

## Children's Responsibility in Conflict With the Law

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**Abstract.** *This research aims to provide knowledge and analysis regarding children who commit crimes can be held accountable, the legal process for children who come into conflict with the law in the juvenile criminal justice system based on Law No. 11 of 2012, and to find out the child's journey after undergoing the trial process. To thoroughly examine and analyze the issues in this thesis, we employ a methodological approach essential to legal studies and practice. The main focus of this discussion encompasses three fundamental approaches: the statute approach, the case approach, and the conceptual approach. These three approaches were chosen because they offer a comprehensive framework for understanding, interpreting, and resolving complex legal issues, both in theoretical and practical contexts. This research is classified as library research, data is collected by citing, reviewing, and analyzing using content analysis, against representative literature that is relevant to the problem being discussed, then reviewing and concluding it. After conducting a study on this issue, the research results show that, the construction of children in the context of criminal responsibility can be divided into three qualifications, First, children aged 0 to under 12 years, Second, children aged 12 to under 14 years, Third, children aged 14 to under 18 years. In the juvenile justice system there are important points and mechanisms in resolving cases of children who are in conflict with the law and after the child has undergone the trial process and received a decision, the child who has received the decision will be placed in a juvenile correctional institution for guidance.*

**Keywords:** Children; Conflict; Juvenile; Law.

### 1. Introduction

Children are a vital component of human survival and the well-being of a nation and state. They are the next generation, serving as a benchmark for societal development. However, children are also highly vulnerable to crime, whether as victims, witnesses, or even perpetrators. As they grow and develop, children

imitate the actions of adults, whether within their family, friends, or community. In this era of technological advancement, many children can easily access the internet and view a wide variety of content. This can easily influence children to commit crimes or even lead to them committing them.<sup>1</sup>

Children are citizens who must be protected because they are the future generation who will continue to lead the Indonesian nation. Every child, in addition to formal education, must also receive moral education so they can grow into useful individuals for the nation and state.<sup>2</sup> In accordance with the provisions of the Convention on the Rights of the Child which was ratified by the Indonesian government through Presidential Decree Number 36 of 1990, then also stated in Law Number 4 of 1979 concerning Child Welfare and Law Number 23 of 2002 concerning Child Protection and Law Number 11 of 2012 concerning the Child Criminal Justice System, all of which put forward general principles of child protection, namely non-discrimination, the best interests of the child, survival and growth and respect for child participation.<sup>3</sup> The Protection Law is the legal basis given to children in conflict with the law in the Juvenile Justice and Judicial System.

Currently, protection for children in conflict with the law Referring to Law Number 3 of 1997 concerning Juvenile Courts. This law regulates how juvenile courts operate and handle cases involving children in conflict with the law. The enactment of Law Number 3 of 1997 concerning Juvenile Courts is a follow-up to this agreement. Law Number 3 of 1997 provides a legal basis for child protection efforts.<sup>4</sup>

Children who commit unlawful acts will of course still be prosecuted according to applicable legal provisions. However, this law has been replaced by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, Juvenile Justice is a court that handles criminal cases involving children who are included in a system called the criminal justice system in a society to overcome juvenile delinquency, while also being expected to provide protection to children who experience conflict with the law. Children who commit crimes can still be held accountable, the criminal threat for children who commit an unlawful act is determined by the Criminal Code, where the imposition of punishment is determined at half of the maximum criminal threat from adults, while the imposition of life imprisonment and the death penalty is not applied to children.<sup>5</sup>

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<sup>1</sup> Awang Long Law Review, 2024, legal protection for children in conflict with the law.

<sup>2</sup> Riska Vidya Satriani Article, (restorative justice as the goal of implementing diversion in the juvenile criminal justice system), Thursday, June 22 2017 12:52 WIB.

<sup>3</sup> Khairul Amri, 2004, "Seeking Justice in the Juvenile Court System: Is there still hope? (stories of children in conflict with the law)", Yayasan Pustaka Indonesia, Medan, p. 207.

<sup>4</sup> Law Number 3 of 1997

<sup>5</sup> Law No. 11 of 2012 concerning the Juvenile Criminal Justice System.

The Juvenile Criminal Justice System Law has laid the foundation for different treatment in dealing with and resolving criminal acts committed by children as perpetrators, children as witnesses, and children as victims, with the aim of this distinction to better protect and nurture children so they can face their long future. In addition, this distinction is intended to provide opportunities for children so that through guidance they will gain their identity to become independent, responsible, and useful human beings for themselves, their families, society, nation, and state.

On this basis, the author considers it necessary to conduct research so that we can find out and analyze whether children who commit crimes can be held accountable, the legal process for children who come into conflict with the law in the juvenile criminal justice system based on Law No. 11 of 2012, and to find out the child's journey.

## **2. Research Methods**

To thoroughly examine and analyze the issues in this thesis, we employ a methodological approach essential to legal studies and practice. The main focus of this discussion encompasses three fundamental approaches: the statute approach, the case approach, and the conceptual approach. These three approaches were chosen because they offer a comprehensive framework for understanding, interpreting, and resolving complex legal issues, both in theoretical and practical contexts. This research is classified as library research, data is collected by citing, reviewing, and analyzing using content analysis, against representative literature that is relevant to the problem being discussed, then reviewing and concluding it.

## **3. Results And Discussion**

### **3.1. Child Responsibility**

Based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the construction of children in the context of criminal responsibility itself can be divided into three qualifications.

*First*, children aged 0 to under 12 years. The provisions, children cannot be examined in the criminal justice system (investigation/prosecution/trial), and cannot be held criminally responsible. However, they can be subject to action (returned to parents/guardians and enrolled in education and guidance programs at government agencies or LPKS) through a court order submitted by investigators, together with community guidance counselors and professional social workers.

In the context of alleged criminal acts committed by children under the age of 12, the investigation conducted by investigators is not within the framework of the criminal justice process (investigation), but rather as a basis for decision-making

involving investigators, community counselors, and professional social workers, in order to provide appropriate and effective action for children under the age of 12 who are suspected of committing a crime. The age regulation related to criminal responsibility itself is closely related to the factor of responsibility capacity which is one aspect of guilt.

Criminal law is embodied in calculations of mental capacity, in terms of whether the individual is in a normal or abnormal state (impaired mental capacity from birth or due to illness), and the minimum age at which a person can be held criminally responsible. Based on this, lawmakers consider children under the age of 12 to be incapable of taking responsibility because they lack psychological maturity.

*Second*, children aged 12 to under 14 years. The provisions, children can be examined in the criminal justice system, up to trial, but may be detained, and cannot be given criminal sanctions and can only be subject to action through a court decision that is broader than children under 12 years old, namely return to parents/guardians, surrender to someone, treatment in a mental hospital, treatment at LPKS, the obligation to attend formal education and/or training, held by government or private institutions, and corrections due to criminal acts.

*Third*, children aged 14 to under 18. The provisions, children can be brought to trial. They can be subject to criminal sanctions or action. According to Article 71 of the Juvenile Criminal Justice System Law, criminal sanctions against children are divided into principal sanctions consisting of warnings, conditions (outside institutional guidance, community service, supervision), job training, in-institutional guidance, and imprisonment.

Meanwhile, additional penalties include confiscation of profits obtained from the crime and fulfillment of customary obligations. Furthermore, if the material law carries a cumulative penalty of imprisonment and a fine, the fine may be replaced with job training.

In addition, there is a *lex specialis* in sentencing children that is mitigating (affirmative penal), namely, the maximum prison sentence that can be imposed on a child is half the maximum prison sentence for an adult. If the crime committed by a child is punishable by death or life imprisonment, the maximum sentence that can be imposed on a child is 10 years' imprisonment.

Based on the three constructions of criminal responsibility for children above, basically there is a legal loophole that can have implications for the birth of injustice in social reality, namely if a child under 12 years old commits a crime, especially one that is classified as a serious crime or an offense against other children.

For example, cases of sexual abuse/violence. It's undeniable that current technological developments have changed children's behavior in general, encouraging them to commit acts of sexual violence against other children. This is the experience of a mother with the initials NDP, who took to social media to fight for justice for her child, who was sexually assaulted by a 9-year-old.

Legally, if a child under 12 years old commits a crime, then the child under 12 years old cannot be held criminally responsible and can only be subject to action in the form of returning the child to their parents or enrolling them in an education and guidance program at a government agency or LPKS.

In this context, how can justice be provided to child victims? Victims are the ones most harmed and most impacted by a crime. Children who are victims of sexual violence undoubtedly experience severe psychological suffering that can impact their future mental development. Furthermore, imposing criminal responsibility on children under 12 is also not justified by international law or norms.

Therefore, a legal breakthrough is needed to address this problem, namely by disseminating the doctrine of vicarious liability (substitute criminal responsibility) in the Juvenile Criminal Justice System Law. So, the concept is, if a 12-year-old child commits a crime that harms the victim psychologically, physically, or financially, then the parent is criminally responsible. If there is no parent, then the guardian. If there is no guardian, the prosecutor's office as the state's attorney will bear the responsibility.

The form of vicarious liability here, of course, is not in the form of retributive deprivation of liberty, but rather sanctions that are in the form of restitutionary liability for the victim's losses, such as compensation or financing of medical, social and psychosocial rehabilitation within a certain period of time.

Therefore, parents/guardians, who have the duty to educate their children, are logically the parties most responsible for their children's actions. This is the spirit of the concept of vicarious liability in the criminal responsibility of children under 12 years old. Although in general the doctrine of criminal responsibility contains the principle of personality, namely that every criminal responsibility is borne by the person who committed it and criminal sanctions are imposed on anyone who committed the crime. However, in the phenomenon of children under 12 years old committing crimes, the principle of personality can be set aside to realize the essential goal of the law, namely substantive justice.

Justice is lost when children under the age of 12 who commit crimes are not held criminally accountable and are subjected to re-education and moral development. Meanwhile, victims of crimes receive justice through compensatory sanctions imposed on parents/guardians/prosecutors in the form of compensation or funding for medical, social, and psychosocial rehabilitation.

On the other hand, the parents/guardians of the perpetrators also receive education/warning therapy to be more concerned with educating their children through vicarious responsibility. This is substantive legal justice, where criminal sanctions are operationalized to provide corrective and rehabilitative justice.

### **3.2. Juvenile Criminal Justice System**

The juvenile criminal justice system is the entire process of resolving cases of children in conflict with the law, starting from the investigation stage to the guidance stage after undergoing the criminal process with the aim of providing justice for children in conflict with the law, prioritizing the best interests of the child and the principles of protection, justice, non-discrimination, and child development.<sup>6</sup>

The Juvenile Criminal Justice System Law has laid the foundation for different treatment in dealing with and resolving criminal acts committed by children as perpetrators, children as witnesses, and children as victims, with the aim of this distinction to better protect and nurture children so they can face their long future. In addition, this distinction is intended to provide opportunities for children so that through guidance they will gain their identity to become independent, responsible, and useful human beings for themselves, their families, society, nation, and state.

#### **1) Key Points in the Juvenile Criminal Justice System.**

##### **a. Parties Involved**

In Article 1 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the parties involved in the juvenile criminal justice process, namely investigators, public prosecutors, judges, community counselors and social workers.<sup>7</sup>

- 1) The investigator is a Child Investigator.
- 2) The Public Prosecutor is the Child Public Prosecutor.
- 3) The judge is a Child Judge.
- 4) The Appellate Judge is the Children's Appellate Judge.
- 5) The Cassation Judge is the Juvenile Cassation Judge.

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<sup>6</sup>General Explanation, Law No. 11 of 2012 concerning the Juvenile Criminal Justice System.

<sup>7</sup>Law Number 11 of 2012 Article 1 concerning the Juvenile Criminal Justice System

6) Community Guidance Officers are functional law enforcement officials who carry out community research, guidance, supervision and support for children inside and outside the criminal justice process.

7) A social worker is someone who works in either a government or private institution who has the competence and profession of social work as well as concern in social work obtained through education and/or experience in social work practice to address social problems.

b. Children's Rights

In implementing the juvenile criminal justice system, Law No. 11 of 2012 concerning the Juvenile Criminal Justice System has provided several guidelines as contained in Article 3 and Article 4 concerning children's rights in trials, namely as follows:

Article 3

Every child in the criminal justice process has the right to:

- a. treated humanely by paying attention to needs according to their age.
- b. separated from adults.
- c. obtain legal aid and other assistance effectively.
- d. do recreational activities.
- e. free from torture, punishment or other cruel, inhumane or degrading treatment.
- f. not sentenced to death or life imprisonment.
- g. not be arrested, detained or imprisoned, except as a last resort and for the shortest possible time.
- h. obtain justice before a Children's court that is objective, impartial, and in a trial that is closed to the public.
- i. his identity was not published.
- j. obtain support from parents/guardians and people trusted by the child.
- k. obtain social advocacy.
- l. get a private life.
- m. gain accessibility, especially for children with disabilities.
- n. get an education.

- o. obtain health services. and
- p. obtain other rights in accordance with the provisions of laws and regulations.<sup>8</sup>

Article 4 Paragraph (1) Children who are serving a prison sentence have the right to:

- a. get a reduction in prison term.
- b. achieve assimilation.
- c. get leave to visit family.
- d. obtain parole.
- e. get leave before being released.
- f. obtain conditional leave; And
- g. obtain other rights in accordance with the provisions of laws and regulations.

Article (2) The rights as referred to in paragraph (1) are given to children who fulfill the requirements as stipulated in the provisions of statutory regulations.<sup>9</sup>

c. Principle

To implement the juvenile criminal justice system, Law No. 11 of 2012 concerning the Juvenile Criminal Justice System has provided several guidelines as contained in Article 2 and Article 5. Article 2 and its explanation stipulate that the juvenile criminal justice system is implemented based on the following principles:

- 1) Protection, which includes direct and indirect activities against actions that endanger children physically and/or psychologically.
- 2) Justice, is that every resolution of a child's case must reflect a sense of justice for the child.
- 3) Non-discrimination means there is no different treatment based on tribe, religion, race, class, gender, ethnicity, culture and language, legal status of the child, birth order of the child, and physical and/or mental condition.<sup>10</sup>
- 4) The best interests of the child mean that all decisions made must always take into account the child's survival and development.

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Law No. 11 of 2012 concerning the Juvenile Criminal Justice System  
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5) Respect for children's opinions is respect for children's rights to participate and express their opinions in decision-making, especially when it concerns matters that affect children's lives.

6) The survival and development of children are the most basic human rights for children which are protected by the state, government, society, family and parents.

7) Guidance is an activity to improve the quality, piety to God Almighty, intellectual, attitude and behavior, skills training, professionalism, as well as the physical and spiritual health of children both inside and outside the criminal justice process.

8) Guidance is the provision of guidance to improve the quality of piety to God Almighty, intellectual, attitude and behavior, skills training, professionalism, and the physical and spiritual health of correctional clients. Proportional means that all treatment of children must take into account the needs, age, and condition of the child.

9) Deprivation of liberty is a last resort; in principle, children cannot be deprived of their liberty unless forced to do so for the purposes of resolving a case. Avoidance of retaliation is the principle of avoiding retaliation in the criminal justice process.

#### d. Diversion

As we know, diversion is the authority of law enforcement officers who handle criminal cases to take action to continue the case or stop the case, taking certain actions in accordance with their policies.<sup>11</sup>Based on this, there is a policy determining whether the case will be continued or discontinued. If the case is continued, we will be faced with the criminal system and will face criminal sanctions. However, if the case is not continued, then the investigation will be stopped from the initial stage for the benefit of both parties, with the principle of restoring the relationship that arose due to the crime for the future benefit of both parties. This is the principle behind diversion, especially for juvenile crimes, which aims to achieve the welfare of the child. Diversion can provide an opportunity for the child to become a new person with a clean criminal record and prevent recidivism.

The goal of diversion is to find a way to handle legal violations outside the courts or formal justice system. There are similarities between the goals of discretion and diversion. Diversion is motivated by the desire to avoid the negative effects on a child's psyche and development from their involvement with the criminal justice

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Law No. 11 of 2012 concerning the Juvenile Criminal Justice System

system. The implementation of diversion by law enforcement officers is based on the authority of law enforcement officers, known as discretion.<sup>12</sup>

In the general explanation of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, it is stated that the most fundamental substance in this Law is the explicit regulation regarding Restorative Justice and Diversion which is intended to prevent and distance Children from the judicial process so as to avoid stigmatization of Children who are in conflict with the law and it is hoped that Children can return to the social environment in a normal manner.

Therefore, the participation of all parties is essential to realizing this goal. The process must aim to create restorative justice, both for children and victims. Restorative justice is a diversion process, where all parties involved in a particular crime work together to address the problem and create an obligation to make things better by involving the victim, child, and community in finding solutions for repair, reconciliation, and reassurance that are not based on retaliation.

- 1) achieve peace between the victim and the child.
- 2) resolving children's cases outside the judicial process.
- 3) protect children from deprivation of liberty.
- 4) encourage the community to participate. And
- 5) instill a sense of responsibility in children.

#### e. Restorative Justice

Restorative Justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just resolution with an emphasis on restoration to the original state, rather than retaliation. Article 5 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System stipulates:<sup>13</sup>

- 1) The Juvenile Criminal Justice System must prioritize a Restorative Justice approach.
- 2) The Juvenile Criminal Justice System as referred to in paragraph (1) includes:
  - a) investigation and prosecution of criminal cases against children are carried out in accordance with the provisions of laws and regulations, unless otherwise stipulated in this Law;
  - b) Child trials conducted by courts in the general judicial environment. And

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<sup>12</sup>Law No. 11 of 2012 concerning the Juvenile Criminal Justice System  
Law No. 11 of 2012 concerning the Juvenile Criminal Justice System

c) guidance, mentoring, supervision and/or assistance during the process of carrying out criminal or criminal action and after serving the criminal or criminal action.<sup>14</sup>

3) In the Juvenile Criminal Justice System as referred to in paragraph (2) letters a and b, diversion must be attempted.

The United Nations (UN) Working Group on Juvenile Justice defines restorative justice as a process in which all parties involved in a particular crime come together to solve problems and consider how to address future consequences. This process is primarily conducted through discretion and diversion. A diversion program can be a form of restorative justice if:

- 1) encourage children to take responsibility for their actions;
- 2) provide an opportunity for children to make up for the mistakes they have made by doing good for the victim;
- 3) provide an opportunity for the victim to participate in the process; provide an opportunity for the child to maintain relationships with the family;
- 4) provide opportunities for reconciliation and healing in communities harmed by crime.

The goal of the criminal justice process from a restorative justice perspective is to hold the offender accountable for their actions and consequences, namely how to restore the suffering of the person whose rights were violated (the victim) to the position they were in before the violation was committed or the loss occurred, both in material and immaterial aspects. In handling Children in Conflict with the Law (ABH), the concept of a restorative justice approach is very important because it respects and does not violate children's rights. Restorative justice at least aims to repair/restore (to restore) criminal acts committed by children with actions that benefit the child, the victim, and their environment. Children who commit crimes are avoided from the formal legal process because they are considered physically and psychologically immature, and not yet able to be held accountable for their actions before the law.

## 2) Mechanisms in the Juvenile Justice System.

In resolving cases of children in conflict with the law, there are several processes or procedures in its implementation, from the initial stage of the investigation process carried out by the Police to the court/judge's decision. In the investigation process carried out by the police, it is important for the continuation of the criminal justice process for children, because in the investigation it can be known whether an act suspected of being a crime has occurred or an act that is not a

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crime has occurred. The police are given discretionary authority in carrying out their duties, what is meant by discretionary authority is the legal authority where the police have the right to continue or not to continue a case.

The order of the process for handling criminal acts involving child perpetrators at the police level is:

a. Investigation and Inquiry

An investigation is a series of actions by investigators to search for and discover an event that is suspected to be a criminal act in order to determine whether or not an investigation can be carried out according to the methods regulated by law. When conducting an investigation into a child who has committed a crime, the police must pay attention to various provisions regarding efforts to handle children from arrest to the placement process.<sup>15</sup>

In accordance with Article 26 of Law Number 12 of 2011 concerning the juvenile criminal justice system,

1) Investigations into cases involving children are carried out by investigators appointed based on the Decree of the Chief of the Indonesian National Police or other officials appointed by the Chief of the Indonesian National Police.

2) Examination of the victim's child or witness' child is carried out by investigators.

3) Where the requirements to become an investigator in child cases are:

a) has experience as an investigator.

b) have interest, attention, dedication, and understand children's problems. And

4) has attended technical training on juvenile justice. In the event that there is no investigator who fulfills the requirements as referred to in paragraph (3), the investigative task will be carried out by an investigator who carries out the task of investigating criminal acts committed by adults.

Article 27

1) In conducting investigations into children's cases, investigators are required to seek advice or suggestions from community guidance counselors after the crime has been reported or complained about.

2) If deemed necessary, the Investigator may request consideration or advice from educational experts, psychologists, psychiatrists, religious figures, professional social workers or social welfare workers, and other experts.

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<sup>15</sup>Law No. 11 of 2012 concerning the Juvenile Criminal Justice System

3) In conducting examinations of Child Victims and Child Witnesses, Investigators are required to request a social report from Professional Social Workers or Social Welfare Workers after the crime has been reported or complained about.

b. Arrest

Law Number 8 of 1981 concerning the Criminal Procedure Code regulates the authority of the police in conducting investigations and inquiries, which are further regulated in the police's guidelines and implementation (Juklak) and technical guidelines (Juknis). The act of arrest is not regulated in detail in the Juvenile Criminal Justice System Law, so the provisions of the Criminal Procedure Code apply. Article 30 of the Juvenile Criminal Justice System Law stipulates that:

- 1) The arrest of a child is carried out for investigative purposes for a maximum of 24 (twenty four) hours.
- 2) Children who are arrested must be placed in a special child care room.
- 3) If there is no special service room for children in the area concerned, the child will be placed in a correctional facility (LPAS).
- 4) Arrests must be carried out humanely, taking into account needs appropriate to their age.

c. Inspection

Investigators, Public Prosecutors, Community Counselors and/or legal aid providers and other officers examining cases involving children, child victims and/or child witnesses do not wear togas or official attire (Article 22 of Law Number 11 of 2012 concerning the Child Criminal Justice System), then in Article 23 it states that:

- 1) At each level of examination, children must be provided with legal assistance and accompanied by a Community Guidance Officer or other companion in accordance with the provisions of laws and regulations.
- 2) At every level of examination, the Child Victim or Child Witness must be accompanied by a parent and/or a person trusted by the Child Victim and/or Child Witness, or a Social Worker. In the case where the parent is a suspect or defendant in the case being examined, the provisions as referred to in paragraph (2) do not apply to the parent.

d. Implementation of Sanctions

Criminal sanctions are the imposition of suffering on a person who is found guilty of committing a crime or criminal act through a series of judicial processes by the authorities or the law. The Criminal Code (KUHP) emphasizes that a person can be

held responsible for his actions because of the person's self-awareness and understanding that the act is prohibited by applicable law.

Children's exposure to crime is their first contact with the law. Not only do they engage with the perpetrators of the crime, but in some cases, children can also be witnesses or victims. The government has enacted several regulations regarding children in conflict with the law. One such regulation is Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.<sup>16</sup>

Imposition of Sanctions from cases that arise, sometimes Children are in the status of witnesses and/or victims so that Child Victims and/or Child Witnesses are also regulated in this Law. Specifically regarding sanctions against Children, they are determined based on the difference in age of the Child, namely for Children who are still under 12 (twelve) years old, only action is imposed, while for Children who have reached the age of 12 (twelve) years to 18 (eighteen) years old, action and criminal penalties can be imposed.

Article 21 of the Juvenile Criminal Justice System Law.

1) In the case of a child under 12 (twelve) years of age who commits or is suspected of committing a crime, the investigator, community guidance counselor and professional social worker will make a decision to:

a) Return it to the parent/guardian; or

b) Involve them in education, coaching and mentoring programs at the agency government or LPKS in agencies that handle social welfare, both at the central and regional levels, for a maximum of 6 (six) months.

2) The decision as referred to in paragraph (1) is submitted to the court to be determined within a maximum of 3 (three) days.

3) Bapas is obliged to carry out an evaluation of the implementation of education, development and guidance programs for children as referred to in paragraph (1) letter b.

4) In the case of evaluation results as referred to in paragraph (3) where the child is assessed as still requiring further education, coaching and guidance, the period of education, coaching and guidance may be extended for a maximum of 6 (six) months.

5) Government agencies and LPKS as referred to in paragraph (1) letter b are required to submit reports on child development to Bapas periodically every month.

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6) Further provisions regarding the requirements and procedures for decision-making and education, development and guidance programs as referred to in paragraph (1) are regulated by Government Regulation.

Children under 12 (twelve) years of age, even if they have committed a crime, cannot be brought before a juvenile court. This is based on sociological, psychological, and pedagogical considerations, namely that children who have not considered the severity of the crime they have committed. In addition, consideration must also be given to: the child's condition, the household conditions of the parents/guardians/foster parents, the relationship between family members, and the conditions of their environment. The judge must also pay attention to the report of the Community Guidance Officer.

Article 70 states that: the lightness of the act, the child's personal circumstances, or the circumstances at the time the act was committed or what happened subsequently can be used as a basis for the judge's consideration not to impose a criminal penalty or to impose measures by taking into account aspects of justice and humanity. Regarding legal sanctions, Law Number 11 of 2012 has regulated them as stipulated in Chapter V Article 69 paragraph (1), and these sanctions consist of two (2) types, namely:

1. Criminal.
2. Action.

According to SPPA Article 71

Article (1)

The main criminal penalties for children in conflict with the law are:

- a) Criminal warning

Article 72 states that a warning is a minor crime that does not result in restrictions on the child's freedom.

- b) Criminal with conditions:

1. Coaching outside the institution.
2. Community service.
3. Supervision.

- c) Job training

- d) Coaching in institutions

e) Prison

Verse (2)

Additional penalties consist of:

- a) Confiscation of profits obtained from criminal acts or
- b) Fulfillment of obligations.

Verse (3)

If in material law a cumulative penalty is imposed in the form of imprisonment and a fine, the fine is replaced with job training.

Verse (4)

Criminal penalties imposed on children must not violate the child's dignity and honor.

Verse (5)

Further provisions regarding the form and procedures for implementing the criminal penalties as referred to in paragraph (1), paragraph (2), and paragraph (3) are regulated by Government Regulation. The explanation of Article 71 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System does not explain what is meant by additional penalties in the form of Confiscation of profits obtained from criminal acts is merely an additional punishment in the form of fulfilling customary obligations as explained. It is stated that fulfilling customary obligations means fines or actions that must be fulfilled based on local customary norms that respect the child's dignity and do not endanger the child's physical or mental health.

Article (1) above states that children sentenced to imprisonment in a Special Child Development Institution (LPKA) become a problem if there is no LPKA in the area. According to the explanation of Article 85, if there is no LPKA in an area, children can be placed in a Correctional Institution which is placed separately from adults.

The legal sanctions in Article 82 and Article 83 of the SPPA Law are as follows:

Article 82

- 1) Sanctions Actions that can be imposed on children
  - a) Return to parents/guardians.
  - b) Surrender to someone.
  - c) Treatment in a mental hospital.



- d) Treatment at LPKS.
  - e) Obligation to participate in formal education and/or training held by the government or private bodies.
  - f) Revocation of driving license and/or
  - g) Correction due to criminal acts
- 2) The actions as intended in paragraph (1) letters d, e, and f are imposed for a maximum of 1 (one) year.
  - 3) The actions referred to in paragraph (1) may be submitted by the Public Prosecutor in his/her demands, except for criminal acts punishable by imprisonment of at least 7 (seven) years.
  - 4) Further provisions regarding the actions referred to in paragraph (1) are regulated by Government Regulation.

#### Article 82

- 1) Article 82 paragraph (1) letter c states that children are given treatment in a mental hospital, meaning that this action is given to children who at the time of committing a crime were suffering from mental disorders or mental illness.
- 2) Where children who are in conflict with the law are given sanctions in the form of reparations for the consequences of the crime, for example repairing the damage caused by the crime and restoring the situation to what it was before the crime occurred, as explained in the existing article.<sup>17</sup>

#### e. Detention

That regarding the detention of children (Article 32 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System) is as follows:

- 1) Detention of a child may not be carried out in the event of obtaining a guarantee from the parents or institution that the child will not run away, remove evidence or damage evidence or will not repeat the crime.
- 2) Detention can be carried out on the following conditions:
  - a) Child age 14 (fourteen) years; And
  - b) Suspected of committing a crime with a prison sentence of 7 years or more.
- 3) The conditions of detention as referred to in paragraph (2) must be stated expressly in the detention order.

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4) While the child is detained, the child's physical, spiritual and social needs must continue to be met.

5) To protect children's safety, children can be placed in LPKS.

Article 33.

1) Detention as referred to in Article 32 for the purposes of investigation shall be carried out for a maximum of 7 (seven) days.

2) The detention period as referred to in paragraph (1) may be extended by the Public Prosecutor for a maximum of 8 (eight) days at the request of the Investigator.

3) If the time period as referred to in paragraph (2) has expired, the child must be removed by law.

4) Detention of children is carried out in correctional institutions.

5) In the event that there is no LPAS, detention can be carried out at the local LPKS.

Article 34.

1) In cases where detention is carried out for the purposes of prosecution, the Public Prosecutor may carry out detention for a maximum of 5 (five) days.

2) The detention period as referred to in paragraph (1) may be extended by the district court judge for a maximum of 5 (five) days at the request of the Public Prosecutor.

3) If the time period as referred to in paragraph (2) has expired, the child must be removed by law.

Article 35.

1) In cases where detention is carried out for the purposes of examination in a court hearing, the judge can carry out detention for a maximum of 10 (ten) days.

2) The time period as referred to in paragraph (1) may be extended by the head of the district court for a maximum of 15 (fifteen) days at the request of the judge.

If the time period as referred to in paragraph (2) has expired and the Judge has not yet issued a decision, the Child must be removed by law.

Article 37.

1) In cases where detention is carried out for the purposes of examination at the appeal level, the Appeal Judge may carry out detention for a maximum of 10 (ten) days.

2) The time period as referred to in paragraph (1) may be extended by the head of the high court for a maximum of 15 (fifteen) days at the request of the Appeals Judge.

3) In the event that the time period as referred to in paragraph (1) and paragraph (2) has expired and the Appeal Judge has not yet issued a decision, the Child must be removed by law.

#### Article 38.

1) In cases where detention is necessary for the purposes of examination at the cassation level, the Cassation Judge may carry out detention for a maximum of 15 (fifteen) days.

2) The time period as referred to in paragraph (1) may be extended by the Chief Justice of the Supreme Court for a maximum of 20 (twenty) days at the request of the Cassation Judge.

3) In the event that the time period as referred to in paragraph (1) and paragraph (2) has expired and the Cassation Judge has not yet issued a decision, the Child must be removed by law.

#### Article 39.

In the case of the detention period as referred to in Article 33 paragraph (3), Article 34 paragraph (3), Article Article 35 paragraph (3), Article 37 paragraph (3), and Article 38 paragraph (3) have expired, the officer where the child is being detained must immediately release the child by law.

A child undergoing the detention process must still have their physical, spiritual and social needs met, in addition to that the child's security must also be met which is provided in the form of placing the child in a Social Welfare Institution as regulated in Article 32 of the Law.

#### Temporary Child Placement Criminal Justice System (LPAS).<sup>18</sup>Prosecution

The transfer of files to the court requires the public prosecutor to provide notification to the defendant regarding the provisions of the day and time of the case being tried, accompanied by a summons, both to the defendant and to witnesses to come to the appointed hearing. The next task after the trial time begins is prosecution, prosecuting the case for the sake of legal interests as a

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public prosecutor according to the provisions of this law such as the judge's determination.

Article 41 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System contains the following provisions for prosecution:

- 1) Prosecution of cases involving children is carried out by a Public Prosecutor appointed based on a Decision of the Attorney General or another official appointed by the Attorney General.
- 2) The requirements for being appointed as a Public Prosecutor as referred to in paragraph (1) include:
  - a. has experience as a public prosecutor;
  - b. have interest, attention, dedication, and understand children's problems; And
  - c. has attended technical training on juvenile justice.
- 3) In the event that there is no Public Prosecutor who fulfills the requirements as referred to in paragraph (2), the prosecution duties shall be carried out by the public prosecutor who carries out prosecution duties for criminal acts committed by adults.

Further provisions are regulated in Article 42 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, namely:

- 1) The Public Prosecutor is obliged to attempt Diversion no later than 7 (seven) days after receiving the case files from the Investigator.
- 2) Diversion as referred to in paragraph (1) shall be implemented for a maximum of 30 (thirty) days.
- 3) If the Diversion process succeeds in reaching an agreement, the Public Prosecutor will submit the Diversion minutes along with the Diversion agreement to the head of the district court to make a decision.
- 4) If Diversion fails, the Public Prosecutor is obliged to submit a Diversion report and refer the case to the court by attaching a report on the results of the community research.
- f. Judge at first instance and Decision.

According to the provisions of the Child Criminal Justice System Law number 11 of 2012 article 43, it is formulated that the examination in court hearings of children's cases is carried out by a judge appointed based on the decision of the Chief Justice of the Supreme Court or another official appointed by the Chief Justice of the Supreme Court on the recommendation of the chief justice of the relevant district

court through the chief justice of the high court, and the requirements to be appointed as a judge as referred to are:

- 1) has experience as a judge in the general court environment.
- 2) have interest, attention, dedication, and understand children's problems and
- 3) has attended technical training on juvenile justice.

If there is no judge who meets the requirements as referred to in paragraph (2), the examination duties in the juvenile trial will be carried out by the judge who carries out examination duties for criminal acts committed by adults.

Judges examine and decide cases involving children in the first instance with a single judge. The head of the district court may determine that the examination of a child's case will be conducted by a panel of judges in cases where the crime is punishable by imprisonment for 7 (seven) years or more or where proof is difficult. In each trial, the judge is assisted by a clerk or substitute clerk. Appeal judges are appointed based on the decision of the Chief Justice of the Supreme Court upon the recommendation of the chief justice of the relevant high court. In order to be appointed as an Appeal Judge, the conditions as referred to in Article 43 paragraph (2) apply. The Appellate Judge examines and decides on Juvenile cases at the appeal level with a single judge. The Chief Justice of the High Court may determine the examination of Juvenile cases with a panel of judges in the case of a crime that is punishable by imprisonment of 7 (seven) years or more or is difficult to prove. And in carrying out his duties, the Appellate Judge is assisted by a clerk or a substitute clerk. The examination of Juvenile cases at the Cassation level is carried out by the Cassation Judge determined based on the Decree of the Chief Justice of the Supreme Court. The requirements for appointing a Juvenile Cassation Judge are adjusted to the provisions of Article 43 paragraph (2). The Cassation Judge examines and decides on Juvenile cases at the cassation level with a single judge. The reasons for the court to make a criminal decision are:

- 1) The arena has been proven to fulfill the elements of the crime that has been charged against him.
- 2) The child has been detained during the court process, starting from the investigation, prosecution to the trial, so that by being sentenced, the sentence of imprisonment can be reduced or almost the same as the period of detention that has been served.

The examination in the court hearing of children in the first instance is carried out by a single judge, however the Chief Justice in the examination of children's cases with a panel of judges in the case of crimes that are threatened with imprisonment of 7 years or more is difficult to prove. The judge in examining children's cases in children's trials is declared closed to the public except for the reading of the

verdict. Then in the trial process (Article 55 of Law Number 11 of 2012 concerning the Child Criminal Justice System) the Judge is obliged to order the parents/guardians or companions or other legal aid providers; in the event that parents, guardians or companions are not present, the trial is continued accompanied by an advocate or other legal aid providers and/or community mentors. If the judge does not implement the provisions as referred to in paragraph (2), the child's trial is null and void by law.

That when examining a child victim or child witness, the judge can order that the child be taken out (Article 58 of the Republic of Indonesia Law Number 11 of 2012 concerning the Child Criminal Justice System). In the event that the child victim or child witness is unable to provide information before the court, the judge can order that the child victim or child witness's statement be heard outside the court through electronic recording carried out by a community guidance counselor in the presence of an investigator or Public Prosecutor and Advocate or legal aid provider, through a long-distance examination or teleconference (Article 58 of the Republic of Indonesia Law Number 11 of 2012 concerning the Child Criminal Justice System).

Before making a decision, the judge will give the parents/guardians/companions the opportunity to express matters that are beneficial to the child. In certain cases, the child victim will be given the opportunity by the judge to express an opinion regarding the case in question. The judge must consider the social research report from the Community Guidance Officer before making a decision on the case. If the social research report as referred to in paragraph (3) is not taken into consideration in the judge's decision, the decision will be null and void.<sup>19</sup>

then when the court decision is read out in a public hearing and may not be attended by the child. The identity of the Child, Child Victim, and/or Child Witness must remain confidential from the mass media as referred to in Article 19 by only using initials without a picture. The court is obliged to provide an excerpt of the decision on the day the decision is pronounced to the Child or Advocate or other legal aid provider, Community Guidance Officer, and Public Prosecutor. The court is obliged to provide a copy of the decision no later than 5 (five) days after the decision is pronounced to the Child or Advocate or other legal aid provider, Community Guidance Officer, and Public Prosecutor. The imposition of sentences on children in conflict with the law can be subject to criminal and action, and children can only be sentenced to criminal or imposed based on the provisions of the Law.

that against children in conflict with the law who are under 14 years old can only be subject to non-criminal measures, which include return to parents, surrender to someone, treatment in a mental hospital, and treatment in a Social Welfare

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Institution (LPKS), the obligation to attend formal education and/or training held by the government or private bodies and revocation of the Driving License, and corrections due to the crime. Meanwhile, children who are 14 years old and above can be sentenced to various types of criminal penalties as stated in Article 71 of the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, namely as follows: The main criminal penalties consisting of

- a) criminal warning
  - b) conditional sentence (counseling in institutions, community service, supervision).
  - c) job training;
  - d) coaching in institutions and prisons.
- 1) Additional penalties include confiscation of profits obtained from criminal acts, fulfillment of customary obligations.
  - 2) If the material law imposes a cumulative penalty in the form of imprisonment and a fine, the fine is replaced with job training.
  - 3) Criminal penalties imposed on children must not violate the child's dignity and honor.
  - 4) Further provisions regarding the form and procedures for implementing criminal penalties as referred to in paragraph (1), paragraph (2), and paragraph (3) are regulated by Government Regulation.

#### Article 72.

A warning is a minor crime that does not result in restrictions on the child's freedom.

#### Article 73

- 1) A conditional sentence may be imposed by a judge in the case of a prison sentence of no more than 2 (two) years.
- 2) In a court decision regarding a criminal sentence with conditions as referred to in paragraph (1), general conditions and special conditions are determined.
- 3) The general condition as referred to in paragraph (2) is that the child will not commit any further criminal acts while serving his sentence with conditions.
- 4) The special conditions as referred to in paragraph (2) are to do or not do certain things as stipulated in the judge's decision while still taking into account the child's freedom.

- 5) The prison term with special conditions is longer than the prison term with general conditions.
- 6) The maximum term of imprisonment with the conditions referred to in paragraph (1) is 3 (three) years.
- 7) During the period of imprisonment with conditions, the Public Prosecutor will supervise and the Community Guidance Officer will provide guidance so that the child meets the conditions that have been set.
- 8) While the child is serving a sentence with the conditions as referred to in paragraph (7), the child must undergo 9 (nine) years of compulsory education.

#### Article 74

If the Judge decides that the Child is being cared for outside the institution as referred to in Article 71 paragraph (1) letter b number 1, the institution where the education and care is being carried out is determined in the decision.

#### 3) Weaknesses of the Juvenile Justice System

The Juvenile Criminal Justice System (SPPA) in Indonesia, despite its stated aim of protecting children's rights, still has several weaknesses in its implementation, which prioritizes restorative justice and diversion approaches, as well as related environmental factors. Some of the main weaknesses include:

##### a. Law Enforcement Factors and the Judicial System

a) Differences in Perception and Understanding of the Juvenile Justice System Law: There are still differences in understanding among law enforcement officers (police, prosecutors, judges, social workers) regarding Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (Juvenile Justice System Law), especially regarding the implementation of *divesi* (outside court processes).

b) Lack of Understanding of Restorative Justice: The restorative justice approach that prioritizes the recovery and participation of victims, perpetrators, and the community has not been fully understood and optimally implemented by all parties.

c) Punitive Tendency (Punishment): The legal system in Indonesia still tends to be punitive, where prosecution and prison sentences for children still frequently occur even though there are other alternatives, such as guidance at the Social Welfare Institution (LPKS).

##### b. Factors of the Parties to the Litigation (Family and Community)



a) **Refusal of Diversion by Victims:** Victims often refuse the diversion process because they consider prison to be the right place for children who have committed crimes, or because they demand too high compensation.

b) **Lack of Parental Participation:** Difficulties in fulfilling children's rights, such as the right to assimilation, are often hampered by a lack of participation and support from parents or family.

c) **Social Stigma:** The negative stigma from society towards children who have committed serious crimes also becomes an obstacle in the process of social reintegration of children after undergoing the legal process.

**c. Facilities and Infrastructure Factors**

a) **Infrastructure Limitations:** The limited and inadequate supporting facilities, such as diversion rooms, children's waiting rooms, special investigation rooms for children, and rehabilitation facilities at LPKS, are significant obstacles.

b) **LPKA Overcapacity:** The Special Child Development Institution (LPKA) often experiences overcapacity, which has an impact on the fulfillment of the rights of children in its care, including a lack of health workers and other supporting facilities.

c) **Budget and Human Resource Limitations:** Lack of budget allocation and the number of competent human resources, such as social workers, psychologists, and community counselors, also contribute to the problem.

**d. Legal Substantive Factors**

a) **Age Limit of Responsibility:** There is an age limit that determines whether a child can be held criminally responsible or only charged with an offense (under 12 years), which sometimes creates complexity in handling it.

b) **Weaknesses of Diversion Regulations:** The SPPA Law is considered to still have weaknesses, such as the absence of an article that requires parties to the case to participate in diversion, so that peace efforts often fail to be implemented.

Overall, these obstacles show that the criminal accountability of children is not simply the application of sanctions, but rather a complex process that requires good coordination between various parties and adequate infrastructure support to ensure optimal protection of children's rights.

**SOLUTION**

Solutions to address weaknesses in the accountability of children in conflict with the law (ABH) focus on optimizing the implementation of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), strengthening

restorative justice approaches, and improving inter-institutional coordination. The following are key solutions based on inhibiting factors:

1) Strengthening the Understanding and Implementation of the SPPA Law

a) Massive and Comprehensive Outreach: Conduct broader and more structured outreach regarding the Child Protection Act and the concept of restorative justice to all law enforcement officials (police, prosecutors, judges, advocates, community counselors), the public, and families. This can reduce differences in perception and the tendency to immediately impose prison sentences.

b) Special Education and Training: Provision of continuing education and training for law enforcement officers who handle ABH to increase professionalism, sensitivity, and in-depth understanding of children's rights and non-punitive approaches.

c) Optimal Implementation of Diversion: Diversion must be a mandatory effort at every level of the judicial process (investigation, prosecution, and examination in court) for cases that meet the requirements (criminal threat of under 7 years and not a repeat of the crime).

2) Increasing Participation of Stakeholders

a) Victim and Community Education: Providing education to victims and the community about the benefits of restorative justice, which prioritizes the restoration and fulfillment of victims' rights through compensation or other agreements, not just revenge.

b) Encouraging the Active Role of Parents/Families: Actively involving parents or families in every legal process and child development or rehabilitation program.

c) Optimizing the Role of Social Workers and Community Guidance Officers (PK): Ensuring the availability and active role of professional social workers and PK in assisting children, preparing social reports, and finding the best solutions through diversion.

3) Improvement of Facilities and Infrastructure

a) Provision of Special Facilities for Children: Allocate sufficient budget to provide child-friendly facilities, such as diversion rooms, special waiting rooms, and investigation rooms separate from adults.

b) Increasing the Capacity of LPKS and LPKA: Improving the quality and quantity of Social Welfare Institutions (LPKS) and Special Child Development Institutions (LPKA) to prevent overcapacity and ensure that the available facilities can optimally support the rehabilitation and education process for children.

4) Optimization of Regulations and Policies

a) **Regulatory Revision (If Necessary):** Identify and revise weaknesses in the SPPA Law or its implementing regulations, for example by clarifying articles that require parties to follow the diversion process.

b) **Strict Oversight:** Strengthening oversight mechanisms for the implementation of restorative justice to prevent abuse or undue evasion of due process.

By implementing these solutions in an integrated manner, the juvenile criminal justice system can be more effective in achieving its primary goal of providing the best protection and justice for children, and returning them to society in a harmonious manner.

### **3.3. CHILD'S JOURNEY AFTER TRIAL**

After undergoing the trial process in the Juvenile Criminal Justice System (SPPA) in Indonesia, the child will receive a decision from the judge who prioritizes the child's best interests and focuses on rehabilitation and development, not retaliation. The child can be given a decision, transferred to a correctional institution if they have reached adulthood (18 years) but have not yet completed their sentence, or given action in accordance with the judge's decision such as diversion (out-of-court settlement) or criminal (if the child is 14-18 years old). The handling of children in conflict with the law prioritizes restorative justice and considers their rights and best interests. The following are some possibilities that may occur to the child after the trial, depending on the judge's decision:

#### **1) Acquittal or Release**

If the child is found not guilty, they will be immediately released and returned to their parents/guardians. The child has the right to restoration of their good name (rehabilitation).

#### **2) Diversion Decision**

If the case meets the requirements (threat of punishment under 7 years and not a repeat offense), a diversion process (a settlement outside the judicial system) may have been attempted beforehand, or the judge may decide on a non-prison solution after the trial, such as:

a. **Return to parents/guardians:** Children remain under parental supervision, but with guidance from Community Guidance (PK).

b. **Participation in guidance programs or institutions:** Children are required to participate in community guidance, education, or job training programs, both within and outside government institutions.

#### **3) Prison Sentence (Special Child Development Institution/LPKA)**

If the crime committed is serious enough, the judge can impose a prison sentence. Children who receive a prison sentence or are sentenced to a Juvenile Correctional Institution (LPA). The Juvenile Correctional Institution (LPA), now known as Special Child Development Institution (LPKA), is a place for children in conflict with the law to serve their sentences, with the main goal of guidance and education, not just punishment. LPKA functions as a technical implementing unit under Directorate General of Corrections whose duty is to serve, care for, educate, train and guide correctional students so that they can return to society with better provisions.

#### A. Duties and functions of LPKA

- 1) Development: Providing formal education (elementary, middle, high school) and non-formal (Package A, B, C), as well as personality and skills development.
- 2) Education: Providing facilities for formal and non-formal education and other development programs in accordance with the mandate of the law.
- 3) Children's rights: Education and development: Children continue to have the right to formal and informal education, as well as to personality and independence development. This includes reduced sentence length (remission), assimilation, family leave, parole, and other rights as stipulated in the law.
- 4) Mentoring: Serving, caring for, educating, training, and guiding children to achieve a better, more independent, and responsible identity.

#### B. Differences with adult prisons

- 1) LPKA is specifically designed for children and focuses on education and development, not just detention like in adult prisons.
- 2) Children in LPKA have the right to continue attending school, while adult prisoners do not have the same educational facilities.

The fundamental changes in the handling of children's cases in the Child Criminal Justice System Law strengthen the role of correctional institutions in the overall handling of children in conflict with the law in relation to guidance, mentoring, supervision and/or assistance. Here, the role of the Correctional Center (BAPAS), the State Detention Center (RUTAN) which will be formed into a Temporary Child Placement Institution and the State Children's Correctional Institution (hereinafter referred to as LPAN) which will later be changed to a Special Child Development Institution (hereinafter referred to as LPKA), as Correctional Technical Implementation Units becomes very important in encouraging the handling of children's cases through a restorative approach. Justice and diversion. Child protection through special treatment is necessary by considering the best interests of the child, where the child is a subject with special needs and has the right to his future. Child detention places must be separated from adult detention

places and while the child is detained, the child's physical, spiritual, and social needs must continue to be met (Article 33 paragraph 4 and paragraph 5 of Law Number 11 of 2012). Based on the law, children detained are placed in temporary child placement institutions (LPAS) or social welfare institutions (LPKS) if there is no LPAS, the place is separate from child prisoners.<sup>20</sup>

Due to psychological considerations for children in conflict with the law, to avoid negative consequences because children who are detained are not necessarily proven to have committed delinquency, associating with child prisoners, it is feared that this can transmit their experiences to children who are in detention, and affect their mental development. In practice, it is known that juvenile detainees are held together with adults, claiming that adult correctional facilities are not yet full. This is extremely dangerous and does not reflect child protection. Both juvenile detainees and juvenile prisoners influence the attitudes and actions of adult detainees. Children may learn about crimes they have never heard of or committed, or even become victims of sexual abuse while in adult detention.

The Social Welfare Institution (LPKS) itself has several programs, broadly referred to as the Social Rehabilitation Program for Children Requiring Special Protection. According to the researchers' documentation, the following are some forms of guidance or programs implemented by the Social Welfare Institution (LPKS):

a) Psychosocial Therapy

Psychosocial therapy is a standards-based counseling service. It aims to help children change their personality, behavior, or situations to contribute to achieving satisfaction and restoring human functioning within the framework of their values and goals, as well as the availability of community resources.

In addition, they ensure that children are participating in the social rehabilitation program effectively, whether they are experiencing any difficulties, and what obstacles they face, such as a reluctance to participate in the LPKS program. In this case, social workers are tasked with discussing with the children and helping them develop a sense of self, as well as identifying their responsibilities after being rehabilitated and their functional abilities.

b) Spiritual Therapy

Spiritual therapy aims to develop a concept of empowerment for children and prepare them for future challenges, remembering that there is a power above them that can be relied upon. This spiritual therapy also involves providing religious materials and materials on spiritual values.

c) Vocational Therapy and/or Lifeskill Education Therapy

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<sup>20</sup>Law Number 11 of 2012 concerning the juvenile justice system

Vocational education and training activities are a form of training to channel the interests and talents of ABH and prepare them for independence as adults, through work skills or internships. Lifeskills, in general, is education, providing an understanding that what ABH can do, what they need to do to survive, will not be realized without a solid self-concept. This is because the average child entering the LPKS comes from a family background that does not make an effort to help ABH by inviting prominent figures to hold discussions.

Vocational therapy is divided into several sections: computers, cosmetology, furniture, electrical, sewing, automotive, and welding. Each vocational class section has its own instructor. The vocational therapy program depends on the ABH's interests and talents. For children aged 17 and over, social workers encourage children to delve deeper into these areas. Previously, the LPKS provided material, starting with an introduction to tools and materials, and so on. This is different from the current LPKS model, which uses modules. For example, the first week of the automotive class would introduce the tools used in the class, and ABH would be given the opportunity to choose which module to study. For example, the module on dismantling engines.

d) Physical Therapy or Interests and Talents.

Physical therapy, or interest and talent therapy, is an activity that channels children's emotions and expresses their concerns through exercise. It provides children with opportunities to manage and organize their community, but with supervision. It trains ABH (Children with Disabilities) to organize and be responsible, and trains ABH to implement what they have learned, to discuss and socialize with their peers. This physical therapy is comprehensive, meaning that the LPKS (School of Disabilities) accommodates ABH broadly and completely, not piecemeal, and is directly practiced by ABH within the community they form themselves.

e) Health Services

This health service is a mandatory program for all ABH (Children with Disabilities) within the LPKS (Rehabilitation and Social Welfare Institution). The service begins with a health assessment, whereby upon entering the LPKS, a medical check-up is conducted. This medical check-up is conducted to assess the proper functioning of all ABH's organs. A pregnancy test is performed specifically for female ABH. In addition, the LPKS conducts a medical history check, starting with family members and including the ABH themselves, to ensure they are tested for HIV/AIDS. After all tests, if a positive case is found, the ABH will be referred to the Health Office Laboratory if the LPKS doctor or nurse is unable to treat the case.

f) Literacy

Literacy implemented by LPKS is one of the additional programs. The literacy model provided here is not monotonous reading, writing, but rather activities in the form of sharing, such as watching, discussing, telling stories and so on. The aim is to train ABH to analyze situations, absorb information, decide that the information is worthy of being accepted, so that their insights are more open, trained to absorb information well and make decisions based on that information. The coaching function carried out by LPKS aims to ensure that individuals or groups carry out their duties according to what is desired to achieve the goals desired by the organization. LPKS provides coaching for ABH, of course, has its own function for the child. The coaching functions carried out by LPKS for ABH are:<sup>21</sup>

1. Restoring the social functioning of Children in Conflict with the Law (ABH), which includes the ability to carry out their role as children.
2. Fulfilling children's rights.
3. Developing self-potential.
4. Changing children's behavior.
5. The researcher obtained what is written above from documentation data available at LPKS.

It can be seen that LPKS has a function for the guidance they provide to children.

Facing the Law (ABH), so that ABH feels safe at LPKS.

#### 4) Action Decision (Not Imprisonment)

The judge can also decide on other actions that are more educational in nature, such as:

- a. Surrender to the state: To be placed in a child welfare institution.
- b. Hospital care: If special medical or psychological treatment is required.
- c. Social work obligations: Doing work for the benefit of society.

Crucially, the Juvenile Criminal Justice System (SPPA) in Indonesia prioritizes restorative justice, meaning that case resolution emphasizes restoration to the original state, dialogue with the victim, and instilling a sense of responsibility in the child, rather than solely retaliation. This process involves the active participation of Community Guidance Officers (PK), social workers, and parents/guardians to ensure the best possible future for the child.

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<sup>21</sup>Government Regulation of the Republic of Indonesia Number 39 of 2012 concerning the Implementation of Social Welfare

#### **4. Conclusion**

From the explanation above, we can draw a conclusion that a child is someone who is not yet 18 years old, including those who are still in the womb, as defined in the child protection law in Indonesia. Children are grouped as weak and vulnerable people, a very high-risk group because their nature is dependent on adults, because their age, physical, mental, moral and spiritual development are not yet mature. They cannot think like adults, they are not yet able to make decisions about what is good and what is bad. Therefore, they need protection and guidance from adults. In addition, it is also possible that children can also commit a violation, violations committed by children can be various actions, ranging from minor violations such as violating school rules to serious violations involving criminal acts. Children who are in conflict with the law are children who are in conflict with the law, children who are victims of the law, and children as witnesses to criminal acts. The construction of children in the context of criminal responsibility can be divided into three qualifications, First, children aged 0 to under 12 years, Second, children aged 12 to under 14 years, Third, children aged 14 to under 18 years Based on Law Number 11 of 2012 concerning the Child Criminal Justice System. In the child justice system there are Important Points and mechanisms in resolving cases of children in conflict with the law from the investigation stage to the guidance stage after undergoing the criminal process with the aim of providing justice for children in conflict with the law, by prioritizing the best interests of children and the principles of protection, justice, non-discrimination, and child development. The Child Criminal Justice System (SPPA) in Indonesia, although aimed at protecting children's rights, still has several weaknesses in the implementation of the child criminal justice system which prioritizes the restorative justice and diversion approaches, as well as factors from the related environment. Some of the main weaknesses include, Law Enforcement and Justice System Factors, Litigant Factors (Family and Community), Facilities and Infrastructure Factors, and Legal Substance Factors. Overall, these obstacles show that child criminal accountability is not just the application of sanctions, but a complex process that requires good coordination between various parties and adequate infrastructure support to ensure optimal protection of children's rights. The solution is to optimize the implementation of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), strengthen the restorative justice approach, and improve coordination between institutions. And After undergoing the trial process in the Juvenile Criminal Justice System (SPPA) in Indonesia, The child will receive a decision from a judge who prioritizes the child's best interests and focuses on rehabilitation and development, not retaliation. A child undergoing detention must still have their physical, spiritual, and social needs met. In addition, the child's safety must also be met, which is provided in the form of placement of the child in a Social Welfare Institution as regulated in Article 32 of the Child Criminal Justice System Law or detention can be carried out through a Temporary Child Placement Institution (LPAS).



From the conclusions that the author has expressed, in this research the author also provides suggestions to readers, namely:

1. Children who commit unlawful acts are essentially victims of a negative family, situation, or environment. Therefore, children in conflict with the law should be treated with protection of their rights.
2. In the juvenile justice system, punishment for non-criminal offenders is necessary to provide a deterrent effect and improve their behavior. However, the judge's discretion is also essential when making sentencing decisions. Judges must adapt to the circumstances and appropriate punishment for the perpetrator. Judges must also exercise caution in their decision-making to avoid errors or misrepresentations that could lead to prolonged public controversy.
3. When placing a child in a correctional institution/Special Child Development Institution (LPKA), supervision and/or support is necessary during their detention. Due to psychological considerations for children in conflict with the law, to avoid negative consequences, as children who are detained may not necessarily be proven to have committed delinquency. Socializing with child prisoners is feared to transmit their experiences to children who are in detention, and affect their mental development. In practice, it is known that child prisoners are combined with adults, on the grounds that detention places in adult correctional institutions are not yet full. This is very dangerous and does not reflect child protection. Child prisoners and adult prisoners influence the attitudes and actions of adult prisoners. Children may learn about experiences of committing crimes they have never heard of or committed, or even become victims of sexual abuse while in adult detention.

## 5. references

### Journals:

Adella Dinda Savira, *"Perlindungan Hukum Terhadap Anak Yang Berhadapan Dengan Hukum Melalui Diversi Dalam Sistem Peradilan Pidana"*, Semarang, Fakultas Hukum, Universitas Islam Sultan Agung.

Hidayati, Salma Fitria, Rantikasari, Intan Asyikin. *"Perlindungan Anak Menurut Hukum dan Perundang-undangan"*, Prosiding Lokakarya Pendidikan Islam Anak Usia Dini IAIN Ponorogo. Vol 3, 2023, hal 1.

Pribadi Dony, *"Perlindungan Terhadap Anak Berhadapan Dengan Hukum"*, Jurnal Volkgeist, 3 no, 2018, hal 18-19

### Books:

Adami Chazawi. 2002. *Pelajaran Hukum Pidana Bagian 1*. Jakarta: Raja Grafindo Persada

Agus Rusianto. 2016. *Tindak Pidana & Pertanggungjawaban Pidana; Tinjauan Kritis melalui Konsistensi antara Asas, Teori, dan Penerapannya*. Jakarta: Kencana.

Ahmad Kamil dan Fauzan. Hukum, Perlindungan dan Pengangkatan Anak di Indonesia. (Jakarta: PT RajaGrafindo Persada, 2008). hlm. 5

Amir Ilyas. 2012. *Asas-Asas Hukum Pidana: Memahami Tindak Pidana dan Pertanggungjawaban Pidana sebagai Syarat Pemidanaan (Disertai Teori-Teori Pengantar dan Beberapa Komentar)*. Yogyakarta: Rangkang Education Yogyakarta & PuKAP-Indonesia.

Amri Khairul, 2004, "Mencari Keadilan dalam Sistem Pengadilan Anak: Masih adakah harapan? (kisah anak berkonflik dengan hukum)", Yayasan Pustaka Indonesia, Medan, hal. 207.

Andi Hamza. 2010. *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta.

Atmasasmita R.dkk, 2006, "*Hukum Pidana Anak*", Refika Aditama, Bandung.

Bambang Poernomo. 2018. *Asas-Asas Hukum Pidana*. Jakarta: Ghalia Indonesia.

Bambang Waluyo. 2008. *Penelitian Hukum dalam Praktek*. Jakarta: Sinar Grafika.

Fultoni.dkk., 2012. "*Anak Berkonflik Dengan Hukum (ABH)*", Cetakan ke-1, The Indonesia Legal Resource Center (ILRC), Jakarta Selatan.

Harahap, M. Y. 2005. "*Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*", Sinar Grafika, Jakarta.

Makarao, M. T. 2014. "*Hukum Perlindungan Anak dan Penghapusan Kekerasan dalam Rumah Tangga*", Rineka Cipta, Jakarta.

Soetodjo, W. 2008, "*Hukum Pidana Anak*", Refika Aditama, Bandung.

Wiyono. 2016 "*Sistem Peradilan Pidana Anak di Indonesia*", Sinar Grafika, Jakarta.

Wagiati Soetodjo, 2008, "*Hukum Pidana Anak*", Refika Aditama, Bandung. hal. 12.

### **Regulation:**

The 1945 Constitution of the Republic of Indonesia.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Law Number 35 of 2014 concerning Child Protection.

**A. Internet:**

National Legal Development Agency,  
<https://bphn.go.id/data/documents/12uu011.pdf>

Era.id news,<https://era.id/news/120286/mengenal-lembaga-pembinaan-khusus-anak>.

Harruma Issha, "Children in Conflict with the Law: Their Definition and Rights",<https://nasional.kompas.com/read/2022/05/25/00000051/ana-k-yang-dealing-with-the-law-its-understanding-and-rights>.

Supreme Court of the Republic of Indonesia, "Restorative Justice as the objective of implementing diversion in the juvenile criminal justice system",<https://www.mahkamahagung.go.id/id/artikel/2613/keadilan-restoratif-sebagai-tujuan-pelaksanaan-diversi-pada-sistem-peradilan-pidana-anak>.

Willa Wahyuni, "Getting to Know Children in Conflict with the Law",<https://www.hukumonline.com/berita/a/mengenal-anak-yang-berhadapan-dengan-hukum-lt64081e7f1eea9/>