-penal means.

Second, the Penal System Policy in Law Number 11 of 2012 is implemented by criminal legal measures through investigation, prosecution, trial in court, and guidance in Institutions. The crime prevention policy with penal means in Law Number 11 of 2012 can only be applied to children who are perpetrators who are 12 (twelve) years old but have not reached the age of 18 (eighteen) years. However, children who can be detained because of their actions are children aged 14 (fourteen) years, and the act is an act that is punishable by imprisonment for seven years or more.

Suggestion. First, the criminal system policy for punishing children who are perpetrators of crimes is an essential part of the legal protection of children. Therefore, the government must make systematic efforts to handle the problem of children who are perpetrators of crimes. Involving parties related to child psychology, social services and education services.

Second, efforts that must be put forward in handling the problems of children as perpetrators of criminal acts are to prioritize aspects of children's problems in the future. Therefore, a restorative justice system is given priority. However, it must also be considered a deterrent for children by providing opportunities to grow and develop.

REFERENCE

- Abdussalam. (2007). *Hukum Perlindungan Anak*. Restu Agung, Jakarta.
- Abdul, H. (2008). *Garuda Nusantara dalam bukunya Maidin Gultom, Perlindungan Hukum Terhadap Anak dalam Sistem Peradilan Pidana Anak di Indonesia*, Refika Aditama, Bandung.
- Barda, N. A. (1998). *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum pidana*, PT Citra Aditya Bagti, Bandung.
- Burt, G., & Joe, H. (1978). *Offender Restitution in Theory and Actions*, Lexington: Mass death, 1978.
- Dharsana, I. M. P., Sujana, I. N., & Ferrari, J. M. (2023). The Legitimacy of Authentic Deeds Read by a Notary via Teleconference. *Journal of Political and Legal Sovereignty*, 1(1), 44-52. <https://doi.org/10.38142/jpls.v1i1.55>
- Inter-Parliamentary Union & UNICEF. (2006). *Improving the Protection of Children in Conflict with the Law in South Asia: A regional parliamentary guide on juvenile justice*, UNICEF ROSA.
- J.E. Jonkers. (1987). *Buku Pedoman Hukum Pidana Hindia Belanda*. Bina Aksara, Jakarta.
- Lilik, M. (2005). *Pengadilan Anak di Indonesia dan Teori, Praktik dan Permasalahannya*. Bandung. Mandar Maju. 2005 hlm. 133 Undang- undang Pengadilan Anak Nomor 3 Tahun 1997.
- Maidin, G. (2008). *Perlindungan Anak dalam Sistem Peradilan Pidana Anak di Indonesia*. Bandung. Refika Aditama. Cetakan I.
- Maidin, G. (2010). *Perlindungan Hukum terhadap Anak*. Bandung PT Refika Aditama.
- Perumusan Harmonisasi Hukum Bidang Penyerasian KUHAP dengan KUHP Baru, Jakarta; Badan Pembinaan Hukum nasional Departemen Kehakiman. 1998 /1999.
- Soemitro, R. H. (1994). *Metodologi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta, 1994.
- Shanty, D. (1998). *Wanita dan Anak di Mata Hukum*, Liberty, Yogyakarta, 1988. *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan Peraturan Dasar dan Peraturan Perundang-undangan*.

Tutukansa, A. F. (2023). The Future of Relations between Indonesia and the Middle East Region in Terms of Geopolitics as Indonesia's 2020-2024 Strategic Plan. *Journal Of Political and Legal Sovereignty*, 1(1), 01-04.

<https://doi.org/10.38142/jpls.v1i1.31>

Undang-Undang Dasar 1945.

Undang-undang No 11 tahun 2012 tentang Sistem Peradilan Pidana Anak, Lembaran Negara Republik Indonesia Tahun 2012 Nomor 153.

Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak, lembaran Negara Republik Indonesia Nomor 109 Tahun 2002.