

IMPLEMENTATION OF CRIMINAL SANCTIONS AGAINST CHILDREN WHO COMMIT CRIMINAL OFFENSES

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Abstract

This research examines the juvenile criminal justice system in Indonesia, particularly in relation to the implementation of criminal sanctions against children involved in criminal acts. Using library research methods, this study explores various relevant literature and legal documentation to understand the approach taken in handling cases of children in conflict with the law. This research found that there is a tendency to prioritize restorative justice and diversion, which aims to reintegrate children into society without involving formal court processes. Diversion, as an alternative case resolution, allows children to avoid social stigma and long-term legal consequences that can hinder their personal development. The main focus is on rehabilitation and reintegration, taking into account psychosocial and environmental conditions that influence children's behavior. The research results show the need for a more holistic approach in the juvenile criminal justice system that is not only oriented towards punishment, but also towards recovery and development of children as individuals.

Keywords: juvenile criminal justice, restorative justice, diversion.

INTRODUCTION

Children are an inseparable part of a nation who have an important role in maintaining the existence and realizing the ideals of a nation. Children are hope for parents, nation and state because of their role as human resources. To achieve superior human resources, it is necessary to provide continuous guidance to children for survival, physical growth, mental development and social interaction, as well as protecting them from all possibilities that could harm them.

The occurrence of an unlawful act or criminal act can be committed by anyone regardless of age, gender, and so on. One of them is people who are minors or children, whether as perpetrators, witnesses or as victims of criminal acts. Every child has the right to live, grow and develop, and participate appropriately in accordance with human dignity, and to receive protection from violence or discrimination.¹

The legal provisions that regulate juvenile justice are law number 11 of 2012 concerning the juvenile criminal justice system (UU SPPA). Article 21 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System regulates that the age of criminal responsibility for minors is from 12 years to less than 18 years. The age limit for children who can be detained is 14 years and over. For children under 12 years of age, investigators, community counselors and professional social workers will conduct a study to decide whether the child will be handed over to a parent/guardian or included in an

¹Ivan Aditya Bistara Sembiring, Robi Krisna, T. Riza Zarzani, Legal Protection for Children as Perpetrators of Criminal Acts in the Juvenile Justice System in Indonesia <https://jurnal.darmaagung.ac.id> accessed on Saturday 21 October 2023 at 15:00 WIB

education/development/guidance program at the central or regional LPKS for a maximum period of time. 6 months long.

Every year there are many children who come into contact with the law because they have committed crimes or criminal acts that end up in court. In general, children do not receive adequate assistance, both in terms of legal assistance and assistance from social services. Cases of children in conflict with the law (ABH) handled by the BPHN Ministry of Law and Human Rights through the Legal Aid Organization (OBH) which is under the coordination of BPHN are very concerning. Based on OBH data collected by BPHN during 2020-2022, there were 2,304 cases of crimes involving child perpetrators. The majority of crimes are dominated by crimes that cause direct victims such as theft, assault, sharp weapons, and sexual harassment (1396 cases)².

The placement of children suspected of committing criminal acts must be differentiated from adults, children must be placed in special institutions that handle children. The coaching system must be differentiated from that of adults and must pay attention to the rights and obligations of children. This is done because it refers to the principle of criminalization of children, that if the law is imposed on children like adults, it can create a stigma in society which is difficult to avoid and can affect the child's own growth and development. Therefore, the child development system must be considered carefully and must pay attention to the rights and obligations of children.

Child delinquency is known as juvenile delinquency. The term juvenile delinquency comes from juvenile, meaning young, children, youth, characteristic features of youth, typical traits of the teenage period. Meanwhile, delinquency means wrongdoing, neglected/neglected, which was later expanded to mean evil, asocial, criminal, rule breaker, trouble maker, terror, irreparable, ungodly and so on.

Juvenile delinquency is a child's behavior which is an act that violates norms, which if carried out by an adult is called a crime. It is too cruel if child criminals are called child criminals, not child delinquents, while if you pay attention to implementation/executive policies regarding children who commit delinquencies (delinquent children), referring to children who are in correctional institutions is not as "child convicts" but as "correctional students"³

In the explanation above, we can see the differences between law enforcement for children and adults. There are alternatives other than punishment regarding criminal acts committed by children, children's rights must be carefully considered, and protection of children must be prioritized because of course the position of children is very different and cannot be equated with adult punishment.

It is explained in article 1 point 1 of the Law of the Republic of Indonesia Number 11 of 2012 that the aim and purpose of creating a juvenile criminal justice system is to resolve the problem of criminal acts committed by children from the investigation stage to the implementation of guidance beyond the end of the criminal period in order to produce a

² <https://news.detik.com/berita/d-6627993/kejahatan-anak-meningkat-pencurian-tertinggi-disul-kas-narkoba> Accessed on Saturday, October 21 2023 at 12:29 WIB

³ Nashriana, Criminal Law Protection for Children in Indonesia, Raja Grafindo, Jakarta, 2015, Page. 20

prosperous and safe life for children. criminal punishment against children that is punitive in nature.

One institution that plays a very important role in the juvenile criminal justice system is the Correctional Center. The Correctional Center is an institution that plays a full role in providing guidance, supervision and assistance to children who are in conflict with the law. In carrying out its duties to provide community guidance, of course it must comply with statutory regulations. Community Guidance, which is one of several law enforcement agencies (APH), carries out the duties and functions of the Correctional Center for children in conflict with the law.

Community Counselors play a very important role in efforts to follow up on children who are in conflict with the law. One way is to carry out restorative justice which is achieved through diversion. Through different alternatives in resolving children's cases that should be carried out in the criminal justice process outside the criminal justice process, by involving parties such as children, parents/guardians of children, victims, the community and other authorized law enforcement officials in efforts to resolve cases to reach agreement in resolving problems.⁴

Mediation is a form or method of resolving a problem through negotiation by prioritizing restorative justice. One way of mediation is through diversion efforts carried out at each stage so that a diversion agreement can be reached between the two parties. The party carrying out mediation in seeking a solution with the best results for both parties is the mediator's job.

Diversion can be carried out if there is community research conducted by the Community Advisor. As a mediator, Community Guidance in the diversion process must apply neutral values and not take sides with anyone, either the perpetrator or the victim. Mediation is carried out between the two parties with the Community Counselor as a mediator in order to find the best outcome for both parties peacefully without having to prioritize punishment.⁵

METHOD

In order to compile a narrative of research methods related to the application of criminal sanctions to children who commit criminal acts, this research will use library research methods. This approach was chosen because it aims to collect, review and analyze various literature relevant to the research topic. Data and information will be collected from various secondary sources, including law books, scientific journals, articles, and legal documentation relating to the legal treatment of minors involved in the criminal justice system. Document analysis will focus on comparisons between theory, applicable practice, and legal reforms that have been or are being carried out.

⁴Hadi Supeno, *Criminalization of Children Offers Radical Ideas for Juvenile Justice Without Punishment*, Gramedia Pustaka, Jakarta, 2013, Page. 34

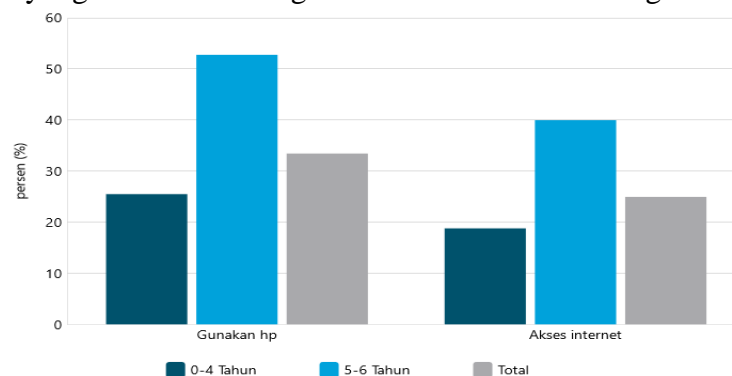
⁵Rika Saraswati, *Child Protection Law in Indonesia*, Citra Aditya Bakti, Bandung, 2014, Page. 27

RESULTS AND DISCUSSION

Factors that cause children to commit criminal acts

Criminal acts committed by children can be influenced by various complex factors that are intertwined in their lives. Environmental factors, such as family and peers, have a big impact in shaping children's behavior. Family instability, lack of adequate parenting, or negative influence from peers can provide incentives for children to become involved in criminal activity. In addition, individual factors such as mental disorders or lack of social skills can also make children vulnerable to unlawful behavior. The combination of these factors often creates an environment that stimulates or encourages children to commit criminal acts as a response to the pressure or circumstances they face. Apart from the above, there are also factors that contribute no less to the number of crimes committed by children. Namely the lack of parental control over technology such as smartphone use.

Figure 1. Early Age Children Using Cell Phones and Accessing the Internet (2022)



Popular culture or media that promotes violence, crime, or unhealthy social norms can influence a child's perception of what behavior is socially acceptable or even considered cool. Understanding these factors is important in designing effective prevention strategies and supporting the development of holistic solutions to reduce crimes committed by children. A coordinated approach from multiple sectors, including the family, education, mental health, and criminal justice systems, can help prevent children's criminal behavior and effectively support their recovery.

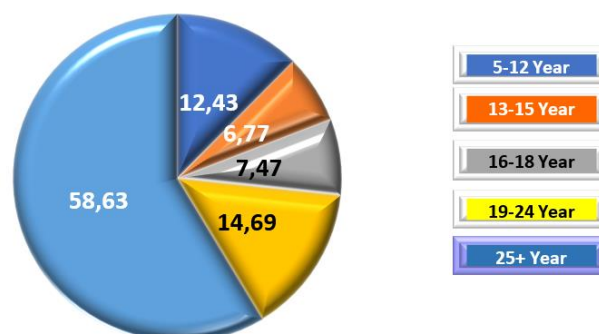


Figure 2. Age Profile of Internet Users in Indonesia in 2023

Efforts to deal with and overcome various behavioral acts of children who are suspected of committing a criminal act must be able to be differentiated from cases experienced by adults. The phenomenon of children breaking the law is a social problem that receives special attention because it requires special and specific types of treatment.

Several factors can influence a child to commit a crime. Some factors commonly associated with criminal behavior in children include:

1. Family environment
2. School environment
3. The Influence of Peer Pressure
4. Economic Factors
5. Mental or Emotional Disorders
6. Media Influence
7. Lack of Legal Education or Knowledge
8. Biological Factors
9. Involvement with Drugs and Alcohol
10. Lack of Supervision and Guidance
11. Social Skills Deficiencies and Adjustment
12. Lack of Positive Alternatives
13. Lack of Awareness of Consequences

From the analysis of the factors above, it can be seen that criminal acts committed by children cannot be reduced to one single cause. Rather, this phenomenon is complex and influenced by interactions between various environmental, economic, psychological, educational, cultural, and media factors. To overcome this problem, a holistic approach is needed that includes interventions at various levels, from the individual level to the community level.

Forms of Criminal Liability That Can Be Imposed on Children

The government has also made a number of regulations regarding Children in Conflict with the Law (ABH), namely Law Number 11 of 2012 concerning SPPA. Settlement of children's cases is carried out using the Juvenile Criminal Justice System (SPPA). In handling juvenile criminal cases, implementing Restorative Justice with Diversion is the most important option. Diversion is the transfer of the resolution of ABH cases from the criminal justice process to the criminal justice process outside criminal justice. In this way, stigmatization of children is avoided and it is hoped that children can return to the social environment naturally.

Law Number 11 of 2012, ABH is a child who is 12 years old but not yet 18 years old who is suspected of committing a crime. However, there are times when the Diversion process does not find an agreement between the victim and the child suspected of committing a crime so that the juvenile criminal justice process continues.

Article 20 of the SPPA Law regulates the age limit for children that in the event that a criminal act is committed by a child, the child is still submitted to court. The child is not yet 18 (eighteen) years old and is submitted to court after the child in question has passed the

age limit of 18 (eighteen). years, but has not yet reached the age of 21 (twenty one) years. However, Article 21 of the SPPA Law confirms that:

- (1) If a child under the age of 12 (twelve) years commits or is suspected of committing a criminal act, the Investigator, Community Counselor and Professional Social Worker makes a decision to:
 - a. Hand it back to parents/guardians; or
 - b. Participate in educational, coaching and mentoring programs in government agencies or LPKS in agencies that handle the field of social welfare, both at the central and regional levels, for a maximum of 6 (six) months.
- (2) The decision as intended in paragraph (1) is submitted to the court for determination within a maximum period of 3 (three) days.
- (3) Limits are required to carry out evaluations of the implementation of educational, coaching and mentoring programs for children as intended in paragraph (1) letter b.
- (4) In the event that the results of the evaluation as referred to in paragraph (3) show that the child still needs further education, coaching and guidance, the period of education, coaching and guidance can 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 child development reports to Bapas periodically every month.
- (6) Further provisions regarding requirements and procedures for decision making as well as education, coaching and mentoring programs.

In the SPPA Law, there are three categories of children involved in criminal acts, namely children of perpetrators, children of crime victims, and children of crime witnesses. Article 69 paragraph (2) of the SPPA Law states that perpetrators of crimes against children can be subject to two types of crimes, namely procedures for perpetrators of criminal acts under the age of 14 years and criminal acts for perpetrators of criminal acts aged 15 years and over.

The Juvenile Criminal Justice System Act (SPPA) aims to create a system that ensures the protection of children's rights and interests in the legal process. Through SPPA, efforts are emphasized on the rehabilitation and reintegration of children involved in the criminal justice system, taking into account the factors that influence their behavior. The approach taken by SPPA focuses on guidance, not punishment, by prioritizing children's rights to receive fair treatment and services that suit their needs.

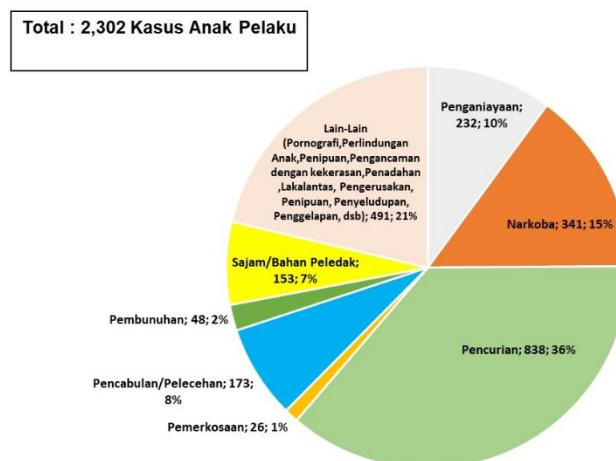


Figure 3. Number of Child Perpetrators Based on Crime Category (2020-2022)

Source: BPHN Kemenkumham RI

The Concept of Diversion in Criminal Cases Committed by Children

Essence and ontology are elements in knowledge that aim to explore, understand and find out the origins of knowledge. The essence and ontology of diversion are needed to understand the essence or basis of diversion as well as knowing what the definition of diversion is. In simple terms, both are important to know as the basic paradigm and foundation of thinking for law enforcers as well as practitioners, researchers and legal observers in upholding justice towards children.

Etymologically, according to Sally Wehmeir in Sinaga (2017), the word diversion is equivalent in meaning to the word divert which means the act of changing the direction that someone is used for. This means an action to change the course that something is taking or change someone's goal or change the use that is usually used (Wehmeir, 2000)⁶.

Diversion essentially has the aim of preventing children from the negative effects of criminal enforcement. Diversion is an approach in the juvenile criminal justice system that aims to prevent children from being exposed to the negative effects that may arise from the application of criminal punishment. Through diversion, efforts are emphasized on alternative solutions such as counseling, coaching, or rehabilitation programs, which are designed to change a child's behavior without having to involve a formal court process. Thus, diversion allows children to avoid the stigma and long-term consequences of a criminal record, while providing an opportunity for them to improve their behavior and return to a positive path in society. This not only has the potential to reduce levels of abuse in the criminal justice system, but also opens the door to more effective recovery for children, ensuring that they have the opportunity to grow and develop without the burden of a burdensome past.

The definition of diversion is clearly stated in Article 1 point (7) of the SPPA Law, namely transferring the resolution of children's cases from the criminal justice process to a process outside criminal justice. This means that the criminal justice system accommodates the resolution of children's cases not only through special handling in the form of

⁶ Dr. Ilham Djaya, SH, MH, M.Pd, Understanding Children in Conflict with the Law, Palangkaraya, 2020, Page 1 45

deliberation by prioritizing a restorative justive spirit. Hambali (2019)⁷ stated that using diversion in restorative justice in juvenile justice begins with the assumption that children's delinquent behavior is ineffective without the cooperation and involvement of victims, perpetrators and the community.

The principles that form the basis of justice for parties are that they are served well, receive fair and balanced attention, and are actively involved in the justice process and obtain adequate benefits from their interactions with the juvenile justice system.

To protect justice and guarantee the interests of children, the SPPA Law emphasizes the importance of diversion to prevent children from having their freedom taken away and retaliation against them. On the other hand, diversion must also give children a sense of responsibility in the form of regret, guidance and compensation. Therefore, Article 11 of the SPPA Law regulates the form of diversion agreement which is a form of child responsibility for their actions. The form of the agreement is:

- a. Peace with or without compensation. In this case, an agreement is reached to forgive each other and end the case between both parties, whether with compensation money to the victim or not.
- b. Handing back to parents. The parties involved believe in bringing the child back to their parents as a form of accountability.
- c. Participation in education or training at an educational institution or LPKS (Social Welfare Organizing Institution) for a maximum of 3 (three) months. This agreement is usually given to children whose parents deem them incapable of fostering, so the child is deemed to need to be supervised and given skills by entrusting them to LPKS.
- d. Society service. This agreement aims to give children responsibility for their actions. Apart from that, this can develop children into more pro-social individuals.

The form of agreement above is one of the points in the results of the diversion agreement which is usually stated in a document called the diversion agreement results letter. This document will later become the basis for determining diversion so that it is binding for the parties to implement.

Table 1. Diversion Results at ABH (2021-2023)

Year	Man	Woman	Amount
2021	359	28	387
2022	432	32	464
2023	433	8	441

Source: Bapas Class I Medan

From the table above it can be concluded that there are fluctuations in diversion numbers every year. In 2021, there were 359 diversion results for men and 28 women, with a total of 387 diversion results in 2021. In 2022 there will be an increase in diversion with a record number of 432 men and 32 women with a total of 464 diversion results in 2022. In

⁷AR Hambali, Application of Diversion to Children in conflict with the law in the criminal justice system, Makasar, 2019

2023, diversion results will decrease with a total number of 441 people consisting of 433 men and 8 women.

Diversion Deliberation Stages⁸

A. Preparation for Diversion Deliberations

1. Prepare the following parties
 - a. Victims, perpetrators and families of perpetrators
 - b. Other relevant people also need to be brought in
2. The following other parties can also be prepared
 - a. Parties supporting the victim (prepared by the victim)
 - b. Parties who support the perpetrator (prepared by the perpetrator and the perpetrator's family)
3. Another thing to pay attention to;
 - a. Provide information to the parties regarding the meeting
 - b. Obtain information from the parties that will help in facilitating the meeting
 - c. Determine the place, space and seating arrangements for the meeting.
 - d. Prepare other items that may be needed such as stationery
 - e. Check that the participants will attend and prepare that the room is truly comfortable and safe for all parties.
 - f. Prepare a list of questions for yourself

B. Information Sharing Stage

1. Welcome and introduction
2. Law Enforcement Officers read out the charges in detail
3. The perpetrator is given the opportunity to accept or reject responsibility for the act
4. If the child wants to take responsibility then a family group deliberation will proceed, but if the child does not want to take responsibility then the case must be returned to the formal process.
5. Efforts should be made to encourage children to tell what really happened
6. The victim is given the opportunity to talk about what has happened, how he was harmed and what the perpetrator considers necessary to do in order to compensate for his mistake.
7. A general discussion by all parties about the actions and what needs to be done to make amends.
8. Then, the facilitator will conclude the discussion and make recommendations.

C. Family Consideration Stage

The families of each party are given the opportunity to:

1. How children can replace mistakes with kindness for the victim
2. How children can replace mistakes with truth for society
3. Plan what child perpetrators can do together with their families to prevent repetition of the crime

D. Negotiation and Agreement Stage

⁸Diversion Mediation and Deliberation/ by Nasirudin, SH Human Resources Development Agency for Law and Human Rights – Depok, 2019.

The facilitator needs to check the following:

1. Has the victim's needs been met in this plan?
2. Whether this plan has met community needs
3. Is this planning achievable and realistic
4. Is this planning relevant enough to be implemented within a certain time period?
5. Can this planning be measured?
6. Is this planning proportional and feasible to implement?
7. Can this planning protect and advance children's development and children's rights?
8. Anticipate what must be done if this plan is successful or not

E. Signing of Diversion Agreement

The Diversion Facilitator pours the results of the deliberations into a Diversion Agreement which is then signed by the parties, facilitator and witnesses.

Supervision of Diversion Deliberation Results

After the family meeting is complete and the results are expressed in an agreement, the community counselor can be asked to supervise the implementation of the agreement. Community counselors must develop different strategies: first, what will happen if the parties succeed in implementing the agreement, and second, what will happen if they fail to implement the agreement, or third, what will happen if they perform well in implementing their part of the agreement? the agreement. During the evaluation, you should consider how to strengthen the family's ability to manage and prevent criminal behavior.

CLOSING

This study underscores the importance of reform in the juvenile criminal justice system in Indonesia. Findings from the research show that the application of restorative justice and diversion has a significant impact in treating children in conflict with the law not only as perpetrators but also as individuals who need guidance and protection. Justice that is oriented towards rehabilitation and reintegration offers a more humane and effective way to support children to reintegrate into society, while avoiding the negative impacts of the conventional justice system.

The implementation of diversion and a recovery-focused approach shows a paradigm shift from a punitive system to a system that cares more about children's development and welfare. This is in line with human rights principles and the children's rights convention which emphasizes the protection and fulfillment of children's rights. Going forward, a strong commitment is needed from all relevant parties, including the government, educational institutions and society, to continue to develop and implement strategies that support restorative justice. This is not just about changing the way we deal with children in conflict with the law, but also about building a stronger foundation for their future and the future of a more just and civilized nation.

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