



JURIDICAL ANALYSIS OF MINORS WHO COMMIT THE CRIME OF MURDER

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Abstract: The aim of this research is to clarify the handling of criminal acts where the perpetrator is a minor, especially the crime of murder, and to clarify the application of the juvenile criminal justice system (SPPA) in prosecuting criminal acts committed by children. As a rule of law, Indonesia regulates all the lives of its citizens. country through applicable laws and regulations. The current laws do not provide justice to all Indonesian people without discrimination. As criminal acts committed by minors occur in society, especially in Indonesia, applicable law enforcement is different from criminal law in general. To overcome this problem, there is a special law that regulates it, SPPA (Juvenile Criminal Justice System). It would be more effective to use punitive sanctions and behavioral sanctions simultaneously (two-track principle). Efforts to divert at all stages of the investigation and limit prison sentences and recidivism. Article 8 concerns parties participating in diversion activities through advisory procedures and the diversion principles in Article 9.

Abstrak: Tujuan penelitian ini adalah untuk memperjelas penanganan tindak pidana yang pelakunya masih di bawah umur, khususnya tindak pidana pembunuhan, dan untuk memperjelas penerapan sistem peradilan pidana anak (SPPA) dalam penuntutan tindak pidana yang dilakukan oleh anak itu Sebagai negara hukum, Indonesia mengatur seluruh kehidupan warga negaranya melalui peraturan perundang-undangan yang berlaku. Undang-undang yang berlaku saat ini tidak memberikan keadilan kepada seluruh rakyat Indonesia tanpa pandang bulu. Sebagaimana tindak pidana yang dilakukan oleh anak di bawah umur terjadi di masyarakat khususnya di Indonesia, maka penegakan hukum yang berlaku berbeda dengan hukum pidana pada umumnya. Untuk mengatasi masalah tersebut, ada undang-undang khusus yang mengaturnya,

SPPA (Sistem Peradilan Pidana Anak). Akan lebih efektif jika menggunakan sanksi hukuman dan sanksi perilaku secara bersamaan (prinsip dua jalur). Upaya pengalihan pada semua tahap penyidikan dan pembatasan hukuman penjara dan residivisme. Pasal 8 menyangkut pihak-pihak yang ikut serta dalam kegiatan diversifikasi melalui prosedur penasehatan dan prinsip-prinsip diversifikasi pada Pasal 9.



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INTRODUCTION

Criminal cases involving a child, regardless of whether it is positioned as a victim or a perpetrator. In this case, the position of the child as the intensity of the carrier's pain can be described as very sad and immoral. As a legitimate country, Indonesia has a strong legal system that sometimes serves as the basis for all laws and regulations is applicable in this country, specifically the Constitution of the Unitary Republic of Indonesia from 1945 onwards. In Indonesia, there are laws with the aim of advancing the interests of the general public. Public law in Indonesia is divided into two categories: public law and private law. The law in question is divided into various parts, which include civil law and criminal law. Criminal law is described as all of the natural law that is important to actually say and do in criminal cases, as well as the rules applied to criminal cases that are pursued.¹

Prof. Moeljatno, S.H. emphasized that natural law is one of the three main categories of law is valid in every nation, derived from natural law and basic law for:²

1. Educate those who violate the above rules about what they may not be able to do by using sanctions or threats that have a strong spiritual connection.

¹ Leden Marpaung, *Asas-Teori-Praktik Hukum Pidana* (Jakarta: Sinar Grafika, 2012).

² Arista Candra Irawati, "Politik Hukum Dalam Pembaharuan Hukum Pidana (Ruu Kuhp Asas Legalitas)," *ADIL Indonesia Journal* 1, no. 2 (30 Desember 2019), <https://jurnal.unw.ac.id/index.php/AIJ/article/view/369>.

2. Educating people on what to do and when to do it for those who make changes to the established rules of the game.
3. Outlining the imposition of punishments that can be made for those who are perceived to be victims of such prohibitions.

Crime is also described as aspects of criminal observation, pedant production, and criminal observation. We also discuss the concept of health, where the health effects of all things that come into contact with rules or methods; however, not everything that comes into contact with rules or methods is classified as health. The population in Indonesia is of various genders, religions, ethnicities, and ages.³

There are people who are below the surface, such as teenagers, adults, and even older age. According to documents from the World Health Organization (also known as WHO), children are considered vulnerable from birth to 19 years of age. Article 1 Paragraph 1 of Law No. 23 of 2002, Child Protection, states that a person under the age of 18 is considered a minor. In addition, according to Article 330 of the Law on the Protection of Human Rights (KUHP), children are under 21 years old and unmarried.

Children view childhood as a formative period where they learn a lot of information from birth to adulthood. The importance of providing the best education for children cannot be overstated, as children are the future of the country's clan. Education is not merely about forming an intelligent, clever and skillful person, it is also about having good moral salient.⁴

In the field of law, minority issues are particularly important because minority individuals tend to have a disadvantage in terms of their ability to apply the law. People also make determinations as to whether or not a person can be considered a legal subject. Different perspectives of early age are expressed in different ways. For example, based on Article 45 of the Criminal Code, a child is classified as 16 years old and below:

³ Amir Ilyas, *Asas-asas Hukum Pidana: Memahami Tindak Pidana dan Pertanggungjawaban Pidana sebagai Syarat Pemidanaan* (Yogyakarta: Rangkang Education Yogyakarta & PuKAP-Indonesia, 2012).

⁴ Hariadi Cakti, Hambali Thalib, dan Sitti Ulfah, "Tinjauan Kriminologis Terhadap Delik Pembunuhan Yang Dilakukan Oleh Anak (Studi Polres Gowa)," *Qawanin Jurnal Ilmu Hukum* 3, no. 1 (2022), <https://doi.org/10.56087/qawaninjih.v3i1.377>.

1. Based on Article 47 of Nonir 1 of 1974 concerning inheritance, it is stated that a will can only be accepted if the donor parent is at least 19 years old and the recipient parent is at least 16 years old.
2. In paragraph 1 of Article 26 of Law No. 13 of 2023, which deals with employment, it is stated that a child is defined as an individual who is under the age of eighteen years.
3. In accordance with Regulation No. 11 of 2012 on the protection of minors, paragraphs 1 to 5 state that a minor is defined as a person between the ages of one and eighteen.
4. Based on the 2014 Child Rights Act No. 35, which defines “adoptee” as a person who is not yet 18 years old and an infant who is mainly in the brand's protective environment.

Under the dating law, the minimum age at which a person can be tested is 18 years old. If the test taker is found to be at least 18 years old, the test will be conducted in a special way under the Juvenile Justice System (SPPA), where children who have reached the age of 12 and at least 18 years old can be admitted under SPPA. Within 6 months, children under 12 years of age are entitled to be returned to their parents/guardians for guidance, education and LPKS guidance in the social sector.

As a comparison with this research, the researcher presents some of the minors who commit criminal acts of murder have been carried out by several researchers as a research gap, research from Dia Nopita, Wira Marizal. (Journal of Pro Justice, Vol. 2, No. 1, April 2024) with the title “Juridical Review of Minors as Criminal Offenders in Review of Indonesian Criminal Law and Malaysian Criminal Law”. The results showed that the sanctions that can be imposed on criminal offenders are criminal sanctions and action sanctions. Further research was conducted by Johannes Mangapul, Juliana Priska Dewi Sagala, Hellen Br Sembiring, Success Marhasak Penungkunan Siburian. (Prima Journal of Legal Sciences, Vol. 7, No. 1, April 2024) This research is entitled “Juridical Analysis of the Crime of Premeditated Murder Committed by Minors”. The results showed that the law stipulates that children in conflict

with the law must receive treatment that takes into account aspects of age, the best interests of the child, and prioritizes avoiding children from the criminal justice process by prioritizing restorative justice and diversion.

Maksud dalam penulisan ini, untuk mengetahui pandangan antara Mazhab Hanafi dan Mazhab Hanbali tentang hukum meminum *urine* unta sebagai medikasi. Mengetahui metode *istinbath* hukum antara Mazhab Hanafi dan Mazhab Hanbali terhadap hukum meminum *urine* unta sebagai medikasi.

RESEARCH METHOD

Normative juridical method applied. Normative or doctrinal legal studies use data from books and other sources to solve research problems, laws, and expert opinions related to the subject of investigation. Conducting research to improve and produce scientific understanding in the discipline of law.⁵

DISCUSSION

Child Support Arrangements Involving the Crime of Murder

This statement, which states “The State of Indonesia is a state of law,” is taken from Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945).⁵ A recognized state of law is one that has developed the rule of law is to achieve equality and justice, and has no power based on unresolved. The main source of creating order based on law is the 1945 Constitution, which accords with state order and provides justice is the life of the Indonesian state which is a state of law.”⁶

The main purpose of the law is to protect the human rights and constitutional rights of citizens. This protection extends to children. The main purpose of the law is to protect the human rights and constitutional rights of citizens. This protection extends to children. It is necessary to provide protection for children until they reach adulthood. The principles of restorative justice are taught in the principles of SPPA. The concept of restorative justice, sometimes known as “mulihan” or “restorative justice,” is a new paradigm for

⁵ Syamsiar Arief, “Tinjauan Yuridis Terhadap Tindak Pidana Pembunuhan Berencana Yang Dilakukan Oleh Anak,” *PETITUM* 4, no. 1 April (14 April 2016): 65–72.

⁶ Teguh Prasetyo, *Hukum Pidana* (Jakarta: Rajawali Pers, 2020).

resolving criminal cases. The law on juveniles was amended in Regulation No. 11 of 2012 on the Child Protection System. Part 2 and 3 of Article 11 of Law No. 11 of 2012 concerning the child protection system, there is also information about children in conflict with the law, specifically: children in conflict with the law, children who are legal guardians, and children who are victims of the law. A baby in conflict with the law, referred to as a child, 11 is a person who can have reached the age of twelve (two years), until before reaching the age of eighteen (four years), and who is not involved in any form of prohibited activity.”

The term “punishment” can be understood to be a process in punishment, where the emphasis is on deterrent effect is to maximize and implement the aspects mentioned above, a method is needed, namely applying laws or sanctions to individuals involved in violations and crime laws. The three theories of punishment are absolute, relative, and combined. The Absolute Theory, also known as the Retaliation Theory, states that retribution is a piece of cake; the Relative Theory, also known as the Purpose Theory, or punishment, is a tool used to assess the status of law in society; the Combined Theory is the union of the balance theory and the purpose theory. The theory is divided into two parts (the emphasis in the theory of balance and the emphasis in the business of improving order in society.⁷ The best interests of the child in the future must be taken into account by granting criminal responsibility to the child.

In Indonesia, the application of criminal sanctions against children is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Sanctions that can be imposed on juvenile offenders are criminal sanctions and action sanctions.

a. Criminal Sanctions

Criminal sanctions that can be imposed on juvenile offenders are in the form of principal punishment and additional punishment, as follows:

⁷ Teguh Prasetyo, *Kriminalisasi dalam Hukum Pidana* (Jakarta: Nusa Media, 2014).

1) Principal Punishment

The main punishment that can be imposed on children as perpetrators of criminal acts is regulated in Article 71 paragraph (1) of Law No.11/2012 on Juvenile Criminal Justice System consists of:

- a. Warning punishment
- b. Punishment with conditions (punishment outside the institution, community service, and supervision)
- c. Job training
- d. Guidance in an institution
- e. Prison

2) Additional Penalty

Additional punishment that can be imposed on juvenile offenders is regulated in Article 71 paragraph (2) of Law No.11/2012 on Juvenile Criminal Justice System consists of deprivation of benefits obtained from criminal acts and fulfillment of customary obligations.

b. Action Sanctions

Action sanctions that can be imposed on juvenile offenders are regulated in Article 82 of Law No.11/2012 concerning the Juvenile Criminal Justice System, as follows:

1) Measures that may be imposed on children include:

- a. Return to parents/guardians
- b. Handover to someone
- c. Treatment in a mental hospital
- d. Treatment at LPKS
- e. Obligation to attend formal education and/or training organized by the government or private entities
- f. Revocation of driving license
- g. Correction of the consequences of the criminal offense

2) The measures as referred to in paragraph (1) letter d, letter e, and letter f shall be imposed for a maximum of 1 (one) year.

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- 3) The measures as referred to in paragraph (1) may be submitted by the Public Prosecutor in his/her prosecution, except for criminal offenses with a minimum imprisonment of 7 (seven) years.⁸

An unfocused act is only one specific act at a time. According to the Penal Code, the act of damaging the life of another person can be a variety of things, such as hitting, hacking, shooting, and moving limbs. Paragraph 338 mentioned above also states that there will be a consequence for this, which is the loss of one's (another's) life. Paragraph 338 above also states that each element of intent that needs to be dealt with in detail must be broken down into three parts, namely: overall intentionally because of belief in necessity and certainty and possibility".⁹ Criminal punishment for children is provided by the Criminal Code (*lex generalis*) and Law No. 11 of 2012 In the juvenile criminal justice system, special laws stipulate that the punishment for children is part of the maximum adult punishment. In addition, recommended sentences based on age are as follows: children aged twelve years old (two siblings) to 18 years old may be subject to punishment, and children aged 8 to 12 years old will only be subject to sanctions.

The Act stipulates that in the area of child custody proceedings involving the law, it is mandatory to spend as little time as possible on diversified proceedings, as stated in paragraph 5(3). Adoption is referred to as a last resort. For example, best practices for children with legal land rights are found in international legal instruments such as the Beijing Rules, Riyadh Guidelines, and UN regulations to protect children from abuse.

Law No. 35/2014 provides a broader and more detailed definition of what child abuse is. It includes all forms of physical, psychological, sexual, and neglectful mistreatment, including threats to commit such acts, exploitation, or other mistreatment that causes physical and/or psychological harm to children. The Law also increases the range of sanctions for perpetrators of

⁸ Johannes Mangapul Turnip dkk., "Analisis Yuridis Tindak Pidana Pembunuhan Berencana Yang Dilakukan Oleh Anak Di Bawah Umur," *Ilmu Hukum Prima (IHP)* 7, no. 1 (30 April 2024): 118–24, <https://doi.org/10.34012/jihp.v7i1.5374>.

⁹ Prasetyo, *Hukum Pidana*.

violence against children, including imprisonment and fines, with the aim of providing a deterrent effect and reducing the number of crimes against children. One important aspect of this Law is the increased protection of children in conflict with the law, both as victims and perpetrators of criminal acts. The law stipulates that children in conflict with the law must receive treatment that takes into account the age aspect, the best interests of the child, and prioritizes the avoidance of children from the criminal justice process by promoting restorative justice and diversion. This means that the legal system is expected to focus more on child rehabilitation rather than punishment.¹⁰

International human rights law, such as the Beijing Rules (the United Nations Standard Minimum Rules for the Administration of Juvenile Justice), clarify and emphasize that a good foster care system is obliged to prioritize the welfare of the child and ensure that no response, no matter how minor, to a parent or child classified as an offender will be consistent with the rights of the offender or offspring, and the child can only be prevented from harm by complying with international human rights law: The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty provide that a child's developmental system must take into account their right to privacy, dignity, and respect for others. According to the United Nations Rules for the Protection of Children Deprived of Liberty, the juvenile justice system is responsible for safeguarding the rights and safety of children to the extent of promoting their physical and mental well-being. The Riyadh Guidelines, paragraph 54, further state that no child or adult should ever be considered an obstructive member of the family. For children it is against the law for adoption agreements made when they are 14 years old and up to 18 years old, they must proceed through the court process.

The judge's analysis is based on the SPPA Law and the sentence is fixed (1/2 of the adult sentence) as well as when imprisonment is issued (as a last resort) As recognized is the parent, so as a result of the best interests of the

¹⁰ Masyhur Masyhur, "Tinjauan Yuridis Tindak Pidana Pembunuhan yang Dilakukan oleh Anak," *GANEC SWARA* 12, no. 2 (26 September 2018): 8–14, <https://doi.org/10.35327/gara.v12i2.34>.

child, should be in a juvenile correctional facility in relation to the quantity and quality of infrastructure and care to be provided, as well as the need to respect and uphold the rights of the child as an individual. The penalties and forms of fines for juvenile offenders are outlined in Law No. 11/2012, starting with Article 69 and ending with Article 83, which relates to criminal acts and offenses. Based on Article 338 of the Criminal Code, "Whoever with deliberate intent takes the life of another person, shall, being guilty of murder, be punished by a maximum imprisonment of fifteen years," children are sentenced to imprisonment for -/+ 7.5 years.

Moreover, the victims are parents. It is even more effective if sanctions are applied simultaneously in accordance with the principle of the Double Track System. It is up to the judge to handle the case based on various considerations, including the age of the defendant, whether there are necessary criminal elements, the quality of valid evidence, the opinion of the judge, and the elements that aggravate or mitigate the defendant. According to the Community Research Report (Litmas) made with BAPAS, parents, foster parents, or guardians must inform the victim or his/her family at the trial.

How the Juvenile Justice System Law Regulates Diversity for Children in Conflict with the Law

In the SPPA that addresses diversity is Article 6 outlining the purpose of diversion. As per Article 7, it is important to ensure diversity in any meetings and discussions regarding recidivism and sentencing rates. Article 8 emphasizes the importance of participating and diversifying efforts to promote deliberative processing and the principle of diversion. Section 9 describes the procedures used by law enforcement to diversify and diversify agreements.

In Paragraph 14 Clause (1), it is explained that the observation of the diversification process and the results of the agreement are based on the tacit observation of the participants who are fully committed to each stage of the process. According to Clause (2), during the entire diversification process up to the point of implementation, the Community Supervisor is required to carry out assistance, guidance and supervision. As mentioned in Paragraph (1), the

Community Supervisor shall immediately report to the responsible official in the event that this agreement is not implemented within the specified time. In paragraph (4), it is explained that students who follow the guidelines as stated in paragraph (3) must complete the task within the shortest possible time of seven (seven) days.

When it comes to a child who has been taken into police custody, diversion can be done by the police (discretionary) by bringing the child up to date with the attorney general. Thereafter, if the case has reached the drafting stage, the magistrate should be happy with the magistrate's decision to undertake treatment in accordance with the guidelines and to protect the child from being harmed by the jarring of the prison. If the child, as stated, is ill and unable to communicate effectively, so that the child ends up in the juvenile prison, then the juvenile prison caregiver can create a different type of treatment for the child so that the child is transferred to an alternative social group or school that is more useful when the child grows up.¹¹

CONCLUSION

Providing an accompanying criminal offense with whether the outcome with the victim is dead or alive (in good health). As a result of their greater effectiveness in addressing the issues that matter most to children, the implementation of the Dual Track System (also known as the Criminal and Action sink) has also been shown to be beneficial for infant care. The purpose is, on the face of it, to address the first legal case involving a child in conflict with the law; in particular, the first resort is concerned with achieving restorative excellence and fish-naming as a last resort. However, if the child's behavior falls outside the scope of the SPPA Bylaws, the diversion process cannot be used to excuse the child's behavior in accordance with the diversion guidelines.

As to create legal certainty and regulate the double track sanction system against children in the SPPA Law, the Juvenile Criminal Law regulates the crime of murder and other serious crimes explicitly. Guidance for government

¹¹ Fransiska Novita Eleanora, "Sistem Pemidanaan Terhadap Anak yang Melakukan Tindak Pidana," *Lex Journalica* 10, no. 3 (2013), <https://doi.org/10.47007/lj.v10i3.364>.

policy, law enforcement, and the general public in improving the childcare system, particularly the importance of restorative and integrative therapy in raising children in conflict with the law. Law Enforcement Officials should seek imprisonment as a last resort, and systematically collect restorative justice is the dependency of diversion in juvenile case reviews.

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