

The Influence of the Child Criminal Justice System in the Implementation of Criminal Sanction For Underages Who Permit Criminal act

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Abstract

The application of criminal sanctions against minors has many challenges and obstacles, including in terms of measuring children's guilt, determining appropriate sanctions, and reintegrating children after serving criminal sanctions. The imposition of criminal sanctions against minors can have significant social and psychological consequences, both for the child and the community where the child lives. This paper is prepared based on normative research with analytical descriptive nature. It is stated that Juvenile Justice, in accordance with Law No. 11/2012, is separate from the criminal provisions listed in Article 10 of the Criminal Code and determines sanctions independently. This paper aims for the government to immediately complete the unfinished regulations and prioritize attention to the institutions responsible for the detention and arrest of children and ensure that they are spread throughout Indonesia.

Kata kunci : Criminal; Sanctions; Minors.

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Introduction

Children in conflict with the law can be understood as those who have been charged with a criminal offense and must account for their actions to the law. As a result, they must participate in legal processes such as investigation, prosecution, examination, court hearings, and many of them must serve prison sentences. (Herdiana, 2014). According to Nicholas Mc Bala in his book *Juvenile Justice System*, children are the period between birth and the beginning of adulthood. Childhood is a period of limited ability, including limitations to harm others (Marlina, 2009). Juvenile law is based on different ideas than adult law, which places less emphasis on the goals of rehabilitation. The principle of best interests for the child, emphasis on rehabilitation for child offenders, and protection of children's rights are fundamental principles. However, the application of criminal sanctions against children is faced with several challenges and obstacles. One of the challenges faced is determining the child's error rate. In punishing children, it should be noted that they are still in the developmental stage and may not understand the consequences of their actions. Therefore, determining the extent to which children are responsible for their actions is an important consideration. Furthermore, determining the appropriate sanction is also a complex matter. The sanctions given must take into account factors such as the age of the child, the level of involvement in the crime, and the need for rehabilitation. The main goal of sanctions should be to promote positive changes in the child's behavior, not just to punish or punish back.

Reintegrating children into society after serving criminal sanctions is also a challenge. Children who have served time often face strong social stigma and have difficulty obtaining the education, employment and social support needed to start a new life. This can affect their well-being and increase their risk of involvement in future criminal behavior. The imposition of criminal penalties on adolescents has a profound social and psychological impact on the environment and children. One of the impacts and dangers of the juvenile criminal justice system is experiencing violence and psychological symptoms that are very likely to appear during the period of detention are feelings of anxiety. (Herdiana, 2010). (According to the KPAI, 80% of juvenile offenders have experienced violence (kompas.com, 2010). From the time of examination and investigation to the judge's decision, children involved in criminal acts will be placed in detention centers and prisons. It is the police who arrest and inspect these children during the examination procedure also put emotional pressure on him not just physical injury. Children are even told to answer yes during interrogation procedures. even if the child's answer is not according to the fact that the child is doing so because he avoids violence such as kicks and punches by the police when they question him.

Apart from the imposition of criminal consequences, the juvenile justice system provides alternative methods such as diversion, mediation, or rehabilitation programs. as specified in *PERMA* 4 of 2014 and Law 11 of 2012. The *SPPA* Law defines diversion as the transfer of settlement of child cases from the criminal justice system to systems outside the system. A thorough investigation is needed to assess the impact of using this alternative methodology on the commission of criminal acts for child offenders who are below the specified age threshold. It is very important to understand the effectiveness and appropriateness of criminal acts in the realm of juvenile justice. It is very important to uphold and protect the human rights of minors who have not yet reached the age of majority, especially in the realm of criminal justice. Therefore, understanding the impact of imposing criminal acts on minors within the framework of the juvenile justice system in protecting the rights of minors is very important. In addition, it is very important to make efforts to uphold children's rights throughout the criminal justice process.

The purpose of this scientific publication is to examine the impact of the juvenile criminal justice system in the application of criminal penalties for minors who commit criminal offenses. This analysis will be carried out by understanding the relevant context and formulating recommendations or appropriate solutions in dealing with the complexity of the problem. In connection with the identification of problems that are the subject matter of this legal writing, namely:

- a. What are the challenges and obstacles in applying criminal sanctions against minors in the juvenile criminal justice system?
- b. How does the application of criminal sanctions against minors in the juvenile criminal justice system compare with the adult criminal justice system?
- c. What are the recommendations to improve the juvenile criminal justice system related to the application of criminal sanctions against minors who commit criminal offenses?

Materials and Methods

The type of research used is normative legal research, Soerjono Soekanto states that the normative juridical approach is legal research conducted by studying secondary data or literature as the basis of research by conducting a search for laws and literature related to the problem under study. Normative legal research is used as a research methodology in this study. The methodology used in this approach includes the explication and organization of

legislation and legal mandates, drawn from primary, secondary, and tertiary legal sources. This research shows descriptive and analytical characteristics, where the discussion is carried out through the presentation and explanation of data in a comprehensive, detailed and systematic manner. Furthermore, the data obtained is analyzed using existing theories in the field of law, especially criminal law. This research uses two different research methodologies, namely desk research and field research, to obtain the necessary data. The desk research process is conducted by examining literature, documents, and written sources relevant to the subject matter under study. Meanwhile, field research involves collecting data directly from locations or sources related to the problem being studied. The combination of these two types of research provides a strong foundation for the analysis in this study.(Sulaiman & Hosnah, 2022).

Result and Discussion

A. Challenges and obstacles of the juvenile criminal justice system in applying criminal sanctions to minors

With the enactment of Law No. 11/2012 on the Juvenile Criminal Justice System (*SPPA* Law) in Indonesia, perpetrators of criminal offenses who are still children are guaranteed an optimal criminal justice process. However, after the passage of several years, the challenges and obstacles in the implementation of the *SPPA* Law are even more apparent.

The following are several supporting regulations related to the *SPPA* Law that have not been fully finalized or fully implemented:

1. Implementation of Government Regulations relating to the registration of cases involving children and child victims that have not been fully completed or properly implemented is regulated in Article 25 paragraph (2) of the Law on the Juvenile Criminal Justice System (*SPPA* Law).
2. Implementation of Government Regulations relating to the structure and protocol of criminal execution that have not been completed or properly implemented is regulated in Article 71 paragraph (5) of the *SPPA* Law.
3. Implementation of Government Regulations relating to actions that have not been completed or have not been properly implemented against children is regulated in Article 82 paragraph (4) of the *SPPA* Law.
4. Article 94 paragraph (4) of the *SPPA* Law regulates the implementation of Government Regulations relating to procedures for coordination, monitoring, evaluation, and reporting that have not been implemented completely or have not been implemented thoroughly.
5. The implementation of Presidential Regulations regarding the rights of Child Victims and Child Witnesses that have not been implemented properly is regulated in Article 90 paragraph (2) of the *SPPA* Law (ICJR, 2017).

Following the enactment of the Juvenile Justice System Law (*SPPA* Law) and other relevant regulations, which have yet to achieve optimal implementation, the next hurdle is the lack of new detention centers that can replace detention and confinement centers for minors.

One of the challenges faced relates to the lack of suitable places to substitute for the detention and confinement of minors. The *SPPA* Law has emphasized the importance of replacing these institutions with more child-friendly institutions that emphasize rehabilitation and protection of children's rights. However, in reality, the lack of resources, infrastructure and expertise to build and operate such new institutions is a real obstacle.

This lack of adequate institutions impacts the physical and social conditions of children in conflict with the law. Institutions that do not meet the necessary standards can result in discomfort, overcapacity, and lack of facilities necessary for children's education, rehabilitation, and development. This can affect the effectiveness of children's rehabilitation and recovery programs, as well as violate the basic principles in the *SPPA* Law. The limitations of new institutions can also affect the overall juvenile criminal justice process. When there are no adequate places of arrest or detention for children, this can lead to situations where children are detained together with adults or in unsafe conditions, which is contrary to the principles of child protection mandated by the *SPPA* Law. Efforts should be made to improve infrastructure, resources and expertise in building and operating new institutions that are in line with the principles of *SPPA* Law. The involvement of relevant stakeholders such as government agencies, non-governmental organizations, and the wider community is crucial in promoting and accelerating the establishment of new child-friendly institutions. The implementation of this measure is expected to improve the conditions of children involved in legal disputes, so as to facilitate the fulfillment of children's rights to obtain optimal rehabilitation and protection. This discourse discusses the institutions responsible for the implementation of the *SPPA* Law and the challenges they face in carrying out their duties:

1. *Lembaga Pembinaan Khusus Anak (LPKA)* is a specialized institution that provides accommodation for children involved in the criminal justice system, with a particular focus on individuals aged between 12 and 18 years old. However, there is currently an obstacle in that *LPKA* children are temporarily housed in prisons or detention centers that are meant for adults. This results in the mixing of children with the adult prison population, which is inconsistent with the child protection principles mandated by the *SPPA* Law.
2. One of the main challenges is the lack of Social Welfare Institutions (*Lembaga Kesejahteraan Sosial - LPKS*) in Indonesia that serve as detention centers for detained children. The existence of *LPKS* is crucial as there are no specialized child welfare and development centers for children under the age of 12. This results in difficulties in placing these children in conditions appropriate to their needs and characteristics.
3. In addition, the number of Temporary Child Placement Centers (*LPAS*) is also lacking in Indonesia. *LPAS* acts as a temporary home for children during the legal process or as an alternative to detention centers for children aged 14 to 18 years. The limited number of *LPAS* means that there are limited housing options for children while they are involved in the justice process.
4. Not all Police Sectors have a Children's Special Service Room (*RPKA*) that provides 24-hour specialized services for arrested children. The limited presence of *RPKA* makes it difficult to provide appropriate protection and services to children in police detention. These limited services can hamper efforts to rehabilitate and protect children's rights, which should be a priority in the juvenile criminal justice system.

The increasing number of minors in temporary placement centers is a noteworthy obstacle to the implementation of the Juvenile Justice System Act. The law mandates that minors be placed in a location or facility that is distinct and separate from adult offenders. However, the lack of Temporary Child Placement Centers and Special Development Centers in Indonesia, coupled with an increase in the number of juvenile offenders, has resulted in children being placed together with adults in detention centers and prisons. Special protection of the dignity of children is needed in the justice system. This is because Indonesia

as a state party to the Convention on the Rights of the Child, which formulates the principles of legal protection related to children as criminals. (Hambali, 2019).

In the juvenile criminal justice system, the lack of case evidence is the final challenge and obstacle in applying criminal sanctions to minors. Especially in cases of sexual abuse where the victim is treated inappropriately, such as grabbing the breasts or fondling the genitals, often the lack of case evidence is difficult to accept. In examinations, it becomes complicated to present witnesses as evidence because most cases of sexual abuse occur in crowded places. In addition, Visum et Repertum examinations of victims often do not show signs of abuse on the victim's body, resulting in difficulties in strengthening case evidence.

To address these challenges, a comprehensive approach is needed. It is critical to increase the number and quality of Temporary Child Placement Centers and Special Development Centers to ensure that children are provided with a safe environment that meets their needs. In addition, efforts need to be made to strengthen the juvenile criminal justice system, including improving the ability of investigators to collect case evidence, involving trained forensic experts in the examination of sexual abuse victims, and increasing public awareness about the importance of reporting such cases so that sufficient evidence can be collected for the judicial process. (Erlyta Azizka Septiana, 2021, p.187)

B. Comparison of the application of criminal sanctions against minors in the juvenile criminal justice system with the adult criminal justice system.

In the concept of a state of law, the dynamics of the nation's life ideally focus on law rather than politics or economics (Setiawati et al., 2021) Indonesia as a state of law must comply with applicable laws and regulations in their enforcement, uphold human rights and guarantee equal status for every citizen in law and government in accordance with Pancasila and the Constitution of the Republic of Indonesia. There are some groups that may not understand the procedures for prosecuting juvenile offenders, resulting in diverse perspectives in the community. Opinions differ on the appropriate approach to the criminal justice system for minors in trouble with the law. Some advocate for a different and more forgiving approach, while others argue that minors should not be subject to punishment. In reality, the prosecution of minors involved in legal matters is subject to more comprehensive regulations. The legal framework governing the treatment of individuals who are minors and involved in the criminal justice system consists of a precise set of laws and regulations. Some of the laws and regulations are covered in the following list:

- The subject matter to be discussed is Supreme Court Regulation No. 4 of 2014, which specifically regulates the implementation of diversion in the juvenile criminal justice system. This regulation sets out the guidelines and procedures governing the implementation of diversion, an alternative mechanism for resolving juvenile criminal cases outside of formal justice channels.
- This study discusses the regulatory framework established by the Attorney General's Office, specifically Regulation No. 06/A/J.A/04/2015, which provides guidelines for the implementation of diversion. The Attorney General has promulgated a regulation that provides direction to prosecutors regarding the implementation of diversion within the scope of juvenile criminal justice.
- Amendments to Law No. 23/2002 on Child Protection in the Republic of Indonesia are reflected in the Child Protection Law, specifically numbered 35/2014. The purpose of this law is to improve protection measures for minors in various domains, including within the scope of juvenile criminal justice.
- The aforementioned legal provisions relate to the enactment of Government Regulation in Lieu of Law Number 1 of 2016, which is the second amendment to Law Number 23

of 2002 on Child Protection, now officially recognized as Law Number 17 of 2016. The law provides for significant changes to the legal structure relating to the protection of the welfare of minors in Indonesia.

- The subject matter to be discussed relates to Government Regulation No. 65/2015, which outlines guidelines for the implementation of diversion and handling of children under the age of 12. This regulation offers a set of directives and protocols for the implementation of diversion and handling of children in conflict with the law who are under 12 years of age within the framework of the criminal justice system.(Mahir Sikki Z.A, 2023,).

Prioritizing the recognition and protection of children's human rights should take precedence over considerations regarding punitive and penal measures in the criminal justice realm. It is recommended that priority be given to children in conflict with the law at the investigation, prosecution and trial stages of juvenile cases." (Faisal Salam, 2005).

Diversion is the transfer of juvenile legal cases from the criminal justice system to an alternative process unrelated to the criminal justice system. This alternative process is usually dependent on certain conditions, such as successful completion of educational programs:

- a. Punishable by imprisonment under 7 (seven) years;
- b. And not a repetition of a crime;

In addition, children facing criminal charges carrying a maximum prison sentence of 7 years or less are eligible for diversion. Similarly, those facing criminal charges carrying a maximum prison sentence of 7 years or more on subsidiarity, alternative, cumulative, or combined charges may also be considered for diversion.(Mahir Sikki Z.A, 2023).

The goal of diversion, the process used here with juvenile offenders, is reconciliation between victim and offender. Diversion aims to provide an alternative to imprisonment for troubled youth so that they can continue to live in the community without restrictions. In addition, diversion requires community involvement to effectively teach accountability to children.

If the diversion agreement is accepted, the competent authority is obliged to issue an order to stop further investigation, prosecution, and analysis of the matter. However, if the diversion deadline has passed without an agreement, then the community supervisor must immediately notify the authorities so that additional investigations can be conducted.

In accordance with the provisions of Article 45 of the Penal Code, the court is authorized to impose certain decisions in the case of minors (*minderjarig*) who commit a criminal offense before reaching the age of 16. In the event that the act in question constitutes a criminal offense or one of the offenses mentioned in articles 489, 490, 492, 496, 497, 503, 505, 514, 517-519, 526, 532, 536, and 540, the court is authorized to take certain measures. These measures may include, but are not limited to, (1) issuing an order that the child be returned to his or her parents, guardians, or caregivers without any accompanying penalties, or (2) issuing an order that the child be handed over to the government without any accompanying penalties.(Moeljatno, 2003.)

Therefore, in the case of underage individuals who have not reached the age of 16, they are subject to the same criminal sanctions as adults.

In accordance with the provisions of Article 47 of the Criminal Code, individuals who commit criminal offenses before reaching the age of 16 may be subject to the following penalties:

1. In the event that the judge decides to impose a sentence, it should be noted that the maximum sentence of the principal punishment for the criminal act shall be reduced by one-third in accordance with the applicable provisions.
2. If an offense is punishable by death or life imprisonment, the sentence that may be imposed shall not exceed fifteen (15) years imprisonment in accordance with the applicable provisions.
3. The additional penalties provided for in Article 10 subparagraphs b-1 and b-3 shall not be applicable in the case concerned in accordance with the applicable provisions.

The Juvenile Justice System, as stipulated in Law No. 11/2012, provides different sanctions compared to the sanctions outlined in Article 10 of the Criminal Code. There are three age groups of minors who can be subject to criminal sanctions, namely those who have not reached the age of 12 years, those who are in the age range of 12 to 14 years, and those who have exceeded the age of 18 years.(Nugraha Pranadita, 2023).

It has been stated that any child who is under 14 years old and involved in legal matters will only be subject to a series of measures. These measures include, first, being returned to the responsible parent or guardian. Second, being transferred to the guardianship of another suitable person. Third, undergoing treatment at an appropriate mental hospital. Fourth, undergoing treatment at a Child Special Development Institution (*LPKS*). Fifth, required to attend formal education and/or training organized by the government or private parties. Sixth, revocation of Driver's License (*SIM* in Indonesia) for those who already have a *SIM*. Finally, take corrective action to overcome the impact of the criminal offense committed.

Concerning the Juvenile Criminal Justice System, it is permissible to impose various types of sanctions on children under the age of 18 who are 14 years of age or older. (Regulation. Mr., 2023.)

1. Principal sentence consists of:
 - Criminal warning;
 - Conditional punishment (coaching institutions, community service, supervision);
 - Work training;
 - Training in institutions and prisons;
2. Additional punishment in the form of deprivation of profits obtained from criminal acts, fulfillment of obligations in custom.

In cases where a child has committed a crime that is punishable by imprisonment and a fine in accordance with the relevant legal provisions, the penalty component of the fine should be replaced by a period of on-the-job training lasting between three months and one year. In addition, it should be noted that the maximum prison sentence that can be imposed on a child is limited to no more than fifty percent of the maximum prison sentence that can be imposed on an adult. In addition, children are exempted from minimum imprisonment provisions. (Mahir Sikki Z.A, 2023)

In addition, there are several aspects that must be considered in handling cases involving children, including:

1. The prison sentence that can be imposed on a child does not exceed half of the maximum prison sentence that can be imposed on an adult. This indicates that there is different treatment between children and adults in terms of sentencing.

2. Imprisonment for children is only imposed as a last resort. This emphasizes the importance of considering alternatives to punishment that are more in line with the characteristics and needs of the child, such as rehabilitation and a more pedagogical approach..
 3. If a crime committed by a child is punishable by death or life imprisonment, then the child is sentenced to imprisonment for the shortest term. This principle indicates that there is special protection for children in the event of very severe punishments. (Pranadita, 2023.) In the juvenile justice system, this court prioritizes restorative justice in handling cases involving minors.
- C. Recommendations to improve the juvenile criminal justice system regarding the application of criminal sanctions against minors who commit criminal offenses.

The legal system known as the juvenile justice system was created to handle cases involving children as victims, defendants or suspects. All decisions made by the juvenile justice system must prioritize the best interests of the child. The physical, emotional, social, and developmental needs of the child must be taken into account at every stage of the legal procedure. The juvenile criminal justice system should protect the fundamental rights of minors, including, but not limited to, the right to be protected from acts of violence, exploitation, and cruel and degrading treatment. The juvenile criminal justice system should prioritize physical, emotional, and psychosocial rehabilitation for minors involved in the juvenile criminal justice system. The juvenile criminal justice system should consider the following suggestions to improve the implementation of criminal measures against minors involved in criminal offenses. (Human Rights Instruments, 2023)

1. The primary consideration in determining the necessary legal intervention for minors involved in criminal offenses should be the best interests of the child. The welfare and interests of the child should be prioritized in the criminal justice system, with a focus on rehabilitation and recovery rather than retribution. The juvenile criminal justice system should prioritize the best interests of the child at all stages of the criminal justice process, including the determination of criminal sanctions.
2. A focus on prevention is essential. Effective prevention programs are needed to prevent children from becoming involved in crime. Prevention programs should involve education, support for good parenting, poverty alleviation, and building healthy communities. The primary emphasis of the juvenile justice system should be on prevention, and not just the imposition of sanctions after an offense has occurred.
3. Protection of children's rights must be a priority. The government must ensure that children's rights, including the right to participate, be involved and be heard at every stage of the legal process, are respected and fulfilled. This involves aspects such as ensuring children's access to competent legal representation, as well as protecting them from abuse or exploitation in the criminal justice system.
4. The principle of proportionality must be applied in determining the type and level of punishment given to children who commit crimes. Punishment should be proportionate to the severity of the act committed, and take into account the child's age, maturity level, and individual circumstances. Corrections should be a last resort and used only when there is no other appropriate alternative.
5. It is recommended to encourage collaboration between institutions. Integration and continuity of efforts to address juvenile delinquency can be promoted by the government by fostering closer collaboration among related institutions, including but

not limited to the police, courts, correctional institutions, and child welfare institutions. This collaborative effort can ensure a comprehensive approach in dealing with cases of juvenile delinquency, with an emphasis on rehabilitation and protection of the rights of minors..

6. Education and counseling are important. Education and counseling programs must be provided for children, parents, educators, and the community regarding legal rights and obligations, as well as the consequences of criminal acts. Education must be adapted to the age and development of the child, and can help increase legal awareness and reduce the tendency for criminal acts to occur.
7. Positive parenting programs need to be supported. Positive parenting programs must be provided for parents and families, including the provision of effective parenting skills, emotional management, and good communication. This program can help parents face challenges in parenting, and encourage the formation of healthy and positive relationships between parents and children.
8. Diversification of sanctions needs to be considered. The juvenile justice system must provide a variety of sanctions according to the severity and type of crime committed by the child. The sanctions given must prioritize educative, rehabilitative and restorative approaches, such as rehabilitation programs, good parenting, guidance and counseling, and social direction. Criminal sanctions that are punitive and detention must be avoided, except in cases that are absolutely necessary.
9. Evaluation and improvement of the system needs to be done regularly. The juvenile justice system must be evaluated and improved based on the results of this evaluation. Data collection, analysis and feedback from various stakeholders, including children, families and communities, should form the basis for system improvements. The evaluation and improvement process must be carried out on an ongoing basis to ensure that the juvenile justice system remains relevant, effective and in accordance with the latest developments in the field of child protection and criminal law.
10. Educative and rehabilitative approaches must be the main focus. The criminal sanctions given must prioritize an educative and rehabilitative approach, with the aim of improving the child's behavior, changing the mindset, and preventing the repetition of criminal acts in the future. Appropriate rehabilitation programs, such as counseling, therapy, and accompaniment, must be an integral part of the sanctions given to children, to help them face the consequences of the crimes they have committed..

Conclusion

Based on the description that has been submitted regarding the influence of the juvenile justice system, it can be concluded as follows:

1. The implementation of the juvenile justice system in Indonesia still faces challenges and obstacles in the application of criminal sanctions to minors. There are supporting regulations that have not been completed, limited institutions to replace places of arrest and detention, and a lack of special fostering and placement institutions for children. In addition, in several cases, the lack of evidence has also become an obstacle in the application of sanctions.
2. The juvenile criminal justice system aims to provide protection, guidance and a second chance for children who are involved in legal problems. This system recognizes the different characteristics and needs of children, and prioritizes their rights in order to achieve justice. The juvenile justice system has a different approach to dealing with

cases involving minors. This system prioritizes a rehabilitative and pedagogical approach, with a focus on children's social development and reintegration. Prison sentences for children do not exceed half of the maximum prison sentences that can be imposed on adults. Meanwhile, the adult criminal justice system tends to focus more on punishment and sentencing.

3. The juvenile justice system has important principles for dealing with cases involving children as victims, defendants or suspects. All decisions made by the juvenile justice system must prioritize the best interests of the child as in demonstrating the importance of the juvenile justice system protecting the basic rights of children, prioritizing rehabilitation, prevention, and collaboration to achieve more holistic justice for children involved in criminal justice system.

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