



## RESEARCH ARTICLE

# Constructing Juvenile Sentencing in Indonesia: Challenges in Balancing Justice, Protection, and Restorative Principles

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ARTICLE INFO	ABSTRACT
Received: Nov 29, 2024	System criminalization of children in Indonesia is an issue that is and requires attention. Children involved in criminal act acts need a Handling special that focuses on punishment, protection, and rehabilitation. However, the implementation of justice for criminal children in Indonesia still faces several challenges, especially in balancing between the interest child as perpetrators, victims' rights, and a sense of justice in society. Research This aims to analyze deep construction law, such as the fall criminal to child perpetrator act criminal LawLaw in Indonesia. In addition, research will also study the role of system criminalization in accommodating aspects of justice and protection, as well as the implications to the interests of the victims. Research This use method studies law with approach legislation and conceptual. Data that includes regulation legislation, decisions court, literature law, and previous research previous research will be collected and analysed previous research will be collected and analyzed in-depth. Research This finds that even though Indonesia has its Constitution about System Justice Child Criminal Procedure, its implementation is still not optimal. Construction law on the fallen criminal to child perpetrator act does Not yet fully accommodate principles of justice restorative and interests best for the child. System existing criminal penalties tend to focusto focus on punishment and less notice aspects of rehabilitation and reintegration of of social children. In addition, the protection of victims' rights is not yet fully fulfilled.
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## INTRODUCTION

Children are a gift God Almighty gives, whether a man or a woman. Children are the future successors of the nation who will become the country's leading asset to achieve prosperity in the future; appropriately, children get good treatment with methods cared for, educated, guarded and protected by the state. <sup>1</sup>Indonesia has had several and relevant laws related to criminal acts committed by children, such as Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Although this LawLaw has regulated various aspects of law enforcement against children who commit crimes, This LawLaw seems to focus more on protecting child perpetrators of crimes and pays less attention to the interests of victims, which in its implementation still has its own obstacles and challenges.

<sup>1</sup>Ramadhana, AMS, Haerana, H., & Heryani, W. (2022). Recovery Efforts for Child Victims of Sexual Violence by the Integrated Service Center for the Empowerment of Women and Children (P2TP2A) in Maros Regency. *Jurnal Ilmiah Ecosystem*, 22 (1), p. 49

Most previous studies have focused more on the analysis of child protection of criminals or the implementation of applicable laws, while a deeper understanding of the construction of criminal Law for child perpetrators and the role of the criminal system in this context still needs to be explored in more depth. Generally, there are only three types of theories of the purpose of punishment, namely absolute theory, relative theory, and combined theory. However, in its development, there are several types of theories on the purpose of punishment other than the three theories above.<sup>2</sup>

Therefore, this research is relevant and urgent to be conducted in order to explore more deeply the legal construction of sentencing children who commit crimes in Indonesia, the role of the criminal system in accommodating aspects of justice and protection, and its implications for the interests of victims. By understanding these issues, we can contribute to improving the child criminal system in Indonesia and ultimately, will provide justice for both children as perpetrators and justice for victims of criminal acts. even No rarely become victims of crime criminal the is children , while ensuring a just legal system. for all Indonesian people .

The criminal justice system for child criminals in Indonesia is one of the issues that has raised deep concern from a legal and human rights perspective. The legal construction in sentencing child criminals has become the center of debate and significant attention in the last few decades. This is due to two main things : first, the many cases that show the involvement of children in serious criminal acts, and second, the issue of protecting children's rights and enforcing justice for victims of criminal acts has become an important focus in the global order. Children as a vulnerable group require special attention in the criminal justice system to avoid long-term negative consequences that can hinder their development.

Several cases show that children are often involved in various serious crimes, and there needs to be a clear and comprehensive legal framework to address this problem. One example of a case involving a child as a perpetrator of a crime is Decision Number 07/ Pid.Sus -Anak/2014/ PN.Bjm , a child named Ahmad Nurul who was charged by the public prosecutor and proven to have violated Article 340 in conjunction with 55 paragraph (1) ke-1 of the Criminal Code was sentenced to 10 years in prison for having fulfilled all the elements of the crime of premeditated murder committed with his friends. In this case, no diversion was attempted because it did not meet the requirements for diversion . In addition, there is also an example of another case, namely the decision against a child perpetrator of a crime who participated in premeditated murder in Decision Number: 73/ Pid.Sus - Anak/2022/PN.TJK , legally, the child's actions were proven legally and convincingly to have committed a crime as regulated in Article 340 of the Criminal Code in conjunction with. Article 55 Paragraph (1) of the Criminal Code , concerning Participation in Premeditated Murder. Philosophically, judges sentence children to prison as an effort to develop children to become better individuals after completing their development period at LPKA. Sociologically, judges consider aggravating and mitigating factors in the punishment of children . The involvement of children in serious criminal acts can be related to social, economic and cultural factors that need to be understood more deeply. Therefore, research on the legal construction of sentencing children to criminal acts in Indonesia is important in efforts to improve the existing criminal system in order to realize justice for both perpetrators and victims.

Indonesia has experienced significant developments in formulating laws and regulations related to juvenile criminal Law, including Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. However, the implementation of these regulations and the effectiveness of the juvenile criminal justice system are still ineffective and have raised a number of challenges. Therefore, an in-depth analysis of the legal construction, the role of the criminal justice system, and its implications for children's rights and justice in society is needed .

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<sup>2</sup> Rivanie , SS, Muchtar, S., Muin, AM, Prasetya, AD, & Rizky, A. (2022). Development of Theories of the Purpose of Punishment. *Halu Oleo Law Review* , 6 (2), p. 178

In order to discuss problem protection child need We have understanding about proper justice . Sense of justice somebody will influence existence continuity activity protection child . Justice here is a conditions in which everyone can carry out rights and obligations in a way rational , responsible and useful . With thus , it becomes it's clear that business protect child in the sense of trying welfare child besides is call and desire society , is also commitment national For protect child from various the problem they have face it , the problem now , how implementation protection of children's rights is accommodated .<sup>3</sup>

This study will fill the knowledge gap in the understanding of the juvenile criminal justice system in Indonesia and how it affects children involved in criminal acts. Thus, this study will provide a valuable contribution in improving the understanding and renewal of the juvenile criminal justice system in Indonesia, especially in reconstructing the juvenile criminal justice system because the current juvenile criminal justice system focuses more on protecting children as perpetrators of criminal acts and is considered to pay less attention to the victim's side , so that Still felt system criminalization to perpetrator child said not enough give effect deterrent and even impact not enough good for the environment surrounding area .

## RESEARCH METHODS

The type of research used in this research is Normative Legal Research , which is a method in which Law is conceptualized as norms, rules, principles or dogmas. <sup>4</sup>The legal interpretation carried out is grammatical interpretation, namely the interpretation carried out on the words or sentence structure used by lawmakers in certain laws and regulations, in addition, systematic interpretation is also carried out, namely the interpretation carried out by connecting words in an article with words in other articles, both in the same regulation and between various laws and regulations related to the imposition of criminal penalties on children who commit crimes in the criminal justice system in Indonesia .

## RESEARCH RESULTS AND DISCUSSION

### Juvenile Criminal Justice System

#### Definition and Explanation of the Juvenile Criminal Justice System

Children are national assets who have limitations in understanding and protecting themselves from various influences of existing systems, <sup>5</sup>therefore it is necessary for the State to make efforts to provide attention and protection so that in the future the child can make a great contribution to the progress of the State . In addition, protection efforts also function to prevent children from mental, physical and social losses. Protection of children can be seen from the provisions of the Convention on the Rights of the Child ( *Convention on the Rights of the Child* ) ratified by the Indonesian Government through Presidential Decree Number 36 of 1990, which was then outlined in Law Number 4 of 1979 concerning Child Welfare and in Law Number 23 of 2002 concerning Child Protection and Law Number 11 of 2012 concerning the Child Criminal Justice System. All of these regulations state the general principles of child protection, namely non-discrimination, the best interests of the child, survival and development and respect for child participation.<sup>6</sup>

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<sup>3</sup> Sakharina , IK, Noor, SM, Hendrapati , M., Daud, AA, Magassing , AM, & Kadarudin , K. (2018). Convention on the Rights of the Child as an Instrument for Handling Children Victims of Violence and Exploitation. *The Juris Journal of Law* , 2 (2), p . 96

<sup>4</sup>, R. Otje S. Soemadinigrat, "Compiling Legal Writing at the UNIKOM Faculty of Law", Paper at the Up Grading Refreshing Course-Legal Research Methodology event at the UNIKOM Faculty of Law, Bandung, March 22, 2007, 5.

<sup>5</sup>Marlina, Juvenile Criminal Justice in Indonesia Development of Diversion and Restorative Concepts Justice , PT Bandung, Refika Aditama, 2009, p. 15,

<sup>6</sup> [https , // www , mahkamahagung , go , id / rbnews , asp ?bid = 4085](https://www.mahkamahagung.go.id/rbnews.asp?bid=4085) accessed on July 5, 2022 at 17.03 WIB,

For guard dignity and honor , child entitled get protection special , especially protection law in the justice system ,<sup>7</sup> in Article 1 number 1 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System states that what is meant by the juvenile criminal justice system is the entire process of resolving cases of children in conflict with the LawLaw, starting from the investigation stage to the guidance stage after serving a sentence. Setyo Wahyudi stated that what is meant by the juvenile criminal justice system is a juvenile criminal justice law enforcement system consisting of subsystems child investigation , child prosecution subsystem , child judge examination subsystem , and subsystem for implementing child criminal law sanctions based on child material criminal law and child formal criminal law and LawLaw for implementing child criminal law sanctions. In this case, the objective of the child criminal justice enforcement system emphasizes the objective of child protection and welfare interests. Enforcement law Actually lies in the factors that influence it , one of which is The factors the is a legal factor myself will limited by LawLaw,<sup>8</sup> Regarding what is meant by the juvenile criminal justice system, Law No. 11 of 2012 concerning the Juvenile Criminal Justice System does not provide further explanation. It is just that from the provisions of Article 1 number 1 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, it can be seen what the legislators want . The will of the legislators is that the entire process of resolving cases of children in conflict with the LawLaw from the investigation stage to the guidance stage after serving a sentence must be implemented as a system by following the provisions contained in Law No. 11 of 2012.

According to Barda Nawawi Arief, the judicial system is essentially identical to the legal justice system, in the judicial process is essentially a law enforcement process. So in essence it is identical to the judicial power system, because the judicial power is basically the power/authority to enforce the LawLaw. If focused on the field of criminal LawLaw, it can be said that the criminal justice system is essentially a criminal law enforcement system (SPHP) which is essentially also identical to the judicial power system in the field of criminal LawLaw (SKKHP).<sup>9</sup>

In order 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:

Protection, which includes direct and indirect activities against actions that endanger children physically and/or psychologically;

Justice, is that every resolution of a child's case must reflect a sense of justice for the child.

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.

The best interests of the child mean that all decision-making must always take into account the child's survival and development.

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 the child's life.

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.

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<sup>7</sup>Nasruddin, M., Haeranah , H., & Ilyas, A. (2021). Legal Protection for Correctional Students Who Experience Violence in the Class II Maros Special Child Development Institution Environment. *Al- Qadau Journal : Islamic Family Law and Justice* , 8 (2), p. 78

<sup>8</sup> Akub , M. S., & Asis, A. (2020). Legal Protection for Reporting Witnesses in Corruption Crimes. *Amanna Gappa*, Vol. 28 No. 2.

<sup>9</sup>Barda Nawawi Arief, Reform of the Justice System of the Law Enforcement System in Indonesia, In the Anthology of Portraits of Law Enforcement in Indonesia, Indonesian Judicial Commission, 2009, p. 182,

Guidance is an activity to improve the quality, devotion 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.

Guidance is the provision of guidance to improve the quality of devotion to God Almighty, intellectual, attitude and behavior, skills training, professionalism, as well as 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.

Deprivation of liberty is a last resort, meaning that basically children cannot be deprived of their liberty, unless forced to do so in the interests of resolving the case.

Avoidance of retaliation is the principle of avoiding attempts at retaliation in the criminal justice process .

Article 5 states:

The Juvenile Criminal Justice System must prioritize the Restorative Justice approach .

The Juvenile Criminal Justice System as referred to in paragraph (1) includes:

Investigation and prosecution of criminal cases against children are carried out in accordance with the provisions of laws and regulations, unless otherwise specified in this LawLaw;

Child trials conducted by courts in the general judicial environment; and

Coaching, guidance , supervision and/or assistance during the process of implementing the criminal sentence or action and after serving the criminal sentence or action.

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

The objectives of diversion as stipulated in Article 6 are:

- Achieve peace between the victim and the child;
- Resolving children's cases outside the judicial process;
- Protect children from deprivation of liberty;
- Encourage the community to participate; and
- Instill a sense of responsibility in children.

### **Regulation of the Juvenile Justice System as Perpetrators and Victims**

The initial handling of criminal acts in the juvenile criminal justice system is similar to criminal justice in general, namely starting from the investigation process due to a report from the victim to the police. The investigation process carried out by the police is important for the continuation of the criminal justice process for children, because in the investigation it can be known whether an act that is suspected of being a crime has occurred or an act that is not a 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.

### **Definition of Child**

According to common knowledge, what is meant by a child is someone born from a relationship between a man and a woman. While what is meant by children or *juveniles* is someone who is still under a certain age and is not yet an adult and not yet married. The intended definition is the definition that is often used as a guideline in studying various issues about children. Ter Haar stated that when someone becomes an adult is when he (male or female) as a married person, leaves the house of his parents or parents-in-law to live in another house as a young man and wife is a family

that stands alone.<sup>10</sup> According to the Big Indonesian Dictionary (KBBI), what is meant by a child is a descendant or a human being who is still small. <sup>11</sup>While in everyday terms, what is meant by children is those who have not reached a certain age or are not married, this definition is often used as a general guideline.

In science in general, the criteria or standard for determining when someone is categorized as a child is age. However, explicitly (definitely), it cannot be determined what age is actually said to be a child and what is already an adult. Determination of age in various provisions or regulations cannot actually be used as a definite benchmark, that with the determination of age can be categorized as a child or not yet an adult, but the determination of age is due to certain interests (tendencies).

The definition of a child is formulated for a certain act, certain interests and certain purposes, so that the limits of a person being called a "child" will be very diverse. For example, in Article 1 paragraph (2) of Law Number 4 of 1979 concerning Child Welfare, which states that a child is a person who has not reached the age of 21 years, it is determined because based on the development of social business interests, the stage of social maturity, personal maturity and mental taboos of a child are achieved at that age.

For further clarity, children based on their age will be presented in 3 (three) perspectives or points of view regarding children, namely:

### **Children in Psychological Perspective**

Psychological perspective sees humans more holistically, meaning humans are seen from several angles, such as; age, mentality, and growth. In the psychological perspective, humans are divided into several periods, namely:<sup>12</sup>

#### **Vital Period (infant period 0-2 years)**

Infancy is called a vital period because the physical and mental condition of the baby becomes a solid foundation for further development and growth. Therefore, its role is very vital and important. The baby's growth process takes place rapidly and almost all of its activities seem like automatic mechanisms, like unconscious and uncoordinated reflexes. Then gradually its movements that are continuously learned become more regular, controlled, and coordinated by its mind and will. In the next phase of development, more negative reactions will arise, namely movements to move away from or avoid stimulation, including: movements to reject, step back in surprise, cry, sob, frown, frown, whine, shrink in fear, reject and move away from adults.<sup>13</sup>

This is because babies are not yet able to get used to various external stimuli (environment). Not yet able to process external stimulation with their understanding. Only at the end of the first year, with the increasing development of reason, the negative reactions are reduced and replaced by positive reactions, namely in the form of movement towards stimulation or stimulants. These include: listening, reaching, reaching, holding, smiling, laughing, approaching adults (by rolling over or crawling), feeling happy, and so on.<sup>14</sup>

#### **Aesthetic Period (childhood 1-5 years)**

In this period, children quickly get to know their living environment, but the introduction is incomplete and not yet detailed. Although their understanding and introduction are greatly influenced by the activities or efforts of adults, they are limited by a sense of "not yet being aware".

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<sup>10</sup> Syafiuddin Sastrawujaya, Several Problems Concerning Juvenile Delinquency, PT, Karya Nusantara, Bandung, 1977, H, 18

<sup>11</sup> The Great Dictionary of the Indonesian Language, Balai Pustaka, Jakarta, 1990, p. 81,

<sup>12</sup> Kartini Kartono, Child Psychology, Developmental Psychology, Mandar Madju, Bandung, 1995, p, 61-206,

<sup>13</sup> *Ibid*, p, 80

<sup>14</sup> *Ibid*, p, 81

So they see the environment with a simple view. This observation is called *Complex-Qualita*, meaning that their observation is a totality, because children cannot yet distinguish the detailed parts.

According to William Stern,<sup>15</sup> the recognition abilities of babies and children are:

At first, the child can live in a very narrow *milieu* (environment), namely limited by the size or figure of his own body. This phase is called *Urtraum* (scope of origin);

After a few weeks of age, this scope extends to the more immediate environment. This phase is called *Nahraum* (near-sphere);

After a few months, the scope becomes wider and reaches far-flung areas. This phase is called *Fernraum*. (far-reaching);

### **Intellectual Period (elementary school children 6-12 years)**

In this period, the child's attitude towards factual reality is very subjective. Gradually, the picture obtained about the real world will become more perfect and more objective. Given the very rapid development of children at school age, and the family environment is no longer able to provide all the facilities to develop children's functions, especially intellectual functions in pursuing the progress of the times, children need a new, broader social environment. This is in the form of a school to develop all their potential. The school environment will have a very big influence on children as individuals and as social beings. Until the age of 3.5 years, children are under the influence of their entire family. After that age, they begin to expand their horizons of experience outside the family environment. The dominant emotional appreciation function until the age of three and a half years, then gradually with a more rational appreciation, so that it becomes more objective.

Then entering school age, the egocentric attitude of life is replaced by a *zakelijk*, objective, and empirical attitude based on experience.<sup>16</sup> The relationship between objects and oneself is no longer based on subjective appreciation, but changes into objective observation. In this way, children begin to master the world around them objectively, so that they can blend into the wider community, namely the community outside the family, kindergarten, school, and other social groups.<sup>17</sup> The minds of children at elementary school age develop gradually and calmly. Children are in the learning stage, besides the family, schools provide a systematic influence on the formation of children's minds. Their knowledge increases rapidly, and their interests are poured into everything that is dynamic, this is very useful in the development of their personality.

### **Pueral Period (pre-puberty period 12-14 years)**

*Puerperal* period or pre-puberty is characterized by the development of great physical strength. To determine firmly and definitely about the age limits of this puberty period begins and ends, some experts determine the age of 10-12 years, some determine 12-14 years, but what can be stated is that these puberty symptoms can continue far beyond the actual puberty period.<sup>18</sup> This is shown by the behavior of children who appear rude, awkward, delinquent, impolite, wild and so on. Along with rapid physical growth, intensive intellectual development also takes place, so that children's interest in the outside world is very large.

At the end of the *puerperal period* This gives rise to tendencies to oppose and rebel, which are driven by the child's positive, strong and conscious feelings of life. This period is also known as the challenging or *trotzaller period*. Second. The characteristics of children during the challenging or *trotzaller period* This is with typical expressions, such as liking to go on strike, being disobedient (

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<sup>15</sup> *Ibid*, p, 108,

<sup>16</sup> *Ibid*, p, 133

<sup>17</sup> *Ibid*, p, 134

<sup>18</sup> *Ibid*, p, 150

*angehoorzaam* ) , being stubborn, liking to protest, launching lots of criticism, being arrogant and feeling mature, indifferent, reckless, aggressive, quick to anger and big-mouthed.<sup>19</sup>

### **Early Puberty Period (early puberty 14-17 years)**

The personality of a child in pre -puberty is basically still childish , even during puberty there are still many childish elements. However, at this age of puberty a new element appears, namely awareness of one's personality and inner life. Children begin to find certain values and reflect on philosophical and ethical thoughts.

Early puberty or puberty is a period of awakening of a child's personality. This puberty is also a period of reconstruction. With the emergence of self-confidence, there also arises the ability to re-evaluate behavior that is considered useless, replaced with more valuable activities.

### **Adolescence Period (post-adolescent)**

Late puberty ( *adolescence* ) by Sigmund Freud called the second edition of the *Oedipus situation* , because the relationship of young people at this age still contains many complex and unresolved elements, namely there are many conflicts between psychic and contradictory contents, especially conflicts in the relationship of young people with their parents and the objects of their love. During *adolescence* This is the process of maturation of psychic and physical functions that takes place gradually and regularly and is the key to closing the child's development. In this period, many do introspection (self-awareness) and self-reflection which is able to find a new balance and harmony between the attitude inward and the attitude outward to the objective world.

### **Children in Sociological Perspective**

The societal perspective sees children not only from their condition, but also their life or association in society. In customary LawLaw, the criteria used are not a certain age or because they are married but because of the fact of birth or certain characteristics, as expressed by R. Soepomo , <sup>20</sup>namely:

Able to work alone (independently);

Able to do what is required in social life and be responsible;

Can manage your own assets.

According to customary LawLaw, a person can be said to be an adult starting from when someone is no longer dependent on their parents. As stated by Ter Haar , <sup>21</sup>that: "A person who is married and leaves the house of his parents or his parents-in-law to live in another house as a young husband and wife who are an independent family." Thus, the sociological perspective views children not solely based on age, but rather the ability of a person to live independently according to the social views of their community. In customary LawLaw, children are also viewed not solely based on age, but rather their ability (to work) to meet the needs of their family.

### **Children in a Legal Perspective**

The birth of a baby will legally have legal consequences. In civil LawLaw, these legal consequences stem from rights and obligations, such as parental authority, legal recognition of a child and legal denial of it, guardianship, adulthood, adoption and so on. From a criminal law perspective, it is closely related to criminal liability. The definition of a child according to the LawLaw is formulated for a certain act, so that certain limitations will be found in viewing children. In our LawLaw, there is

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<sup>19</sup> *Ibid* , p, 162

<sup>20</sup> R, Soepomo , Customary Law of West Java, Translated by Nani Soewondo , Djambatan , Jakarta, 1997, p, 25-27,

<sup>21</sup> B, Ter Haar BZN and Safiyudin Sastrawijaya , Several Problems Concerning Juvenile Delinquency, PT, Karya Nusantara, Bandung, 1997, p, 18,



*pluralism* regarding the criteria for children, as a result of each statutory regulation regulating its own criteria for children, as follows:

According to Civil Law Article 330 of the Civil Code, children are those who have not reached the age of 21 (twenty-one) years and have not previously married.

Children in Labor Law. Article 1 (1) of the main labor law (Law No. 12 of 1948) defines a child as a man or woman aged 14 years and under.

Children according to the Marriage Law : Article 7 paragraph (1) of the Basic Marriage Law (Law No. 1 of 1974) states that a man is only permitted to marry if he has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years. Deviations from this can only be requested for dispensation from the District Court.

Children according to the Child Criminal Justice System Law ( Law No. 11 of 2012) Article 1 (3) states that (3). Children in Conflict with the Law, hereinafter referred to as Children, are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old, who are suspected of committing a crime.<sup>22</sup>

Children according to Islamic Law: According to Islamic Law, indicating whether someone is mature or not is not based on age limits, but rather based on certain signs. There are several categories of a person's development related to the obligation to carry out sharia . A person is categorized as Mukalaf, namely a Muslim male who has reached puberty. The same as a Muslim woman who is rational and mature. <sup>23</sup>A person is categorized as *baliq* , a man if he has had a dream and a woman if she has menstruated. While *Mumayid* is a small child who has not reached puberty. However, Muhammad Usman najati In the book of the Prophet's Hadith on the Science of the Soul, adolescence is categorized as the changes from childhood to adolescence, usually starting at the age of 12 to 21 years.<sup>24</sup>

Law defines a child as a child who is 12 years old but not yet 18 years old, and distinguishes children involved in a crime into three categories:

Children who are perpetrators of criminal acts (Article 1 number 3 of the SPPA Law)

Children who are victims of criminal acts (Child Victims) (Article 1 number 4 of the SPPA Law)

Children who are witnesses to criminal acts (Child Witnesses)

(Article 1 number 5 of the SPPA Law) Previously, the Law The Juvenile Court does not differentiate between categories of Child Victims and Child Witnesses. Consequently, Child Victims and Child Witnesses do not receive legal protection. This results in many crimes being unresolved or even unreported because children tend to be afraid of facing the criminal justice system.

### **Imposition of Sanctions**

According to the SPPA Law, a child perpetrator of a crime can be subject to two types of sanctions, namely action, for perpetrators of crimes under the age of 14 years <sup>25</sup>and Criminal, for perpetrators of crimes aged 15 years and over.

Sanctions Actions that can be imposed on children include:<sup>26</sup>

Return to parents/guardians

Surrender to someone

Treatment in a mental hospital

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<sup>22</sup>Darwan Prinst, Criminal Procedure Law, Djambatan, Jakarta, 1989, p, 2-4,

<sup>23</sup>Muhammad Amim Masdi, Book of Qowaid Fiqh, H, 503,

<sup>24</sup>Amin Syarif Qosim, Kibab Usul Fiqh, H, 2-6

<sup>25</sup>Article 69 paragraph 2 of the SPPA Law

<sup>26</sup>Article 82 of the SPPA Law

## Treatment at LPKS

Obligation to take formal education and/or training held by the government or private bodies

Revocation of driving license and/or

Correction due to criminal acts.

Criminal Sanctions. Criminal sanctions that can be imposed on perpetrators of child crimes are divided into Criminal

Principal and Additional Penalties:<sup>27</sup>

The main criminal penalties consist of:

Criminal warning

Criminal penalties with conditions, consisting of: outside institutional guidance, community service, or supervision

Job training

Coaching in institutions

Prison.

Additional criminal penalties consist of:

Confiscation of profits obtained from criminal acts; or

Fulfillment of customary obligations.

Law also regulates that in the event that a child under 12 (twelve) years of age commits or is suspected of committing a crime, investigators, community counselors and professional social workers will make a decision to:

Hand it back to the parent/guardian; or

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

Article 32 paragraph (2) of the SPPA Law states that detention of a child may only be carried out on the condition that the child is 14 (fourteen) years old, or is suspected of committing a crime with a prison sentence of seven years or more. If the detention period as mentioned above has ended, the child must be released from detention by LawLaw. The SPPA Law provides convenience for child witnesses or child victims in providing information in court. Witnesses/victims who are unable to attend to provide information in court for any reason may provide information outside the court hearing through electronic recording carried out by the local Community Guidance Officer, attended by the Investigator or Public Prosecutor, and Advocate or other legal aid provider involved in the case. Child witnesses/victims are also permitted to provide information through remote examination using audiovisual communication tools. When providing information in this manner, the child must be accompanied by a parent/guardian, Community Guidance Officer or other companion.<sup>28</sup>

Law allows children involved in criminal acts to obtain legal assistance regardless of the type of crime committed. Children have the right to obtain legal assistance at every stage of the examination, both in the investigation, inquiry, prosecution, and examination stages in court (Article 23 of the SPPA Law). Child Witnesses/Child Victims must be accompanied by a parent/guardian, a person trusted

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<sup>27</sup>Article 71 of the SPPA Law

<sup>28</sup>Article 58 paragraph 3 of the SPPA Law

by the child, or a social worker at every stage of the examination. However, if the child's parent is the perpetrator of the crime, then the parent/guardian is not required to accompany them.<sup>29</sup>

In Article 86 paragraph (1) of the Juvenile Justice and Prosecution Act, children who have not completed their sentence in the Juvenile Justice and Prosecution Institution (LPKA) and have reached the age of 18 (eighteen) years are transferred to a youth correctional institution. This regulation is not in Article 61 of the Juvenile Justice and Prosecution Act. However, both the Juvenile Justice and Prosecution Act regulate that the placement of children in correctional institutions is carried out by providing certain blocks for those who have reached the age of 18 (eighteen) years to 21 (twenty one) years.<sup>30</sup>

## Detention

The examination process in court also requires the defendant to be detained in order to expedite the examination process, the Judge can detain for a maximum period of 10 (ten) days, the period at the request of the Judge can be extended by submitting an application to the Head of the District Court for a maximum of 15 (fifteen) days, if within the period of 15 (fifteen) days has expired and the Judge has not issued a decision, then the child must be removed by LawLaw (Article 35 of the Law on the Juvenile Criminal Justice System), then during the examination process there is a submission of evidence, then the confiscation of evidence in the child's case must be determined no later than 2 (two) days by the Head of the Court.<sup>31</sup>

Article 37 of the Child Criminal Justice System Law stipulates that in the case of detention carried out for the purposes of examination at the appeal level, the Appellate Judge may carry out detention for a maximum of 10 (ten) days, then at the request of the Appellate Judge may be extended by the head of the high court for a maximum of 15 (fifteen) days. If the period of 15 (fifteen) days and paragraph (2) has expired and the Appellate Judge has not yet issued a decision, the child must be released by Law.

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 instructions and implementation ( *Juklak* ) and technical instructions ( *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. The Juvenile Criminal Justice System Law stipulates that:

Arrest of a child is carried out for investigative purposes for a maximum of 24 (twenty four) hours;

Children who are arrested must be placed in a special child service room;

In the event that there is no special service room for children in the area concerned, the child is placed in LPAS;

Arrests must be carried out humanely, taking into account needs appropriate to their age;

The costs for each child placed in LPAS are charged to the budget of the ministry that handles government affairs in the social sector.

The arrest attempt carried out by an investigator against a child must apply the principle of presumption of innocence in order to respect and uphold the dignity and honor of the child and must also be understood as a person who is not yet able to understand the legal problems that occur to him. An investigator who makes an arrest attempt, in addition to applying the principle of presumption of innocence, must also pay attention to the rights of the child as a suspect, such as the right to receive legal assistance at every level of examination according to the procedures determined

<sup>29</sup>Article 23 Paragraph 3 of the SPPA Law

<sup>30</sup>Explanation of Article 86 paragraph 2 of the SPPA Law and Explanation of Article 61 paragraph 2 of the Juvenile Court Law

<sup>31</sup>Article 36 of the Juvenile Criminal Justice System Law

by the Law (Article 54 of the Criminal Procedure Code ).<sup>32</sup>The procedure that will be implemented after the arrest attempt is carried out continues with the detention attempt. Detention is the placement of a suspect or defendant to a certain place by a Child Investigator or Child Public Prosecutor or Child Judge with a determination in terms of and according to the methods regulated in the Criminal Procedure Code Law and the Juvenile Criminal Justice System Law .

A child undergoing a detention process must still have their physical, spiritual and social needs met, in addition the child's safety must also be met which is given in the form of placing 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).<sup>33</sup>Detention carried out by the Public Prosecutor is carried out in order to facilitate prosecution efforts, however the detention period is carried out for a maximum of 5 (five) days. The detention period at the request of the Public Prosecutor can be extended by the District Court Judge for a maximum of 5 (five) days, then if the 5 (five) day period has expired, the child must be released by LawLaw.<sup>34</sup>Detention is forced to be carried out for the purposes of examination at the cassation level, the Cassation Judge can carry out detention for a maximum of 15 (fifteen) days and can be extended for 20 (days) at the request of the Cassation Judge by the Chief Justice of the Supreme Court. In this case the period has expired and the cassation judge has not yet issued a decision, the child must be released by LawLaw.<sup>35</sup>

## CONCLUSION

increasing involvement of children in serious crimes and the need for a balanced criminal justice system between child protection and justice for victims, Indonesia has Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) which regulates the juvenile criminal justice system. This SPPA Law seeks to protect children's rights in the criminal justice process, while ensuring justice for victims. However, the implementation of the SPPA Law still faces challenges, the need for reconstruction of the juvenile criminal justice system that pays more attention to the interests of victims, because the current system tends to focus more on protecting children as perpetrators, so that the interests of the victims are often neglected. The author argues that the child criminal system in Indonesia should be revised to achieve a balance between child protection and justice for victims. The revision should include aspects such as diversion, action sanctions, criminal sanctions, detention, and legal aid.

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<sup>32</sup>Romli Atmasasmita , Juvenile Justice in Indonesia, Bandung, Mandar Maju, 1997, p. 166,

<sup>33</sup>M, Nashir Djamil , Children are not to be punished, Jakarta, PT SinarGrafika , 2012, p, 157,

<sup>34</sup>Article 34 of the Juvenile Criminal Justice System Law

<sup>35</sup>Article 38 of the Juvenile Criminal Justice System Law

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