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Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

The Danger of Ambiguous Norms in Imposing Imprisonment on Children

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Abstract. *Legal protection for children in conflict with the law forms the basis of this study because imprisonment is still widely used, while the phrase “endangering society” in Article 81 paragraph (1) of the Juvenile Criminal Justice System Law does not yet have clear assessment limits. This study aims to analyze legal protection for children against the imposition of imprisonment based on ambiguous norms and to formulate the ideal regulation of imprisonment for children in the juvenile criminal justice system. This study uses a normative legal research method. The results show that the Juvenile Criminal Justice System has distinguished the punishment of children from that of adults by providing various punishments and measures other than imprisonment. Article 81 paragraph (1) still contains weaknesses because the phrase “endangering society” does not explain the degree of danger that may serve as the basis for imposing imprisonment. Multiple interpretations of this phrase may cause disparity in judgments and increase the use of imprisonment against children without uniform standards. Imprisonment for children should only be imposed for serious crimes or violent crimes that result in serious injury, death, or a serious threat to the safety of others.*

Keywords: *Children; Juvenile Criminal Justice System; Legal Protection.*

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1. Introduction

The imposition of imprisonment on children remains one of the most sensitive issues in contemporary criminal justice systems because children possess distinct developmental, psychological, and social characteristics that require special legal protection. Unlike adults, children who come into conflict with the law are still undergoing significant processes of physical, emotional, cognitive, and social development. Consequently, criminal justice responses toward children should not merely emphasize punishment, but must prioritize rehabilitation, education, social reintegration, and the protection of their future. Within this context, the existence of ambiguous legal norms concerning the circumstances under which children may be imprisoned presents a significant danger. Unclear provisions may create different interpretations among law enforcement authorities and judges, potentially resulting in inconsistent and disproportionate restrictions on children's liberty. (Faisal and Derita P. Rahayu; 2021).

Legal ambiguity becomes particularly problematic when the principle of the best interests of the child is not accompanied by clear and operational standards. Although this principle requires children's interests to receive primary consideration in decisions affecting them, broad or undefined legal provisions may leave substantial room for interpretation. Different judges or law enforcement officials may consequently assess similar circumstances differently, particularly when determining whether imprisonment is necessary, proportionate, and appropriate. Such uncertainty may weaken legal certainty while simultaneously increasing the risk that imprisonment will be imposed without sufficient consideration of the child's age, maturity, personal circumstances, family environment, educational needs, and prospects for rehabilitation. (Hasan, Hasbi; 2013).

The danger becomes more apparent when imprisonment is imposed without adequately considering diversion and other non-custodial measures. Diversion is essential because it provides an opportunity to resolve children's cases outside the conventional criminal justice process while promoting accountability, restoration, and reintegration. When ambiguous norms fail to establish clear thresholds and procedures for diversion, criminal justice actors may prioritize punitive responses over rehabilitative alternatives. As a result, children may experience imprisonment even when less restrictive measures could effectively address the offense. Such imprisonment can interrupt education, separate children from their families, expose them to harmful environments, and negatively affect their psychological and social development. (Jaelani, Elan; 2018).

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These challenges demonstrate the necessity of reformulating clear standards for child imprisonment. Imprisonment should remain an exceptional measure and should only be considered when other appropriate alternatives are insufficient. Clear legal standards should establish objective criteria concerning the seriousness of the offense, the child's individual circumstances, the availability of diversion, proportionality, rehabilitation prospects, and the potential consequences of detention. Such standards can limit arbitrary discretion while ensuring consistency in judicial decision-making. (Maya Sari, Made Ayu Citra; 2013).

Accordingly, this article examines the dangers arising from ambiguous norms in imposing imprisonment on children by analyzing legal ambiguity and the best interests of the child, the risk of disproportionate imprisonment and failures in diversion, and the need to reformulate clear standards that shift the juvenile justice system from punishment toward rehabilitation. Ultimately, legal certainty should function not merely as a technical requirement, but as an instrument for safeguarding children's rights and ensuring that deprivation of liberty remains a genuinely exceptional measure. (Muliani S, Adil Kasim, Jamaluddin Ahmad, and Nurjannah Nonci; 2023).

2. Research Methods

This study uses a normative legal research method. The results show that the Juvenile Criminal Justice System has distinguished the punishment of children from that of adults by providing various punishments and measures other than imprisonment.

3. Results and Discussion

3.1. Legal Ambiguity and the Principle of the Best Interests of the Child

Legal ambiguity in the regulation of imprisonment for children presents a significant challenge to the protection of children's rights within the criminal justice system. Children who come into conflict with the law are fundamentally different from adult offenders because their physical, psychological, emotional, and social development is still ongoing. Their capacity to understand consequences, exercise judgment, and respond to criminal conduct is influenced by their age and level of maturity. For this reason, legal systems generally recognize that children require a distinct approach that emphasizes protection, rehabilitation, education, and reintegration rather than punishment alone. When legal norms governing the deprivation of children's liberty are formulated in vague, inconsistent, or insufficiently detailed terms, however, the application of

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these principles may become unpredictable. Ambiguous norms can provide excessive interpretive discretion and create a substantial risk that imprisonment will be imposed without adequate consideration of the best interests of the child.

The principle of the best interests of the child constitutes a fundamental consideration in every decision concerning children. It requires state institutions, including courts, prosecutors, police authorities, correctional institutions, and other relevant actors, to consider the consequences of their decisions for the child's welfare and development. In the context of juvenile justice, this principle requires decision-makers to examine whether a particular criminal justice response contributes to the child's rehabilitation and future reintegration. The principle does not necessarily mean that children should never be held accountable for unlawful conduct. Rather, it requires accountability to be implemented in a manner that recognizes children's developmental characteristics and prioritizes their long-term welfare. The difficulty arises when legislation recognizes the best interests of the child in general terms but fails to provide sufficiently clear criteria for applying the principle when determining whether imprisonment is justified.

Ambiguous legal norms may take several forms. A statute may establish that imprisonment can be imposed when it is considered necessary without clearly defining the circumstances in which such necessity exists. Another provision may require consideration of the child's interests without explaining which factors must be evaluated or how competing considerations should be balanced. Ambiguity may also occur when different provisions establish overlapping or inconsistent standards concerning age, seriousness of the offense, diversion, sentencing, or alternative sanctions. Such uncertainty can produce different interpretations among law enforcement officials and judges. Two children involved in similar offenses may consequently receive substantially different treatment depending on the interpretation adopted by the relevant authorities. This situation threatens the principle of legal certainty and may undermine equality before the law.

The problem is particularly serious because deprivation of liberty has consequences that extend beyond the duration of a criminal sentence. Imprisonment can separate children from their families, interrupt education, restrict social relationships, and expose them to institutional environments that may negatively affect psychological development. Even when detention is formally lawful, its consequences may conflict with the child's developmental needs. Therefore, the legality of imprisonment cannot be assessed solely by asking whether the statute permits imprisonment. It is also necessary to determine

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whether the decision is consistent with proportionality, necessity, rehabilitation, and the best interests of the child. Ambiguous norms make such an assessment more difficult because they fail to establish clear boundaries within which state power may be exercised.

The best interests principle should consequently be understood as an operational legal standard rather than merely a general statement of policy. Courts should be required to consider the individual characteristics of the child, including age, maturity, family circumstances, educational background, psychological condition, social environment, and prospects for rehabilitation. The nature and seriousness of the offense must also be examined, but the offense should not automatically determine the outcome without consideration of the child's individual circumstances. A child-centered assessment requires decision-makers to ask whether imprisonment is genuinely necessary or whether another measure can achieve accountability while causing less harm to the child's development. Without such an individualized assessment, the best interests principle risks becoming symbolic rather than substantive.

3.2. The Risk of Disproportionate Imprisonment and the Failure of Diversion

The use of imprisonment against children represents one of the most serious interventions that a state can impose within the juvenile justice system. Unlike adults, children are still developing physically, psychologically, emotionally, and socially, and their capacity to understand the consequences of their actions is influenced by their age and level of maturity. For this reason, juvenile justice should not simply reproduce the punitive logic applied to adults. It should provide a framework that recognizes accountability while simultaneously protecting children from unnecessary harm and creating opportunities for rehabilitation and reintegration. The risk of disproportionate imprisonment emerges when legal and institutional practices fail to distinguish adequately between adult and juvenile offenders or when ambiguous norms allow imprisonment to become a routine response rather than an exceptional measure. In such circumstances, the failure to prioritize diversion can transform the criminal justice system from an instrument of rehabilitation into a mechanism that deepens the vulnerability of children.

The principle of proportionality is particularly important in determining whether imprisonment is appropriate for a child. Proportionality requires the response to an offense to correspond reasonably to its seriousness while also taking into account the characteristics and circumstances of the offender. In juvenile justice, however, proportionality cannot be understood solely in terms of the seriousness

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of the offense. The child's age, maturity, psychological condition, family environment, educational circumstances, social background, and prospects for rehabilitation must also be considered. A punishment that may be considered proportionate for an adult may have significantly different consequences when imposed on a child. The deprivation of liberty may interfere with education, family relationships, psychological development, and future employment opportunities. Consequently, determining proportionality requires a broader assessment of the consequences of imprisonment for the child's development.

Disproportionate imprisonment can occur when authorities focus primarily on the criminal act while giving insufficient attention to the individual child. This offense-centered approach may lead to decisions in which the nature of the offense becomes the dominant factor and the child's developmental circumstances become secondary. Although the seriousness of an offense is undoubtedly relevant, it should not automatically eliminate consideration of rehabilitation and alternative sanctions. Juvenile justice requires an individualized approach because children who commit similar offenses may have very different levels of maturity, family support, psychological needs, and risks of reoffending. A standardized punitive response may therefore produce unjust outcomes by treating fundamentally different situations as though they were identical.

The failure of diversion further increases this risk. Diversion is designed to provide children with opportunities to resolve their involvement in the justice system through mechanisms that avoid unnecessary formal prosecution and imprisonment. Depending on the applicable legal framework, diversion may involve mediation, reconciliation, restitution, community service, counseling, supervision, education, family-based interventions, or other measures appropriate to the child's circumstances. These mechanisms can promote accountability without exposing children to the potentially harmful consequences of incarceration. Diversion therefore represents an important expression of the principle that imprisonment should be used only as a measure of last resort.

The effectiveness of diversion depends substantially on the clarity of legal norms and the willingness of justice institutions to apply them. If legislation establishes diversion in broad or ambiguous terms without providing clear procedures, thresholds, or responsibilities, implementation may vary considerably between cases. Police officers, prosecutors, and judges may interpret eligibility differently, resulting in inconsistent decisions. Some children may receive opportunities for diversion while others in similar circumstances may be subjected to formal proceedings and imprisonment. Such disparities undermine equality before the law and weaken public confidence in the juvenile justice system. Clear standards

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are therefore necessary to ensure that diversion is not merely an aspirational principle but a practical mechanism that operates consistently.

Institutional attitudes can also contribute to the failure of diversion. Where criminal justice institutions remain strongly influenced by punitive approaches, officials may perceive imprisonment as a more straightforward response to offending behavior. Diversion may instead be viewed as lenient or insufficiently punitive, particularly in cases that attract public attention. Such perceptions can conflict with the fundamental objectives of juvenile justice. The purpose of diversion is not to eliminate accountability but to provide an appropriate form of accountability that addresses the causes and consequences of offending while protecting the child's developmental interests. A child who participates in a restorative process, accepts responsibility, repairs harm where appropriate, and receives educational or behavioral support may have a greater opportunity for positive change than a child placed in an environment focused primarily on punishment.

The consequences of disproportionate imprisonment can be extensive. Imprisonment may interrupt a child's education at a critical developmental stage and reduce future opportunities for employment or further study. Separation from parents and caregivers can weaken family relationships, while prolonged institutionalization may contribute to feelings of isolation, stigma, and hopelessness. Children may also be exposed to other offenders and environments that do not support healthy development. In some circumstances, incarceration can reinforce criminal identities rather than encourage rehabilitation. These consequences demonstrate why the decision to deprive a child of liberty should require a particularly strong justification.

The social consequences of juvenile imprisonment should also be considered. A child who has been incarcerated may face stigma after returning to school, family, and community life. The criminal label can influence how teachers, employers, peers, and community members perceive the child. Such stigma may make reintegration more difficult and increase the likelihood of social exclusion. Diversion can reduce these consequences by allowing children, where appropriate, to remain connected to their families, schools, and communities while receiving interventions designed to address their behavior. Maintaining these social connections can be particularly important in preventing future offending and supporting positive development.

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3.3. From Punishment to Rehabilitation: Reformulating Clear Standards for Child Imprisonment

The transformation of juvenile justice from a punishment-oriented system toward a rehabilitation-centered framework requires a fundamental reconsideration of how the law regulates the deprivation of liberty of children. Children who come into conflict with the law remain in a critical stage of physical, psychological, emotional, and social development. Their behavior, decision-making capacity, and understanding of consequences may differ significantly from those of adults. Consequently, imprisonment should not be treated as an ordinary criminal sanction applicable to children in the same manner as adults. A legal system committed to protecting children's rights must establish clear standards that ensure imprisonment is used only when genuinely necessary and when less restrictive measures cannot adequately address the objectives of justice. Reformulating these standards is essential to prevent ambiguous norms from creating excessive discretion and to ensure that every decision concerning the deprivation of a child's liberty is guided by proportionality, necessity, rehabilitation, and the best interests of the child.

The first requirement of reform is to recognize rehabilitation as a central objective of juvenile justice. Punishment-oriented approaches tend to emphasize retribution, deterrence, and the severity of the offense, whereas rehabilitation seeks to understand the factors contributing to the child's offending behavior and provide appropriate interventions to support positive behavioral change. This does not mean that children should be exempt from accountability. Rather, accountability should be designed in a manner that is compatible with their developmental needs. A child who understands the consequences of wrongdoing, participates in a restorative process, receives appropriate counseling, and is supported in returning to education or community life may have a greater opportunity for successful reintegration than a child subjected primarily to punitive incarceration.

Clear legal standards are necessary because the decision to imprison a child involves a significant exercise of state power. Legislation should explicitly establish that deprivation of liberty constitutes an exceptional measure and should identify the circumstances in which it may legitimately be considered. Broad expressions such as “necessary,” “appropriate,” or “serious circumstances” should be accompanied by objective criteria capable of guiding judicial interpretation. Without sufficiently detailed standards, different authorities may apply the same legal provision inconsistently. Such inconsistency can result in similar children receiving different sanctions and may create a risk of arbitrary or disproportionate

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imprisonment. Clear standards can therefore function as a safeguard against excessive state intervention.

One essential element of such standards is the requirement of individualized assessment. The seriousness of an offense cannot be the sole basis for determining whether a child should be imprisoned. Courts should consider the child's age, maturity, psychological and emotional condition, family circumstances, educational history, social environment, previous interventions, and prospects for rehabilitation. The child's role in the offense and the circumstances surrounding the conduct should also be examined. An individualized approach recognizes that children are not simply smaller versions of adult offenders and that the same offense may have different causes and implications depending on the child's circumstances. Judicial decisions should therefore demonstrate how these factors have been considered before deprivation of liberty is imposed.

The principle of proportionality should operate as another fundamental limitation. A proportionate response must consider not only the seriousness of the offense but also the developmental status of the child and the potential consequences of the sanction. Imprisonment is inherently restrictive because it removes children from their families, schools, communities, and ordinary developmental environments. The longer the period of imprisonment, the greater the potential disruption to education, social relationships, and psychological development. Consequently, a decision to impose imprisonment requires a stronger justification than less restrictive measures. Courts should determine whether the objectives of accountability, public protection, victim interests, and rehabilitation can be achieved through alternatives before selecting incarceration.

4. Conclusion

The imposition of imprisonment on children requires a legal framework that is precise, consistent, and firmly grounded in the protection of children's rights. Legal ambiguity in determining when a child may be deprived of liberty creates significant risks because it allows different interpretations among law enforcement authorities and judges. When statutory provisions fail to establish clear criteria concerning necessity, proportionality, diversion, and rehabilitation, judicial discretion may become excessive and produce inconsistent outcomes. Such circumstances can weaken legal certainty and, more importantly, expose children to unnecessary restrictions on their liberty. The principle of the best interests of the child must therefore function not merely as a general legal principle but as a substantive standard that guides every decision affecting



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children within the criminal justice system. The risk of disproportionate imprisonment is particularly serious because incarceration can produce consequences that extend beyond the punishment itself. Children may experience disruption to education, separation from families, psychological difficulties, social stigma, and reduced opportunities for successful reintegration.

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