

Optimizing Criminal Sanctions Against Children as Murder Perpetrators from the Perspective of Modern Punishment Objectives

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Abstract. *This research examines the effectiveness and optimization of criminal sanctions imposed on children who commit murder, using the framework of modern sentencing theory and Indonesia's juvenile criminal justice system. The study adopts a normative juridical approach combined with judicial analysis of Court Decisions 12/Pid.Sus-Anak/2020/PN Jkt.Pst and 7/Pid.Sus-Anak/2025/PN Kka. The findings reveal that although the Juvenile Justice System Act emphasizes rehabilitation and the best interests of the child, the practical implementation remains less effective due to persistent punitive tendencies, limited rehabilitative facilities, and the absence of specific sentencing guidelines for juvenile offenders in serious crimes. Variations in judicial reasoning between the two decisions also indicate disparities, particularly in assessing psychological conditions, social background, culpability levels, and sentencing objectives. This study proposes an integrative model for optimizing juvenile sentencing through individualized assessments, enhanced institutional capacity of juvenile correctional facilities, harmonized sentencing guidelines, and strengthened restorative justice values. Such an approach ensures that sentencing aligns with the rehabilitative and preventive aims of modern penology while still upholding societal justice.*

Keywords: *Criminal Sanction Effectiveness; Juvenile Justice System; Juvenile Offender; Modern Sentencing; Murder.*

1. Introduction

Children are a gift from God Almighty who are entrusted to parents to be nurtured, cared for, educated and protected to ensure the welfare and optimal growth and development of children.¹ In the context of national development, children also have a strategic position as the nation's next generation who will in the future bear responsibility for solving various problems and continuing the nation's leadership.

¹ Lysa Anggaryni, *Hukum & Hak Asasi Manusia*, Yogyakarta: Kalimedia, 2016, p. 127.

The concept of a child according to Article 1 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law), defines a child as an individual who is in conflict with the law, whether as a child in conflict with the law, a child who is a victim of a crime, or a child who is a witness in a criminal case. Furthermore, Article 1 paragraph (3) of the SPPA Law emphasizes that a child is any child who is 12 (twelve) years of age but under 18 (eighteen) years of age who is suspected of committing a crime and is considered a child in conflict with the law.²

The basis for sentencing children must be based on the belief that every child has the potential to improve. Therefore, sentencing children should not be interpreted as an act of retribution for wrongdoing, but rather as a means of education and development so that children can return to society as responsible individuals.³ The principle of the best interest of the child is a universal reference in the treatment of children in conflict with the law, as regulated in the Convention on the Rights of the Child which has been ratified by Indonesia through Presidential Decree Number 36 of 1990.⁴ Thus, sentencing children who commit serious crimes such as murder must consider the balance between justice for the victim and the future of the child as the perpetrator.

With the development of modern criminal law theory, the goal of punishment is no longer solely retributive, but has shifted toward prevention, rehabilitation, and restorative action.⁵ Modern criminal justice demands a balance between the interests of the victim, society, and the perpetrator of the crime to achieve substantive justice. In the context of children as perpetrators of murder, the modern criminal justice paradigm is particularly relevant because children are individuals who are still morally and psychologically developing, and therefore, the legal approach must consider the principles of protection and guidance. This ensures that the goal of criminal justice as a state instrument for enforcing the law and maintaining social order can be achieved. This underscores the importance of optimizing criminal sanctions that not only deter but also restore and educate children to return to the correct social path.

2. Research Methods

The type of law used in this thesis research is normative legal research, namely research based on a set of norms that apply in society and serve as a reference for legal behavior for each individual. The focus is on the inventory of positive law, legal principles and doctrines, legal discoveries in cases in concreto or court decisions, legal systematics, legal synchronization, legal comparisons and legal history.⁶

² Purwoko, T, *Analisis Faktor-Faktor Penyebab Keberadaan Anak Jalanan di Kota Balikpapan*, Jurnal Sosiologi, Volume 1 Nomor 4, Universitas Lampung, 2013, p. 13-25.

³ *Ibid*, p. 34.

⁴ Keputusan Presiden Republik Indonesia Nomor 36 Tahun 1990 tentang Pengesahan *Convention on the Rights of the Child*.

⁵ Muladi, *Lembaga Pidana dan Pemidanaan*, Bandung: Alumni, 1995, p. 12.

⁶ Menurut Abdulkadir Muhammad Penelitian Hukum Dibagi Menjadi Tiga Yaitu Penelitian Hukum Normative, Penelitian Hukum Normative-Empiris, Dan Penelitian Hukum Empiris. Dalam Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum, Cet 1*, Bandung: PT. Citra Aditya Bakti, 2004, p. 52.

3. Results and Discussion

3.1. Effectiveness of Criminal Sanctions for Children Who Commit Murder

The effectiveness of criminal sanctions for children who commit murder in Indonesia needs to be analyzed by considering the balance between the objectives of modern criminal justice and the protection of children's rights. Modern criminal justice emphasizes three main objectives: rehabilitation, resocialization, and prevention (rehabilitative, resocializing, and preventive functions), in contrast to the classical paradigm that focuses on retributive justice. Punishment is no longer intended to inflict suffering on the perpetrator, but rather to restore them to the social order through guidance and reintegration.

Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code) contains important provisions regarding the minimum age of criminal responsibility for children. Article 40 states that children under 12 years of age at the time of committing a crime cannot be held criminally responsible. However, there are alternative measures stipulated in Article 41, which states that investigators, community counselors, and social workers can decide to return a child to their parents/guardians or enroll them in a social development program (education, guidance) for a maximum of six months.

The enactment of the National Criminal Code is also a progressive step, particularly in sentencing. This is reflected in the recognition of subjective factors such as mental or intellectual disabilities, as regulated in Article 38. Article 38 states that if a person has a mental or intellectual disability at the time of the crime, the sentence can be reduced and/or further action can be taken. The formulation of the National Criminal Code emphasizes the philosophical basis of modern criminal law, with the mission of recodification, democratization, consolidation, and adaptation to developments in modern society. This philosophy opens up interpretive space for judges to consider aspects of rehabilitation, special prevention, and local values (living law) when imposing sentences.

The primary instrument for child criminalization, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), was previously intended to establish a modern criminalization paradigm that prioritizes child protection. The SPPA Law emphasizes that criminal punishment is the last resort (*ultimum remedium*) for children. Diversion efforts must be pursued whenever possible to avoid stigma and disproportionate deprivation of liberty. Furthermore, Articles 69 to 83 of Chapter V of the SPPA Law regulate criminal sanctions and measures for children. These sanctions include institutional development and imprisonment. For children, the SPPA limits the duration of imprisonment and emphasizes special treatment, such as in a Special Child Development Institution (LPKA).⁷ These principles normatively support the goals of modern criminal justice, namely rehabilitation and reintegration. Therefore, the Child Protection Act (SPPA) strongly guarantees children's rights, including assistance, humane treatment, and attention to their best interests.

⁷ Kadek Danendra Pratama dan Komang Pradnyana Sudibya, *Pemidanaan Terhadap Anak Yang Melakukan Tindak Pidana Pembunuhan*, Fakultas Hukum Universitas Udayana, p. 10.

Although the National Criminal Code (KUHP) provides flexibility, the realization of the principle of rehabilitation for children depends heavily on the implementation of the SPPA, namely procedurally and on the availability of development facilities such as the Child Protection and Rehabilitation Center (LPKA) and psychosocial programs. Normatively, the National Criminal Code does not eliminate the protective character of the SPPA Law, but rather requires synchronized implementation between the two.

Analysis of judges' considerations in decisions regarding juvenile cases is crucial because the quality of these considerations determines the extent to which the principles of child protection, the principle of differentiated criminal treatment, and the objectives of modern criminal justice are concretely applied in resolving murder cases committed by children.⁸ In judicial practice, juvenile court decisions are not only a mechanism for resolving individual cases, but also represent the state's attitude towards child protection, balancing the interests of victims, and fulfilling society's sense of justice.⁹ Therefore, a systematic review of two relevant decisions—namely Decision Number 12/Pid.Sus-Anak/2020/PN Jkt.Pst and Decision Number 7/Pid.Sus-Anak/2025/PN Kka—will provide a comprehensive overview of how judges weigh the legal, philosophical, and sociological aspects in deciding cases of murder by children.

3.2. Legal, Normative, and Practical Obstacles to the Application of Criminal Sanctions to Children as Perpetrators of Murder

The application of criminal sanctions to children as perpetrators of murder is a complex issue involving the interaction between child protection interests, the objectives of punishment, the state's obligation to address serious crimes, and the consistency of national law with international legal instruments regarding children's rights. In Indonesia, the normative framework governing the criminalization of children is contained in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) and is integrated with substantive criminal provisions, including significant changes introduced through the National Criminal Code, as stipulated in Law Number 1 of 2023. Murder committed by children poses significant challenges from a juridical, normative, and practical perspective, as the state must balance the principles of retributive justice, restorative justice, and the best interests of the child.

The paradigm shift in punishment brought about by the SPPA Law prioritizes diversion, restorative justice, and the limitation of criminal sanctions to ultimum remedium. However, when the crime committed is a serious crime such as murder, the implementation of these principles is challenging, as the SPPA Law strictly limits the requirements for diversion, while the severity of the offense requires a firm state presence. On the other hand, the National Criminal Code (KUHP) promotes a more contextual, humanistic, and proportional philosophy of punishment, including differentiation of punishments for children. However, the

⁸ Yahya Harahap, *Hukum Acara Peradilan Anak*, Jakarta: Sinar Grafika, 2018, p. 12.

⁹ Marlina, *Op. Cit.*, p. 25.

harmonization of these two legal substances still leaves behind legal and operational issues in the practice of juvenile criminal justice.

Therefore, identifying obstacles in the application of criminal sanctions to children as perpetrators of murder in the juvenile criminal justice system in Indonesia is necessary to achieve the goal of modern criminal justice, which prioritizes balance. Implementation of legislation, law enforcement, and the implementation of court decisions requires analysis, which is then integrated with judicial reasoning theory and contemporary criminal theory.

Judicial reasoning theory emphasizes that judges must base their decisions on legal principles, trial facts, principles of justice, and social values. According to Friedman and Macaulay, judges are at a point of equilibrium between the rule of law and a sense of justice. Therefore, in deciding cases involving children, judges must consider psychological aspects, the child's best interests, the level of culpability, and the social impact of the murder.¹⁰ In Indonesia, the theory of judicial considerations is also influenced by the opinion of Sudikno Mertokusumo who emphasizes that the judge's decision must contain certainty, benefit and justice at the same time.¹¹ In cases involving child murder, these considerations often clash between retributive justice (for the victim and society) and rehabilitative justice (for the child perpetrator).

Meanwhile, contemporary punishment theory has evolved from the classical retributive paradigm to a hybrid formulation that emphasizes the integration of retributive, utilitarian, restorative, and rehabilitative objectives. According to Andrew Ashworth, modern punishment rests on the principles of proportionality, individualized sentencing, and restorative values to ensure that punishment is not merely a tool of retribution but also a means of social reconstruction and the restoration of social relations.¹² In the context of children, contemporary punishment theory consistently emphasizes the dominant value of rehabilitation, which aligns with international regulations such as the Beijing Rules and the Convention on the Rights of the Child (CRC). In youth justice theory, as explained by Goldson and Hughes, punishment for children must avoid punitivism, because, in terms of psychosocial development, children do not yet have the same moral maturity and impulse control as adults.¹³ This serves as the basis for the argument for limiting prison sentences for children and prioritizing a non-custodial approach.

3.3. Model for Optimizing Criminal Sanctions for Children Who Convict Murder

Optimizing the application of criminal sanctions for children who commit murder aims to ensure that all stages and outcomes of the criminal process achieve a balance between protecting society, fulfilling a sense of justice for victims, and fostering and rehabilitating child

¹⁰ Lawrence Friedman & Stewart Macaulay, *Law and the Behavioral Sciences*, 4th Ed., Foundation Press, 1995, p. 60.

¹¹ Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar*, Liberty, 2013. P. 34.

¹² Andrew Ashworth, *Sentencing and Criminal Justice*, Cambridge University Press, 2015, p. 70.

¹³ Barry Goldson & Gordon Hughes, *Youth Crime and Justice*, Sage Publications, 2010, p. 80.

offenders. In practice, this principle still respects human rights principles and takes into account the child's psychological condition and personality development.

Within the framework of modern criminal justice objectives, which emphasize social orientation, humanity, and the resocialization of the perpetrator, optimizing criminal punishment for child offenders means adapting the type, form, and method of punishment to the child's developmental needs and universal human values. This ensures that the punishment imposed truly achieves preventive and corrective goals without having a destructive effect on the child's personality.

In the National Criminal Code, the objectives of criminal punishment are stated in Chapter III, Article 51, namely:

- a. Preventing criminal acts by enforcing legal norms for the protection and care of society;
- b. Socializing convicts through coaching and mentoring to become good and useful individuals;
- c. Resolving conflicts arising from criminal acts, restoring balance, and fostering a sense of security and peace in society; and
- d. Cultivating a sense of remorse and absolving the convict of guilt.

Based on the formulation of the objectives of punishment clearly stated in this article, it is clear that the objectives of punishment in the National Criminal Code have shifted from the retributive theory. Harkristuti Harkrisnowo emphasized that the objectives of punishment in the National Criminal Code have shifted to include prevention, rehabilitation, conflict resolution, restoring balance, creating a sense of security and peace, and evoking remorse in the convict. Modern punishment emphasizes three main functions: rehabilitation, resocialization, and prevention. Punishment is no longer intended to inflict suffering on the perpetrator, but rather to return them to the social order through guidance and reintegration.

Marpaung stated that the concept of punishment in the National Criminal Code is the result of a refinement of three criminal theories: the absolute or retributive theory, the relative or utilitarian theory, and the combined theory. According to him, all three theories have weaknesses, so changes in punishment now provide better protection for victims and restore the disturbed balance of values in society. There has been a shift in law enforcement, no longer solely focused on retributive justice, but also toward restorative justice. Therefore, the objectives of criminal and sentencing now balance two aspects of societal protection: protection for victims and perpetrators.

The punishment of child murderers is at the most complex point in Indonesian criminal law discourse because it involves a conflict between two fundamental interests: justice for victims and society, and protection for children as perpetrators who are still in the developmental phase. This complexity is further exacerbated when the punishment of children must be

placed within the context of the objectives of modern punishment, which are no longer oriented toward retributive punishment but rather toward rehabilitation, restoration, prevention, and protection of children's futures. Barda Nawawi Arief emphasized that modern criminalization is directed as a means of "social control" that takes into account the human dimension of the perpetrator as well as the long-term benefits for society.¹⁴

In the context of the crime of murder committed by a child, the goal of modern criminal justice requires a balanced approach, namely ensuring proportional accountability, while still prioritizing the best interests of the child as the main principle in all child law enforcement policies as stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). Such an approach is in line with developments in psychology which emphasize that the mental capacity of children differs significantly from that of adults, so that the structure of punishment must reflect this cognitive and emotional immaturity.¹⁵

Thus, the discussion regarding the model for optimizing criminal sanctions against child murder perpetrators must be built on a philosophical, theoretical, and empirical basis that includes: characteristics of child development, contemporary criminal theory, theory of judicial considerations, the dynamics of the application of child criminalization in court practice, and harmonization with the principles of restorative justice.

4. Conclusion

The application of criminal sanctions against child murderers in Indonesia is not yet fully effective and not fully aligned with the objectives of modern criminal justice. Although the Child Protection and Child Protection Law and the National Criminal Code have prioritized rehabilitation, resocialization, and child protection, judicial practice still displays a dominant punitive approach. Limited development facilities at the Child Protection and Child Protection Institutions (LPKA), a lack of professional staff, and inconsistent application of the principle of the best interest of the child have resulted in the implementation of criminal penalties not functioning optimally as a means of behavioral improvement or prevention. The judges' considerations in Decisions 12/Pid.Sus-Anak/2020/PN Jkt.Pst and 7/Pid.Sus-Anak/2025/PN Kka demonstrate heterogeneity in the quality of legal, psychological, and sociological analysis. Differences in institutional conditions and access to psychological assessments impact disparities in the formulation of judges' considerations regarding children's culpability, social background, and the objectives of sentencing. This indicates that the implementation of juvenile justice still depends on local court capacity and has not been fully standardized in accordance with the principles of substantive justice. Optimizing criminal sanctions for child murderers requires an integrative approach that combines legal, psychological, sociological, and criminological aspects. This integrative approach must be based on individual assessments, measurable development programs, strengthening the rehabilitative functions of the LPKA (Coroner's Service) and Bapas (Coroner's Service), and harmonizing sentencing guidelines to reduce disparities. This model is crucial so that sentencing of children not only

¹⁴ Barda Nawawi Arief, *Op. Cit.*, p. 72.

¹⁵ Siti Rahayu, *Kriminologi Anak*, Jakarta: RajaGrafindo, 2011, p. 54.

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provides justice for victims and society but also ensures optimal protection and development for children, as mandated by the SPPA Law.

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