

Legal Analysis of the Application of Rehabilitation Based Particular Deterrence in the Concurrent Crimes by Children

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Abstract

Handling concurrent criminal acts (*concursum*) by children still faces an inaccurate approach to punishment between the prevention and protection aspects of children's rights. The dominance of the retributive approach results in less than optimal efforts to reduce child recidivism sustainably. This study aims to analyze the concept, legal basis, and application of rehabilitation-based particular deterrence in judges' considerations in juvenile court decisions. This study uses a normative juridical method with analytical descriptive specifications. The approach used includes legislative, conceptual, and case approaches to juvenile court decisions. Primary legal materials include Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Law Number 35 of 2014 concerning Child Protection, *concursum* regulations in the Criminal Code, and Law Number 1 of 2023. The analysis was conducted qualitatively through normative interpretation and synchronization with judicial practice. The results of the study indicate that the application of rehabilitation-based particular deterrence plays a strategic role in handling *concursum* by emphasizing the development and change of children's behavior. This approach is capable of reducing the risk of recidivism while also embracing the principle of the best interests of the child. However, its implementation is inconsistent in judges'



considerations, particularly regarding proportionality of punishment and the integration of rehabilitative aspects. Thus, the lack of synchronization between norms and practices has the potential to undermine the effectiveness of juvenile sentencing objectives.

KEYWORDS:

Concurrence Of Criminal Acts; Children; Particular Deterrence; Rehabilitation.

Introduction

The involvement of children in crime is a problem influenced by social, economic, and environmental factors, such as poverty, parental unemployment, and limited access to education and social facilities¹. Children who grow up in vulnerable environments tend to be exposed to deviant social interactions, family dysfunction, and experiences of violence that shape psychological conditions that encourage criminal behavior². In this case, children are not only positioned as perpetrators, but also as victims of social conditions that do not support their development. Data shows that children are not only involved in minor crimes, but also serious crimes which in practice often occur in the form of concurrent criminal acts (*concursum*), namely more than one crime in a single series of events³. This phenomenon shows the urgency of the need for a handling approach that is not only oriented towards punishment, but also on the protection and development of children. Legally, the concurrent nature of criminal acts (*concursum*) is regulated in the old Criminal Code (Law Number 1 of 1946) Articles 63–71, which classifies idealistic *concursum*, continuing acts, and

¹ Eben Ezer Simanjuntak, "Tinjauan Yuridis Tindak Pidana Pencurian Yang Dilakukan Oleh Anak Secara Bersama-Sama Di Wilayah Hukum Kepolisian Sektor Jambi Luar Kota (Sudi Kasus Putusan Nomor 3/Pid.Sus-Anak/2024/PN.Snt)" (Batanghari, 2025).

² Mohamad Revaldy Fairuzzen, Asmak UI Hosnah, and Abil Arya Putra, "Menelusuri Akar Masalah: Faktor Penyebab Angka Kriminalitas Anak Di Bawah Umur," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 2024, 1947–57.

³ Fredella Bunga Filonia, "Penerapan Restorative Justice Terhadap Anak Dalam Perspektif Sistem Peradilan Pidana Anak Di Indonesia," *Jurnal Hukum in Concreto* 3, no. 2 (2024): 98–113, <https://doi.org/10.63494/eksishum.v4i1.130>.

realistic concursus. This has been updated in the new Criminal Code (Law Number 1 of 2023) Articles 125–128 as part of the reformulation of criminal law policy. However, these regulations are still oriented towards punishment and therefore do not fully accommodate the needs of child protection. This indicates the need to integrate the criminal law approach with the principles of child protection in the justice system.

Several previous studies have demonstrated the importance of a rehabilitative approach in handling children in conflict with the law. Faried Alwafi Utama research (2021) emphasized that social rehabilitation plays a role in the comprehensive recovery of children's physical, psychological, and social conditions⁴. Wahyudin's research (2024) demonstrated that a rehabilitation approach is more effective than criminalization in supporting the social reintegration of child drug offenders⁵. Humaira's research (2025) discussed the concurrent criminal acts committed by children from a legal perspective, but did not yet link it to a specific prevention approach⁶. Furthermore, research by Qatrunada (2024) and Nuriyah (2024) found that juvenile criminalization practices are still dominated by imprisonment, despite a trend toward a more humane approach⁷. Globally, the rehabilitation approach has also been recognized as an effective strategy in the juvenile justice system to reduce recidivism rates and support social

⁴ Faried Alwafi Utama, "Analisis Rehabilitasi Sosial Terhadap Anak Berhadapan Dengan Hukum Di Lpks-Abh Banda Aceh" (UNIVERSITAS ISLAM NEGERI (UIN) AR-RANIRY DARUSSALAM, 2021).

⁵ Wahyudin, "Rehabilitasi Pelaku Tindak Pidana Narkotika Anak Di Badan Narkotika Nasional Kabupaten Bogor (BNNKB)" (UIN SYARIF HIDAYATULLAH JAKARTA, 2024).

⁶ Fathiya Rizka Humaira, "Perbarengan Tindak Pidana (Studi Kasus Anak Sebagai Pelaku Tindak Pidana Di Desa Babulu Laut , Kal- Tim)" (LAMBUNG MANGKURAT KEMENTRIAN, 2025).

⁷ A. Adilah Qatrunada.W, "Tinjauan Yuridis Terhadap Tindak Pidana Pencurian Dengan Kekerasan Dalam Keadaan Memberatkan Terhadap Anak Yang Dilakukan Oleh Anak ((Studi Kasus Putusan Nomor 53/Pid.Sus-Anak/2023/PN PLG)" (UNIVERSITAS HASANUDDIN, 2024); Liyana Nuriyah, "ANALISIS PEMIDANAAN ANAK SEBAGAI PELAKU PENYERTAAN TINDAK PIDANA PENCURIAN DISERTAI DENGAN ANCAMAN KEKERASAN PERSPEKTIF HUKUM POSITIF DAN HUKUM PIDANA ISLAM (Studi Kasus Terhadap Putusan Nomor 2/Pid.Sus-Anak/2021/PN Lmj)" (UNIVERSITAS ISLAM NEGERI KIAI HAJI ACHMAD SIDDIQ JEMBER, 2024), [https://digilib.uinkhas.ac.id/33608/1/Ananda Putri Damayanti_204102020002..pdf](https://digilib.uinkhas.ac.id/33608/1/Ananda%20Putri%20Damayanti_204102020002..pdf).

reintegration⁸. Although these studies have made important contributions, they are limited by the lack of studies on the integration of the concept of particular deterrence with the rehabilitation approach, particularly in cases of concurrent criminal acts committed by children. Furthermore, research specifically addressing the application of these concepts in judicial considerations in juvenile court decisions is still limited. This indicates a gap between criminal theory, normative regulations, and judicial practice. In judicial practice, the application of these provisions is heavily influenced by the judge's considerations in juvenile court decisions. Judges have the authority to determine the type of sanction, taking into account the child's condition and background, but in some decisions, they still tend to be oriented toward imprisonment. This is not fully in line with Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which emphasizes restorative justice and makes imprisonment a last resort, and Law Number 35 of 2014 concerning Child Protection, which mandates rehabilitation and social reintegration.

From a theoretical perspective, the concept of deterrence positions punishment as a means of crime prevention, while particular deterrence focuses on preventing the perpetrator from repeating criminal acts⁹. Integrating this concept with rehabilitation is crucial so that the punishment of children not only provides a deterrent effect but also encourages sustainable behavioral change. Therefore, this study is novel in examining the relationship between particular deterrence and rehabilitation in the context of concurrent criminal acts by children and its application in judicial considerations. Therefore, this study aims to analyze the concept and legal basis for the application of rehabilitation-based particular deterrence and its application in juvenile court decisions, which also emphasizes the

⁸ Fatri Sagita and Noercholis Rafid, "Pendekatan Rehabilitatif Dalam Penanganan Anak Pelaku Tindak Pidana," *Jurnal de Jure* 16, no. 2 (2024), <https://m.tempo.co/read/news/2015/01/13/0786345>.

⁹ Cesare Beccaria and Voltaire, *Tentang Kejahatan Dan Hukuman* (M. Nur Prabowo S, Transliterasi Dan Interpretasi), ed. Maslahatur Rahmah Yusman, Cetakan ke (Yogyakarta: Lintas Nalar, CV, 2017).

significance of research in developing a more humane and preventive juvenile punishment system. Therefore, a more comprehensive study is needed to examine the relationship between the concept of particular deterrence and the rehabilitative approach in the juvenile criminal justice system, particularly in the context of handling concurrent criminal acts. This is important considering the suboptimal integration between the objectives of specific prevention and efforts to rehabilitate children in judicial practice, which has the potential to affect the effectiveness of efforts to overcome recidivism. Furthermore, the lack of consistency in judges' considerations regarding the application of a particular deterrence-based rehabilitative approach indicates a gap between legal norms and their implementation in the field. To address this issue, this study aims to analyze in-depth the concept and legal basis of rehabilitation-based particular deterrence in handling concurrent criminal acts by children, as well as examine the forms and patterns of its application in judges' considerations in juvenile court decisions. This analysis also aims to assess the extent to which this approach is implemented consistently and proportionally in judicial practice, as well as its implications for the protection of children's rights and the prevention of reoffending.

Therefore, this study is expected to not only provide a more systematic conceptual and legal understanding but also contribute to identifying implementation weaknesses and offer a basis for strengthening the integration of preventive and rehabilitative approaches in the juvenile criminal justice system.

Methods

The method used is descriptive-qualitative normative legal research with a focus on the study of the concept and legal basis for the application of rehabilitation-based special prevention in handling concurrent criminal acts by children through a regulatory, contextual, and case approach¹⁰. Primary legal materials include Law No. 11 of 2012 (SPPA), Law No. 35 of 2014 (Child Protection), Law No. 1 of 1946 and Law No. 1 of 2023 (Criminal Code) related to concurrence, as well as juvenile court decisions from the Supreme Court of the Republic of Indonesia's decision directory. Secondary and tertiary legal materials were obtained virtually through the Google Scholar, ScienceDirect, and JDIHN databases to clarify technical definitions¹¹. Data collection was carried out through literature and document reviews with systematic stages starting from inventory, norm identification, to data classification according to problem relevance¹². Furthermore, data analysis used a normative qualitative method with a deductive approach through the stages of norm description, interpretation, vertical-horizontal synchronization, and thematic analysis to produce comprehensive and systematic legal conclusions¹³.

Result and Discussion

¹⁰ Urip Sulistiyo, *Buku Ajar Metode Penelitian Kualitatif* (Jambi: PT Salim Media Indonesia, 2023), https://books.google.co.id/books?hl=id&lr=&id=nJm8EAAQBAJ&oi=fnd&pg=PP1&dq=Sulistiyo,+2023&ots=GGIOhlwuev&sig=n_zAUrBuP_kmh7PFeY7li4KLhFk&redir_esc=y#v=onepage&q&f=false.

¹¹ Muhaimin, *METODE PENELITIAN HUKUM* (Mataram University Press Jln. Majapahit No. 62 Mataram-NTB Telp. (0370) 633035, Fax. (0370) 640189, Mobile Phone +6281917431789 e-mail: upt.mataramuniversitypress@gmail.com, 2021).

¹² Nur Solikin, *Pengantar Metodologi Penelitiann Hukum*, ed. Tim Qiara Media, cetakan pe, vol. 2 (CV. Penerbit Qiara Media, 2021).

¹³ Wiwik Sri Widiarty, *Buku Ajar Metode Penelitian Hukum, RISTANSI: Riset Akuntansi* (Publikas Global Media, 2024), <http://repository.uki.ac.id/14688/1/BukuAjarMetodePenelitianHukum.pdf>.

1. The Concept And Legal Basis For The Implementation Of Rehabilitation-Based Particular Deterrence In Handling Criminal Acts By Children.

The development of criminal law terminology, "special deterrence," is often used interchangeably with "particular deterrence." Although the term is not explicitly used, the latter term has developed in modern literature, particularly in the Anglo-Saxon tradition, to emphasize that the target of deterrence is directed at a specific individual (particular offender). Nevertheless, both essentially share the same meaning individualized deterrence against the offender. The concept of particular deterrence in criminal law essentially refers to preventive efforts aimed directly at the offender to prevent them from repeating their actions in the future. In modern criminology, special deterrence is understood as the effect arising from the offender's experience after being sentenced. This experience is expected to have a deterrent effect and change the offender's behavior. This aligns with the view that particular deterrence works through the offender's personal experience of the suffering or consequences of the punishment imposed, thereby encouraging the offender to refrain from reoffending¹⁴. The concept of deterrence is rooted in the thoughts of Cesare Beccaria who emphasized that the main purpose of punishment is to prevent the perpetrator from committing a crime again and to prevent others from committing the same act¹⁵. This thought was later developed by Jeremy Bentham through the theory of utilitarianism which emphasizes that humans act based on rational considerations between pleasure and pain, so that a person will tend to avoid actions that cause harm to themselves. Thus,

¹⁴ Athula Pathinayake, "Contextualizing Specific Deterrence in an Era of Mass Incarceration," *Connecticut Public Interest Law Journal* 18 (2018): 357, <https://cpilj-law.media.uconn.edu/wp-content/uploads/sites/2515/2020/03/CPILJ-18.2-Contextualizing-Specific-Deterrence-in-an-Era-of-Mass-Incarceration-by-Athula-Pathinayake.pdf>.

¹⁵ Beccaria and Voltaire, *Tentang Kejahatan Dan Hukuman* (M. Nur Prabowo S, Transliterasi Dan Interpretasi).

punishment must be designed in such a way that it provides more detrimental consequences than benefits obtained from the crime, so that the perpetrator will reconsider his actions in the future¹⁶.

Furthermore, in empirical studies, deterrence is not only related to the threat of punishment, but also the actual experience of the perpetrator after serving the sentence. Daniel S. Nagin explains that in addition to the threat of punishment, there is also the effect of the experience of punishment which is specifically related to specific deterrence or particular deterrence, namely how the experience affects the possibility of the perpetrator to repeat the crime. However, research also shows that the effectiveness of specific deterrence does not always depend on the severity of the punishment but rather, more on the certainty and perception of the possibility of being caught, which actually has a stronger influence in preventing crime¹⁷. Based on the thoughts of Cesare Beccaria and Jeremy Bentham regarding deterrence, and developed in modern studies by Johannes Andenaes, Zimring, Hawkins, and Nagin. Effectiveness (particular deterrence) can be measured through several main indicators¹⁸, namely the change in the perpetrator's behavior which is marked by not committing the crime again, the ability of punishment to influence the perpetrator's way of thinking, especially in making rational calculations between the benefits and disadvantages of an action, the proportionality of sanctions that can have a deterrent effect without exceeding the limits of humanity, as well as the certainty and consistency of law enforcement that strengthens the deterrent effect. This indicator is an elaboration of the concept of deterrence which emphasizes changes in the perpetrator's behavior and perception of the risk of punishment, which shows that the

¹⁶ Endang Pratiwi, Theo Negoro, and Hassanain Haykal, "Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum Atau Metode Pengujian Produk Hukum?," *Jurnal Konstitusi* 19, no. 2 (2022): 268, <https://doi.org/10.31078/jk1922>.

¹⁷ Daniel S. Nagin, "Deterrence in the Twenty- First Century," *Annual Review of Economics* 5, no. 1 (2013): 83–105, <https://doi.org/10.1146/annurev-economics-080614-115526>.

¹⁸ Beccaria and Voltaire, *Tentang Kejahatan Dan Hukuman* (M. Nur Prabowo S, *Transliterasi Dan Interpretasi*).

success of specific prevention is not solely determined by the severity of the sanctions but by the extent to which the experience of punishment is able to change the perception, legal awareness, and behavior of the perpetrator in a sustainable manner.

In relation to children as perpetrators of criminal acts, children as legal subjects have a different position from adults due to limitations in physical, psychological, and social aspects, thus requiring special treatment in the criminal justice system. Normatively, the definition of a child is regulated in various laws and regulations. Based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, a child is a person who is 12 (twelve) years old but not yet 18 (eighteen) years old who is suspected of committing a crime, while in Law Number 35 of 2014 concerning Child Protection, a child is defined as any person who is not yet 18 (eighteen) years old, including those still in the womb. This regulation shows that children are positioned as legal subjects who have the right to be protected in every legal process they undergo. Within the framework of legal protection, the principle of the best interest of the child is the main basis in every handling of criminal cases involving children. This principle emphasizes that every policy and legal action must prioritize the interests, welfare, and development of children, not solely oriented towards punishment. Therefore, the juvenile criminal justice system in Indonesia prioritizes an educational, rehabilitative, and restorative approach as a form of protection for children¹⁹. Thus, the limitations of juvenile criminal liability are also an important aspect that distinguishes children from adult perpetrators. In the SPPA Law, children under 12 years old cannot be subject to criminal liability, while children between 12 and 18 years old are subject to special treatment that emphasizes guidance and rehabilitation. This shows that the state recognizes that children do not have the full maturity to be fully

¹⁹ Didi Nazmi and Syofirman Syofyan, "Pengaturan Perlindungan Hak Anak Di Indonesia Dalam Rangka Mengeliminir Pelanggaran Hak Anak," *UNES Journal of Swara Justisia* 7, no. 2 (2023): 774–84.

responsible for their actions, so the approach used must be more humane and oriented towards improving behavior²⁰.

In line with this, the treatment of children in the criminal justice system demands a paradigm shift from a repressive approach to a more humanistic one. This is based on concerns that punishment that only prioritizes retaliation will actually hinder psychological development and create permanent social stigma for children. As emphasized by Lubis et al., the failure to provide adequate psychosocial support and rehabilitation facilities in the field is often a major obstacle to the optimal fulfillment of children's rights²¹. Furthermore, this argument is strengthened by the criminological perspective of Raymond Paternoster, who shows that increasing the severity of punishment does not automatically create a deterrent effect, but rather legal certainty and appropriate treatment are more decisive for behavioral change²². Therefore, prioritizing diversion instruments, restorative justice, and rehabilitation programs is an urgent need to ensure that children can reintegrate into their social environment without losing their future.

In this case, child protection is not only interpreted as an effort to protect children from harmful actions, but also as an effort to ensure the fulfillment of children's rights during the legal process. This approach is in line with the development of child protection theory that positions children as legal subjects who must be protected and restored, not simply as objects of punishment. Therefore, in handling children in conflict with the law, including in cases of concurrent criminal acts, the application of child protection principles is an important basis for ensuring that the criminal process does not neglect the main objectives, namely guidance, recovery,

²⁰ Mariatul Khiftiyah and Nadia Septi Pramesti, "TANGGUNG JAWAB HUKUM ANAK DALAM KASUS PENCURIAN," *Jurnal Hukum Dan Kewarganegaraan* 14 (2025), <https://doi.org/10.8734/CAUSA.v1i2.365>.

²¹ Yasmin Arinda Lubis et al., "Revitalising the Juvenile Criminal Justice System in Indonesia: A Comparative Study with International Law and Evaluation of Practice," *Journal of Ius Comparatum Law Studies* 1 (2025).

²² Raymond Paternoster, "How Much Do We Really Know about Criminal Deterrence," *Journal of Criminal Law and Criminology* 100, no. 3 (2010).

and prevention of recurrence of criminal acts²³. In line with this, the special prevention approach cannot be separated from the concept of rehabilitation. Rehabilitation is a form of intervention that aims to improve the psychological, social, and behavioral conditions of children, so that they can return to normal functioning in society. This approach is important because children as perpetrators of criminal acts have different characteristics from adults, both in terms of emotional maturity and the ability to consider the consequences of an action. Therefore, the application of deterrence to children is not sufficient only through the imposition of repressive punishment, but must be integrated with rehabilitative efforts oriented towards behavioral change²⁴. Rehabilitation in the Criminal Procedure Code (KUHAP) is defined as a person's right to obtain restoration of rights, status, dignity, and honor due to an invalid or erroneous legal process, as regulated in Article 1 number 22. In its development, rehabilitation is not only interpreted as restoring a good name, but also as a comprehensive approach in handling children in conflict with the law through medical and social rehabilitation to restore the child's physical, psychological, and social abilities so they can return to society²⁵. In Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), rehabilitation is one of the prioritized sanctions, especially for children aged 12-18 years, with an approach that emphasizes education and recovery rather than imprisonment²⁶. This approach is in line with the future-oriented (utilitarian) goal of punishment, namely improving the perpetrator's behavior and supporting social reintegration.

²³ Nazmi and Syofyan, "Pengaturan Perlindungan Hak Anak Di Indonesia Dalam Rangka Mengeliminir Pelanggaran Hak Anak."

²⁴ Media Justitia, "Hukum Pidana Anak Dalam Praktik Diversi, Rehabilitasi, Dan Restorasi," Media Justitia, 2023, <https://www.mediajustitia.com/edukasi-hukum/hukum-pidana-anak-dalam-praktik-diversi-rehabilitasi-dan-restorasi/>.

²⁵ Sagita and Rafid, "Pendekatan Rehabilitatif Dalam Penanganan Anak Pelaku Tindak Pidana."

²⁶ Pemerintah Indonesia, "Undang-Undang Republik Indonesia Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak," Pub. L. No. 11 (Nomor Undang undang) (2012).

Legally, a rehabilitative approach to children is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which emphasizes diversion, restorative justice, and sanctions as a means of handling juvenile cases. Furthermore, Law Number 35 of 2014 concerning Child²⁷ Protection emphasizes the importance of protecting children in every legal process. This approach reflects the principle of the best interest of the child, which places the child's best interests as the primary consideration²⁸.

Concursus refers to a situation where a perpetrator commits more than one criminal act before a final and binding court decision is issued. In Indonesian criminal law, the regulation of concursus was initially regulated in Articles 63 to 71 of Book I of Law Number 1 of 1946 concerning the Criminal Code, which divides concursus into three forms: concursus of regulations (concursus idealis), continuing acts, and concursus of acts (concursus realis). Concursus idealis as regulated in Article 63 refers to a single act that meets more than one criminal provision, while continuing acts in Article 64 refer to a series of acts that are so closely related that they are viewed as a single entity. Concursus realis in Article 65 refers to several acts that each stand alone as a criminal act, whether of the same type or different²⁹. These provisions were later updated in Law Number 1 of 2023 concerning the Criminal Code, which maintains the same division: ideal concursus, continuing acts, and real concursus. Ideal concursus in Article 125 refers to an act that meets more than one criminal provision and is therefore punished based on the most severe provision. Continuous acts in Article 126 refer to several acts that are closely related and therefore considered as a single act, while real concursus in Articles 127 and 128 refer

²⁷ Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak, "Undang - Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang – Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak," *UU Perlindungan Anak*, 2014, 48, <https://peraturan.bpk.go.id/Home/Details/38723/uu-no-35-tahun-2014>.

²⁸ Paternoster, "How Much Do We Really Know about Criminal Deterrence."

²⁹ Barda Nawawi Arief, *Hukum Pidana Lanjut* (Semarang: Badan Penerbit Universitas Diponegoro, 2019).

to several acts that stand alone as crimes and are each taken into account in sentencing³⁰. These provisions indicate that perpetrators who commit more than one crime are not automatically subject to unlimited multiple sentences, but are instead subject to a specific sentencing system that emphasizes the principle of proportionality. In relation to children as perpetrators of crimes, the application of these provisions is crucial because children are positioned as legal subjects requiring special protection. Therefore, the imposition of sanctions on children must not only consider legal aspects but also the principle of the child's best interests.

From a criminal justice theory perspective, the integration of particular deterrence and rehabilitation demonstrates that the experience of punishment serves not only as punishment but also as a learning tool that can influence the perpetrator's way of thinking. Rehabilitation in this case can be understood as a more humane form of deterrence because it not only creates a deterrent effect but also provides an opportunity for the perpetrator to improve themselves. In relation to the concurrent crime (*concursum*), the condition where a child commits more than one crime indicates a tendency for repetitive behavior, thus requiring a more comprehensive approach through ongoing rehabilitation. Thus, the application of rehabilitation-based particular deterrence is relevant to ensure that the goal of preventing recurrence of crime can be achieved without ignoring the principles of proportionality and the best interests of the child³¹.

Thus, the application of rehabilitation-based particular deterrence in handling concurrent criminal acts by children requires an approach that focuses not only on imposing sanctions but also on ongoing development. Children who commit more than one crime demonstrate a pattern of

³⁰ Muhammad Raihan Nugraha, "Pasal 65 KUHP Tentang Concursus Realis," Hukum Online.Com, 2024, https://www.hukumonline.com/klinik/a/tentang-kumulasi-pidana-dalam-pasal-65-kuhp-lt52dc749cdefb3/?utm_source=chatgpt.com.

³¹ Paternoster, "How Much Do We Really Know about Criminal Deterrence."

repetitive behavior, requiring more intensive intervention through rehabilitation. Therefore, the effectiveness of this approach lies not in the severity of the sanctions, but rather in their ability to foster legal awareness, change mindsets, and prevent recurrence of crimes³².

Legally, the regulation of concurrent crimes (*concursum*) in Indonesian criminal law is regulated in the old Criminal Code (Articles 63–71) and was updated in Law Number 1 of 2023, which distinguishes between idealistic *concursum*, continuing acts, and realistic *concursum*. This regulation demonstrates that sentencing still adheres to the principle of proportionality. However, for children, its application must be tailored to their characteristics through a protection and development approach, as stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System³³. In this case, concurrent criminal offenses in children indicate a higher risk of recidivism than single offenses, thus requiring a more comprehensive approach. Particular deterrence is relevant because it focuses on the experience of punishment as a means to prevent recurrence of crime through behavioral changes in the perpetrator. Therefore, the success of this approach can be seen in the absence of reoffending, changes in behavior and mindset, the effectiveness of rehabilitation, and the certainty and consistency of law enforcement³⁴.

³² Nagin, "Deterrence in the Twenty- First Century."

³³ Indonesia, "Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana" (2023).

³⁴ Paternoster, "How Much Do We Really Know about Criminal Deterrence."

2. The Application of Rehabilitation-Based Particular Deterrence in Judges' Considerations in Juvenile Court Decisions Regarding Concurrent Criminal Acts

In Indonesia's juvenile justice system, the orientation of punishment has shifted from an approach that emphasizes retribution to one that prioritizes guidance and rehabilitation, as stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. This shift is in line with the development of modern punishment theory that places particular deterrence as the primary goal, namely efforts to prevent the same perpetrator from repeating crimes through a process of behavioral improvement. Several studies have shown that the rehabilitative approach has a higher level of effectiveness in reducing juvenile recidivism compared to the approach of imprisonment alone because children are still in a developmental phase that allows for changes in attitudes and behavior³⁵.

2.1 Analysis of Decision Number 2/Pid.Sus-Anak/2022/PN Tmg

Decision Number 2/Pid.Sus-Anak/2022/PN Tmg, this criminal incident occurred on September 20, 2022, in Temanggung Regency, which began when the perpetrator's child picked up the victim from her residence based on a previously agreed meeting plan. At that location, the two consumed alcohol which was then followed by sexual activity. Then, a conflict arose after the incident when the victim demanded accountability due to concerns about pregnancy, which triggered a violent act by the perpetrator in the form of strangulation. This action caused the victim to lose consciousness and eventually die, which was medically confirmed through a Visum et Repertum as death due to asphyxia (suffocation) due to

³⁵ Yuspika Yuliana Purba et al., "Peran Restorative Justice Dalam Penyelesaian Kasus Tindak Pidana Anak Di Indonesia" 4, no. 2 (2025): 1923–30.

blunt force trauma to the neck. In an effort to eliminate traces of the crime (obstruction of justice), the perpetrator moved the victim's body to an empty house to be cleaned and buried secretly. This series of actions shows a concurrency of actions, from the violence that caused death to attempts to conceal the body. Based on the chronology of events, the legal process continued to the trial stage which began with the demands of the Public Prosecutor (JPU). The Public Prosecutor stated that the child's actions fulfilled the criminal elements as stipulated in Article 80 paragraph (3) in conjunction with Article 76C of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, regarding violence resulting in death. Based on the fact that there was an element of intent, the Public Prosecutor demanded a prison sentence of 7 (seven) years and job training in lieu of a fine. This demand reflects firm law enforcement efforts regarding the loss of the victim's life, with the aim of providing a deterrent effect proportional to the child's degree of culpability. In his deliberations, the judge confirmed all the legal facts presented, from the meeting at the perpetrator's residence to the act of strangulation. Medical evidence through a post-mortem examination confirmed that the immediate cause of death was asphyxia due to blunt force trauma. Although there were post-incident actions in the form of attempts to conceal the body, the judge legally emphasized his assessment on fulfilling the elements of the crime of violence against children resulting in death, in line with the limitations of the alternative charges submitted by the Public Prosecutor.

The imposition of sanctions in this decision demonstrates the judge's efforts to integrate the repressive and rehabilitative objectives of sentencing. On the one hand, imprisonment is imposed as a form of legal accountability, while on the other hand, the application of Article 71 paragraph (1) letter d of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) through additional punishment in the form of job train. Based on the analysis results, in Decision Number 2/Pid.Sus-Anak/2022/PN Tmg, the Panel of Judges has essentially

implemented a rehabilitative approach by considering the child's age, the child's confession and regret, the results of the Community Research (Litmas), as well as the provision of assistance and supervision by the Community Guidance Officer (PK). In addition to imprisonment, the child was also given job training as a form of guidance in accordance with Article 71 paragraph (3) of the SPPA, which stipulates that fines for children can be replaced with job training as a form of guidance and development of the child's skills. However, the effectiveness of the particular deterrence objective in the decision is considered not yet fully optimal. This is because the judge's considerations have not comprehensively assessed the entire series of actions of the child, especially the actions after the victim's death in the form of elements of the crime of murder, violence resulting in death, and running away with a minor woman, as well as efforts to hide the victim's body so that the concurrent actions based on the *concurus realis* in Article 66 of the Criminal Code should be applied. From the perspective of modern criminal theory and the individualization of punishment as reflected in Article 51 and Article 52 of Law Number 1 of 2023 concerning the Criminal Code, punishment not only aims to inflict suffering on the perpetrator, but also to prevent the repetition of criminal acts, socialize the perpetrator, and consider the perpetrator's motives, mental attitude, and future. Therefore, the perpetrator's overall behavior, including actions after the crime is committed, should be an important part in determining the level of culpability (*schuld*) and the proportionality of the punishment. This view is also in line with the opinion of Muladi and Barda Nawawi Arief³⁶ who stated that modern criminal policy does not only focus on the criminal act committed, but also takes into account the perpetrator's condition, mental attitude, and the possibility of repeating the crime in the future. Therefore, actions after the crime has occurred should be used as an additional indicator in measuring the effectiveness of individual deterrents for

³⁶ Muladi and Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana*, cetakan ke (Bandung: Alumni, 2010).

children³⁷. Furthermore, the failure to include the entire series of actions in the construction of the *concursum realis* as stipulated in Articles 65 and 66 of the Criminal Code has the potential to cause an incomplete assessment of the child's level of culpability. In fact, based on the analysis of Amanda Putri Kusuma Wardani et al., the case in Decision Number 2/Pid.Sus-Anak/2022/PN Tmg essentially fulfills the elements of several crimes at once, namely the crime of murder under Article 338 of the Criminal Code, violence against children resulting in death under Article 76C in conjunction with Article 80 paragraph (3) of the Child Protection Law, and running away with underage women as per Article 332 of the Criminal Code. However, because the Public Prosecutor used an alternative form of indictment, the judge was bound by the *ultra petita* principle and could only decide based on the charges submitted³⁸. On the other hand, the modern criminal justice system has shifted from a retributive paradigm to a rehabilitative and restorative paradigm, particularly in handling children in conflict with the law. The rehabilitative approach is considered more relevant because it aims to improve children's behavior and encourage social reintegration rather than simply inflicting suffering through imprisonment³⁹. This rehabilitative approach is also strengthened through ongoing supervision by Community Guidance Officers who function as a form of formal social control to reduce the risk of child recidivism. Research on juvenile recidivism shows that social guidance and supervision are more effective in preventing recurrence of crimes than solely repressive approaches. Excessively harsh sentences for

³⁷ Ibid.

³⁸ Amanda Putri et al., "Penerapan Asas *Concursum Realis* Pada Tindak Pidana Putusan Nomor 2 / Pid . Sus-Anak / 2022 / PN Tmg" 3, no. 5 (2024): 139–57.

³⁹ Sri Wulandari, "Reintegrasi Sosial Dalam Sistem Pemasyarakatan Sebagai Visi Pemidanaan Dalam Hukum Nasional," *JURNAL PENELITIAN* 3, no. 2 (2023), <https://doi.org/https://doi.org/10.51903/semnastekmu.v3i2.223>.

juveniles have the potential to create social stigma, psychological trauma, and hinder their future social reintegration⁴⁰.

Thus, the application of rehabilitation-based particular deterrence in concursus cases involving children demonstrates a shift in the orientation of criminal justice from a repressive approach to a more humanistic and restorative one. Although Decision Number 2/Pid.Sus-Anak/2022/PN Tmg does not fully accommodate the concursus construct in depth, the judge's considerations, which continue to prioritize guidance, supervision, and rehabilitation, demonstrate that the juvenile criminal justice system in Indonesia has moved toward a modern criminal justice paradigm that emphasizes protecting children's futures while simultaneously preventing individual reoffending.

2.2 Analysis of Decision Number 3/Pid.Sus-Anak/2024/PN Pnj

Decision Number 3/Pid.Sus-Anak/2024/PN Pnj, the criminal incident occurred on February 6, 2024. The 17-year-old perpetrator's child, after consuming alcoholic beverages, committed premeditated murder against a family consisting of five victims using a machete. The act was carried out sadistically by turning off the electricity supply to the victim's house, attacking all family members, and having sexual intercourse with the deceased victim. In addition, the child tried to cover his tracks by destroying cell phones, washing weapons, and engineering a robbery scenario. Based on these facts, the Public Prosecutor (JPU) qualified this act as a combination of criminal acts (*concurus realis*) in accordance with Article 340 in conjunction with Article 65 paragraph (1) of the Criminal Code concerning premeditated murder, as well as Article 363 paragraph (1) 3 in conjunction with Article 65 paragraph (1) of the Criminal Code concerning

⁴⁰ Rafli Jano Trigan and Herry Fernandes Butar Butar, "Bimbingan Kemandirian Klien Anak Sebagai Upaya Pencegahan Pengulangan Pidana (Studi Kasus Griya Abhipraya Gemilang Balai Pemasarakatan Kelas II Pringsewu)," *Jurnal Pendidikan Tambusai* 9, no. 11 (2025): 31778–82.

aggravated theft. During the trial, the Public Prosecutor demanded a 10-year prison sentence and placement in a Social Welfare Institution (LPKS) for 1 year. However, this demand was strongly rejected by the victim's family, who demanded the maximum sentence due to the level of sadism and social suffering caused. In response, the Panel of Judges made a legal breakthrough by imposing a 20-year prison sentence. As explained in the official article of the Parepare District Court, the judge used a subjective approach (age of the child) and an objective approach (cruelty and social impact) in deciding this case⁴¹. The judge considered that this crime had exceeded the limits of general juvenile delinquency, so that community protection (social defense) became the main priority. This decision became a significant legal discourse because normatively, Article 81 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) places imprisonment as a last resort (*ultimum remedium*). Articles 2 and 5 of the SPPA also emphasize the principle of the best interest of the child and restorative justice. However, in this case, the judge appeared to place greater emphasis on particular deterrence (individual deterrence) given the extremely high level of violence and the large number of victims.

From the perspective of modern criminal justice theory, as outlined in Articles 51 and 52 of Law Number 1 of 2023, punishment is not only intended for retribution, but also to protect society and prevent recurrence of criminal acts. The 20-year sentence here is interpreted as an effort to provide a real deterrent effect. Nevertheless, the dominance of this repressive approach has sparked academic debate. Research by Fatri Sagita and Noercholis Rafid emphasizes that the primary focus of juvenile justice should remain on rehabilitation, psychological recovery, and social reintegration, as children are viewed as individuals with the potential to improve their behavior⁴². Hersyanda, in his research on recidivism, cautions

⁴¹ Wulandari, "Reintegrasi Sosial Dalam Sistem Pemasyarakatan Sebagai Visi Pemidanaan Dalam Hukum Nasional."

⁴² Sagita and Rafid, "Pendekatan Rehabilitatif Dalam Penanganan Anak Pelaku Tindak Pidana."

that excessively harsh prison sentences without adequate psychological guidance often fail to reduce the rate of reoffending. Repressive prisons risk triggering social stigma and trauma that hinder children's futures⁴³.

Thus, Decision Number 3/Pid.Sus-Anak/2024/PN Pnj demonstrates that in extraordinary circumstances, where *concursum realis* occurs with extreme levels of cruelty, the application of particular deterrence can shift to highly repressive measures. While a rehabilitative approach remains a pillar of the juvenile justice system, this case emphasizes that judges also have a responsibility to ensure community protection and justice for victims through proportionate individual deterrence.

2.3 Analysis of Decision Number 8/Pid.Sus-Anak/2016/PN Tbh

Decision Number 8/Pid.Sus-Anak/2016/PN Tbh, the series of events began with the actions of the perpetrator's child who together with other parties committed theft using certain methods, such as using a fake key and involving more than one person. These actions did not occur singly, but were carried out repeatedly and were interconnected with other actions, including control of the proceeds of crime. Based on this construction, the Public Prosecutor compiled the indictment in the form of a combination of cumulative and alternative charges, by referring to Article 363 paragraph (1) 4th and 5th of the Criminal Code and Article 65 paragraph (1) of the Criminal Code, and also Article 480 paragraph (1) of the Criminal Code. This formulation of the indictment indicates that the Public Prosecutor considers that there is more than one relevant criminal act to be accounted for, so that an approach is needed that covers all of these acts within a single legal framework. During the trial process, the facts revealed show that the defendant was actively involved in the theft, both through a direct role and

⁴³ Mochammad Daffa Hersyanda et al., "Efektivitas Sanksi Pidana Terhadap Pengulangan Kejahatan (Residivisme) Di Indonesia," *JIMMI: Jurnal Ilmiah Mahasiswa Multidisiplin* 1, no. 3 (2024): 253–65, <https://jurnal.fanshurinstitute.org/index.php/jimmi/article/view/141/95>.

through involvement in control of the proceeds of crime. The fulfillment of the elements of the offense demonstrates that, legally, the defendant's actions meet the definition of the crime charged. Furthermore, the repetition of the act strengthens the indication that the act was committed with awareness and will.

The Tembilahan District Court Decision Number 8/Pid.Sus-Anak/2016/PN Tbh states that the child's actions cannot be viewed as a single act, but rather as a series of interrelated acts, namely theft committed jointly and related to the possession of the proceeds of crime. Normatively, this condition is relevant to the provisions of Article 65 of the Criminal Code, which stipulates that if an individual commits multiple criminal acts, each act is taken into account in sentencing. Therefore, the construction of criminal responsibility for children should not be viewed solely on a single act, but rather on the entire series of acts committed. However, the application of these provisions in juvenile cases must still adhere to the specific principles of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, particularly Article 5, which emphasizes that the juvenile criminal justice system must prioritize restorative justice and diversion approaches.

From the evidentiary side, the judge stated that the elements of the crime of theft as regulated in Article 363 of the Criminal Code had been fulfilled, including the existence of aggravating elements in the form of being carried out together and using certain tools. Legally, this consideration was in accordance with applicable legal provisions. However, if analyzed more deeply, the judge's approach still tended to be oriented towards proving the elements formally without comprehensively exploring the factors causing children to commit crimes, such as environmental, family, and social conditions. In fact, from a criminological perspective, these factors have an important role in shaping children's behavior so that

they should be part of the judge's considerations in issuing a verdict⁴⁴. In imposing sanctions, the judge sentenced the child to 3 (three) years in prison at the Special Child Development Institution (LPKA). Normatively, this decision was in accordance with Article 79 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which limits the maximum sentence for children to half the maximum sentence for adults. In addition, placement in LPKA shows that there is an element of development in the sentencing so that the decision is not entirely repressive. In criminal justice theory, this approach can be categorized as a combined theory, integrating the goals of retribution and rehabilitation. However, a critical assessment can be made that the sentencing approach in this decision is still dominated by a punitive orientation. The LPKA (Children's Special Development Institution) does contain elements of guidance, but in substance, the child remains imprisoned. Yet, research shows that a rehabilitative approach, which emphasizes social and educational guidance, is more effective in preventing reoffending than imprisonment⁴⁵. This suggests that while legally appropriate, the decision still serves less than optimal purposes in modern criminal justice.

Thus, the Tembilahan District Court Decision Number 8/Pid.Sus-Anak/2016/PN Tbh can be concluded that the implementation of rehabilitation-based particular deterrence is evident through the imposition of sentences at the Special Development Institution for Children (LPKA), which aims not only to punish but also to guide children to prevent reoffending. This approach aligns with the principles of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which emphasizes guidance and the best interests of children. However, this implementation

⁴⁴ Resita Nanda Prameswari and Nazwa Rosmarini Putri, "Penegakan Hukum Dan Rehabilitasi Anak Dalam Kasus Penyalahgunaan Narkoba Di Indonesia," *JPIM: Jurnal Penelitian Ilmiah Multidisipliner* 2, no. 2 (2025): 1165–71, <https://ojs.ruangpublikasi.com/index.php/jpim/article/view/823>.

⁴⁵ Erwin Edin, Afi Shofiana, and Indra jaya Indar, "The Effectiveness of Restorative Justice in Resolving Juvenile Criminal Offenses in Indonesia," *HAKIM Jurnal Ilmu Hukum Dan Sosia* 3, no. 1 (2025), <https://doi.org/https://doi.org/10.51903/hakim.v3i1.2288>.

is not yet fully optimal because it is still dominated by a criminal approach, while rehabilitative mechanisms such as diversion have not been effective. Therefore, strengthening the rehabilitative approach is necessary to maximize the goal of preventing recurrence of crimes by children⁴⁶.

2.4 Analysis of Decision Number 44/Pid.Sus-Anak/2022/PN Mks

Decision Number 44/Pid/Sus-Anak/2022/PN/Mks, the series of events began with the 17-year-old perpetrator having intercourse three times with the 14-year-old victim in different time periods by means of coaxing without physical violence. Five witnesses presented confirmed the repeated acts. Visum et repertum showed old tears on the victim's hymen at 8 and 2 o'clock, as well as new tears from 6, 10, and 11 o'clock, which confirmed repeated intercourse. The defendant admitted his actions and no justification or excuse was found that would eliminate criminal responsibility. The Public Prosecutor charged with a single charge of Article 81 paragraph (2) in conjunction with Article 76D of Law Number 35 of 2014 concerning Child Protection, without including the element of concurrent acts. The prosecutor's demand was a prison sentence of 4 years and 8 months of job training. The fundamental criticism is that the public prosecutor failed to invoke Article 65 of the Criminal Code concerning *concursum realis*, even though the facts showed three separate acts.

The judge considered both legal aspects (the indictment, witness and defendant statements, evidence) and non-legal aspects (the consequences of the act, the perpetrator's condition, and the victim's condition). Aggravating factors were the act's damaging the victim's future through physical and psychological harm. Mitigating factors included an admission of guilt, remorse, prior conviction, and unsuccessful attempts at

⁴⁶ Andinta Wulandini and M. Abdul Razak, "PENERAPAN SANKSI HAKIM DALAM MEMBERIKAN PERLINDUNGAN HUKUM TERHADAP ANAK PELAKU TINDAK PIDANA PERBARENGAN PENCURIAN (Studi Putusan PN Tembilahan Nomor 8/Pid.Sus-Anak/2016/PN Tbh)," *Jurnal Judiciary* 13, no. 2 (2024), <https://doi.org/https://doi.org/10.55499/judiciary.v13i2.86>.

reconciliation. The judge sentenced him to 1 year in prison at Maros Class II LPKA and 6 months of job training, much lighter than the prosecutor's demands⁴⁷. In this case, the lack of application of the article on *concurus realis* in either the prosecutor's indictment or the judge's deliberations was a concern, even though the trial evidence showed the perpetrator had engaged in sexual intercourse three times at different times. According to Article 65 paragraph (1) KUHP, "if there is a combination of several acts, each of which must be viewed as one complete act and each of which is a crime which is threatened with the same main punishment, then only one punishment shall be imposed." The elements of *concurus realis* that are fulfilled are:

- (1) a person commits several acts;
- (2) each act stands alone as a crime;
- (3) these acts have not yet been decided by a judge.

Three acts of sexual intercourse clearly constitute three separate criminal acts, not one continuous act. Criminal law doctrine asserts that *concurus realis* occurs when a person commits several acts, each of which constitutes a separate crime, and is tried simultaneously⁴⁸. The prosecutor should formulate the indictment using Article 81 paragraph (2) of Law Number 35 of 2014 in conjunction with Article 65 paragraph (1) of the Criminal Code so that the judge can consider the aggravating factor. By not including the element of concurrence, the perpetrator does not receive an aggravating factor, which should be increased by 1/3 (one-third) of the principal penalty. In the *concurus realis* sentencing system, the total

⁴⁷ Abd.Rahman Syarif, Abdul Hamid, and Nanda Ivan Natsir, "Analisis Yuridis Perbarengan Perbuatan (*Concurus Realis*) Dalam Tindak Pidana Persetubuhan Yang Dilakukan Anak Terhadap Anak (Studi Putusan Nomor 44/Pid/Sus-Anak/2022/Pn/Mks)," *Jurnal Parhesia* 5, no. 62 (2024), <https://doi.org/https://doi.org/10.29303/kn760n50>.

⁴⁸ Laurensius Androine Lengu Labamaking, Made Sugi Hartono, and Ni Ketut Sari Adnyani, "Implementasi *Concurus Realis* Tindak Pidana Pembunuhan Disertai Penganiayaan (Studi Putusan Nomor 194/ Pid.B/2015/PN.Sgr)," *Jurnal Ilmu Hukum Sui Generis* 3, no. April (2023): 36–49, <https://doi.org/https://doi.org/10.23887/jih.v3i2.2583>.

sentence cannot exceed the maximum sentence of the most severe sentence plus one-third. However, in cases involving children, the aggravating factor must still consider the principle of the child's best interests and not exceed a maximum of half the sentence of an adult⁴⁹. The lack of application of the concurrent acts clause demonstrates a weakness in legal construction, resulting in suboptimal justice enforcement. From the victim's perspective, the lack of application of *concursum realis* diminishes the sense of justice, as perpetrators commit repeated acts without receiving the appropriate aggravating penalties. Judges should utilize "substantive justice" by considering concurrent acts, even if they are not included in the indictment, so that decisions more accurately reflect proportional justice.

In this decision, the judge did not explicitly mention particular deterrence, but its substance is reflected in several considerations. First, the 1 year prison sentence, significantly lighter than the prosecutor's demand of 4 years, demonstrates an understanding that effective special deterrence for children does not require severe punishment. The judge stated that the prosecutor's demand was still too harsh and feared it would negatively impact the child's psychological and psychological development. Excessively long prison sentences can actually lead to stigmatization and psychological damage, making rehabilitation difficult for children⁵⁰. Second, the six-month job training sentence is a concrete manifestation of rehabilitation-based particular deterrence. Job training serves as a means of fostering and strengthening children's character. Through job training, children are expected to acquire vocational skills for their future. By having better skills and economic prospects, children will be more motivated to

⁴⁹ Doddy Hermawan, Alpi Sahari, and Ahmad Fauzi, "Pertanggungjawaban Pidana Anak Sebagai Pelaku Tindak Pidana Kekerasan Seksual," *Legalitas: Jurnal Hukum* 13, no. 2 (2021): 98–107, <https://doi.org/10.33087/legalitas.v13i2.265>.

⁵⁰ Arif Wibowo, "Pemahaman Situasi Anak Yang Berkonflik Dengan Hukum Pada Lembaga Pemasyarakatan Orang Dewasa : Suatu Kajian Literatur," *Jurnal Ilmu Kesejahteraan Sosial* 19, no. 2 (2018), <https://doi.org/10.7454/jurnalkessos.v19i2.1203>.

refrain from repeating their actions⁵¹. Third, the consideration of mitigating factors such as a guilty plea and remorse demonstrates the judge's recognition of the perpetrator's good faith in self-improvement.

In the context of particular deterrence, confession and remorse are indicators that deterrence has begun to work. The judge responded to this good faith by imposing a lighter sentence in recognition of the child's willingness to change. The fact that the perpetrator engaged in three acts of sexual intercourse indicates a pattern of repeated behavior that requires more intensive preventive intervention. If the prosecutor charges with the article on concurrent acts, the particular deterrence aspect will be more explicit. Increasing the sentence in the context of concurrent acts should not simply be understood as increasing the prison sentence, but rather as strengthening the rehabilitation program specifically designed to address the recurring pattern of behavior. However, increasing the sentence for juveniles must still consider the principle of proportionality. A maximum sentence increase of 1/3 of the principal sentence can be interpreted as adding a more intensive rehabilitation program, such as intensive psychological counseling or a more comprehensive psychosocial rehabilitation program, rather than simply increasing the prison sentence⁵².

In cases of repeated sexual intercourse, the rehabilitation program must be specifically designed to address the root causes of deviant sexual behavior. This requires an in-depth psychological assessment to identify factors influencing the perpetrator's behavior. The rehabilitation program should include psychological counseling, comprehensive sex education,

⁵¹ Mediajustitia, "Hukum Pidana Anak Dalam Praktik:Diversi,Rehabilitasi, Dan Restorasi," Media Justitia.com, 2025, <https://www.mediajustitia.com/edukasi-hukum/hukum-pidana-anak-dalam-praktik-diversi-rehabilitasi-dan-restorasi/>.

⁵² Khana Amalia Rizki, Hafrida, and Elizabeth Siregar, "Pertanggungjawaban Hukum Anak Usia Di Bawah 14 Tahun Dalam Sistem Peradilan Pidana Anak Indonesia," *Asas Wa Tandhim: Jurnal Hukum, Pendidikan & Sosial Keagamaan* 5 (2026): 445–62, <https://doi.org/https://doi.org/10.47200/awtjhpsa.v5i2.3428>.

cognitive behavioral therapy, character development, vocational skills training, and psychosocial support for reintegration into society⁵³.

2.5 Analysis of Decision Number 50/Pid.B/2009/PN Btg

Decision Number 50/Pid.B/2009/PN.Btg, the case began on February 4, 2009 and February 12, 2009 when the defendant and other parties committed motorcycle theft in the Bontang City area. The act was carried out in two different locations, namely on Jalan Timur No. 117 HOP V, Gunung Telihan Subdistrict and in the yard of a flower shop on Jalan Bhayangkara. The items taken were the Yamaha Jupiter MX and Yamaha Jupiter Z motorcycles belonging to the victim, which are legally qualified as a continuing criminal act according to Article 65 of the Criminal Code. The public prosecutor charged the child with Article 363 paragraph (1) ke 4 jo. Article 65 paragraphs (1) and (2) of the Criminal Code. The trial facts show that the elements of the crime charged were proven legally and convincingly. The judge considered the witness's testimony, the defendant's confession, and the evidence that corresponded to each other. The element of "whoever" was fulfilled because the defendant was a legal subject who was capable of being responsible. The element of "taking another person's property" was also proven through the unauthorized possession of the victim's motorbike. In addition, the element of "committed by two or more persons" was fulfilled because the theft was carried out together with other perpetrators. The judge also stated that the element of concurrent acts was fulfilled

⁵³ Almanda Putri Andini et al., "Analisis Efektivitas Upaya Rehabilitasi Terhadap Anak Sebagai Pecandu Narkoba : Pendekatan Medis Dan Psikosisia," *Amandemen: Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia* 2, no. April (2025): 42–51, <https://doi.org/https://doi.org/10.62383/amandemen.v2i2.865>.

because the thefts were committed at different times and had not been previously decided. The judge's considerations in this decision consisted of legal and non-legal aspects. From a legal perspective, the judge considered that all elements of Article 363 paragraph (1) point 4 in conjunction with Article 65 paragraphs (1) and (2) of the Criminal Code had been fulfilled based on valid evidence. Therefore, the defendant was found guilty of committing the crime of theft with continued aggravation⁵⁴. However, from a non-legal perspective, the judge considered the defendant's age as a child and his long future. The judge considered that the purpose of sentencing children is not only retribution, but also social development and rehabilitation so that children can return to being part of society normally. This view is in line with the relative theory or the theory of the purpose of sentencing which states that punishment is directed at improving the perpetrator and preventing crime, not merely retribution⁵⁵. However, the judge's decision raises issues due to its contradictory nature. On the one hand, the judge imposed a 6 month prison sentence, but on the other hand, the judge ordered the defendant to be returned to his parents for guidance. This situation is considered to lack legal certainty because imprisonment and return to parents are two different forms of sanctions in the juvenile justice system. From the perspective of modern juvenile criminal law, return to parents should be prioritized over imprisonment because it is more in line with the principles of child protection and social development

From a legal perspective, if this decision is analyzed using Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) and Law No. 35 of 2014 concerning Child Protection, there is normative tension. The SPPA Law places diversion as the main priority for children who

⁵⁴ Bilher Hutahaeen, "Imposing Penal Sanctions For Crimes Commite By Kids An Analysis On Decision Number 50/Pid.B/2009/PN.Btg," *Jurnal Yudisial* 6, no. 1 (2013): 64–79, <https://doi.org/https://doi.org/10.29123/jy.v6i1.119>.

⁵⁵ Andi Muhammad Sofyan and Nur Azisa, *Hukum Pidana Indonesia* (Prenada media, 2023), https://books.google.co.id/books?hl=id&lr=&id=RMPAEAAAQBAJ&oi=fnd&pg=PA1&dq=Hukum+Pidana+Sofjan+Sastrawidjaja&ots=7frd1IGftm&sig=qvSY71vIX2-zAXrdzPttR-fvRgs&redir_esc=y#v=onepage&q=Hukum Pidana Sofjan Sastrawidjaja&f=false.

commit crimes with a prison sentence of under 7 years, and emphasizes restorative justice and the best interests of the child. Article 5 paragraph (1) of the SPPA Law emphasizes that in every juvenile criminal justice process, a restorative approach and the best interests of the child must be prioritized. Therefore, imprisonment for children in the SPPA Law is ultimum remedium, namely as a last resort after warnings, conditional sentences, out-of-institutional guidance, community service, and supervision are deemed insufficient⁵⁶. Within this framework, the sentence of 6 months imprisonment for a 15-year-old child who committed theft tends not to be fully in accordance with the spirit of the SPPA Law and the Child Protection Law because imprisonment is chosen even though diversion alternatives and non-imprisonment measures are available. Particular deterrence aims to prevent the perpetrator from repeating the crime, usually through the deterrent effect of punishment. However, in the context of children, this approach must be balanced with rehabilitation, namely the process of recovery, education, and guidance so that children do not repeat the crime due to changes in behavior and understanding, not simply fear of imprisonment⁵⁷.

The judge implicitly attempted to implement rehabilitation-based particular deterrence by imposing a 6-month prison sentence to deter the child from repeating theft and ordering the child's return to his parents for education and guidance as a form of rehabilitation within the family environment. However, this application is inconsistent because there are no clear details of the rehabilitation program in the verdict, there is still a contradiction between the order to remain in detention and return to

⁵⁶ Adil Akhmar Alimin, "Hukuman Bagi Pelaku Tindak Pidana Anak Menurut UU SPPA," Direktorat Jenderal Pemasyarakatan Kementerian Hukum dan HAM RI, 2023, <https://www.ditjenpas.go.id/hukuman-bagi-pelaku-tindak-pidana-anak-menurut-uu-sppa>.

⁵⁷ Haekal Amalin FP and Ermania Widjajanti, "Pembaharuan Hukum Pidana Anak Melalui Penerapan Restorative Justice Di Indonesia," *Locus Journal of Academic Literature Review* 4, no. 2 (2025): 69–79, <https://doi.org/https://doi.org/10.56128/ljoalr.v4i2.430> 1.

parents which is logically difficult to implement simultaneously, and there is no in-depth consideration of the child's psychological, social, economic, and family background that can be the root of criminal behavior. The child's actions in this case are qualified as ongoing according to Article 65 of the Criminal Code because they were committed at several different times but are bound by the same intention in pursuing the same goal, namely stealing the victim's motorcycle. If this case occurred after the enactment of the new Criminal Code (Law No. 1 of 2023), the judge should prioritize non-prison measures and diversion because the new Criminal Code is in sync with Article 2 of the SPPA Law which emphasizes that the juvenile criminal justice system must prioritize protection, justice, non-discrimination, and the best interests of the child. In addition, Article 81 of the SPPA Law states that imprisonment for children can only be imposed as a last resort and in the shortest possible time, the SPPA Law in the principles of restorative justice and limitations on imprisonment of children. The reason for the judge to impose 6 months imprisonment can be reconstructed as a consideration of the deterrent effect on children, the consideration that the act was repeated so it was considered more serious, as well as the judge's limited understanding at that time about the rehabilitation and restorative approach in child punishment because this decision long predates the 2012 SPPA Law. Although this decision comes from 2009, this case study remains relevant to study in the 2021–2026 period because it shows a paradigm shift from a retributive system to a restorative and rehabilitative system in the SPPA, being an example of historical weaknesses in the application of child punishment that still influences judicial practices in several regions to this day, as well as being a reflection material for synchronizing norms between the old Criminal Code, the SPPA Law, the Child Protection Law, and the new Criminal Code in modern juvenile justice practices. Particular deterrence based on rehabilitation should not only be in the form of imprisonment plus being returned to parents, but should be detailed in concrete rehabilitation programs such as psychosocial assistance, alternative education, skills

training, and social supervision in accordance with Article 5, Article 6, and Article 71 of the SPPA Law and Articles 60–64 of the Child Protection Law⁵⁸.

Conclusion

Based on this research, it can be concluded that rehabilitation-based particular deterrence has a strong theoretical and legal foundation in the Indonesian legal system, particularly through the Child Protection Act (SPPA), the Child Protection Act, and concursus provisions in the old and new Criminal Codes. The concept of special deterrence, which focuses on changing the perpetrator's behavior, when combined with a rehabilitative approach, provides a more humane and prospective criminal sentencing framework for juvenile offenders. The application of the principles of the best interests of the child, diversion, restorative justice, and disciplinary sanctions demonstrates that positive law has shifted its orientation from retributive to fostering and social reintegration, although in practice it often clashes with the sentencing paradigm that emphasizes imprisonment. Therefore, theoretically and normatively, particular deterrence integrated with rehabilitation has the potential to be a strategic instrument to reduce juvenile recidivism without compromising the protection of children's rights.

From a judicial practice perspective, through an analysis of several juvenile court decisions related to concurrent criminal offenses, this study found that the application of rehabilitation-based particular deterrence in judges' considerations remains fluctuating and inconsistent. On the one hand, several decisions have accommodated the developmental aspect through job training, placement in a correctional facility (LPKA), and

⁵⁸ Ketut Anjaya Wilansa Wisna, "Tantangan Sistem Pemidanaan Terhadap Anak Sebagai Pelaku Tindak Pidana Dalam Sistem Peradilan Anak Di Indonesia," *Aliansi: Jurnal Hukum, Pendidikan Dan Sosial Humaniora* 2 (2025), <https://doi.org/https://doi.org/10.62383/aliansi.v2i6.1394>.

consideration of age, remorse, and community service results as the basis for sentencing; however, on the other hand, the construction of concursus, the proportionality of punishment, and the details of rehabilitation programs are often not fully addressed. This is evident in the continued dominance of imprisonment, the inaccuracy or lack thereof in the application of concursus articles, and the sometimes contradictory decisions between imprisonment and return to parents. Therefore, the results of this study emphasize the need for more operational sentencing guidelines that are sensitive to the characteristics of concursus cases involving juveniles, strengthened implementation of diversion and measurable rehabilitation programs, and consistent judicial considerations so that particular deterrence truly functions as a deterrent to reoffending and a means of restoring and protecting children's futures.

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