

RESEARCH ARTICLE

# Minor and Crime: How the Law Applied for Juvenile?

Iin Geraldina Jalisna Parhusip

Juvenile Criminal Law Research Center

Bandung, West Java, Indonesia

✉ iinparhusip@gmail.com

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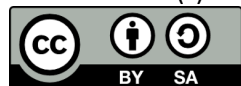
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## Abstract

Criminality is all forms of speech, behaviour that harm society and attack the safety of citizens, both those covered by law and those not yet covered by the criminal law. In carrying out the guidance and protection of children need the role of society through institutions and organizations. Children are part of the young generation as one of the human resources that is the potential and successor of the ideals of the nation's struggle in the future. They have a strategic role and are of special character and require coaching and protection for balanced, physical, mental, and social growth and development. The handling of criminal cases with child offenders needs special attention, starting from the criminal law applicable to children. Handling of children as perpetrators of criminal acts every year always reap a good criticism from the community, this is due to the culture maintained from generation to generation of law enforcement mindset in handling the perpetrators of criminal acts.

**Keywords:** *Children; Juvenile Justice; Child Protection*

## 1. INTRODUCTION

The child is the nation's asset part of the younger generation that plays a role strategic in the progress of a nation. This strategic role is realized by the community International to give birth to a convention that are essentially eligible protection of the rights it has. Theft committed by minors can be said to be a special theft, i.e., as a theft in certain ways so that it is lighter, but in the provisions of criminal law can

only threatened with punishment the maximum is higher, that is more than a five-year or more imprisonment of the criminal sanctioned in Article 362 of the Criminal Code. Therefore, in carrying out examination of children as perpetrators of criminal acts, must be considered about the purpose of juvenile justice.

That is to make corrections and rehabilitation, so that children can return to a normal and independent life for the future potential. In 1990 a child rights convention was born (Convention on The Right of Children) has been ratified by 192 States included Indonesia, Ratification of conventions is implemented through Presidential Decree No.36 1990 on Legalization Convention on The Right of Children. The consequences of that are Indonesia should advance as well protect the interests of the rights of the child legal subject. In the convention there is a general principle that must be applied to the child that is the principle of non-discrimination, that every human being is no exception the child has divide each other (Davies & Robson, 2016; Dewi, Prasetyawati, Warganegara, Monica, & Siswanto, 2021).

Therefore, the State already should be the primary protector as well as guarantors to protect all children from all forms of discrimination committed by others too. As mentioned in paragraph 2 of the Convention on the Rights of the Child. Recently the phenomenon that occurs in society shows the crime committed by children has increased from time-time as often reported in both print and electronic media about various events the crime that the perpetrator is the child. The world of children is now on the stage of the world community in various forums, baik in national, regional, and international environment.

Recently, the phenomenon that occurs in the community shows the crime committed by children has increased from time-time as often reported in both print and electronic media about various crime events that the perpetrators are children. The deviation of unlawful behavior by children is caused by various factors. Among other negative impacts of rapid development, the globalization of communication and information, the advancement of science and technology, and lifestyle changes have brought fundamental social change in people's lives (Erdianti & Al-Fatih, 2019; Wangi, 2017; Amnawaty & Rifandy, 2019).

While on examination at the Court level often the rights of defendants to obtain legal aid are not met. Especially the defendants of children from economically weak groups can not appeal or appeal their case. The judge's decision will affect the child's life as a criminal offender. Therefore, the judge must be confident that the decision to be taken will be one of the strong foundations for returning and transporting the child to a better future and to develop himself as a responsible citizen for the family, nation and state. This should be considered by the judge as law enforcement officers in handling cases of crime committed by children. Therefore, in carrying out the examination of children as perpetrators of criminal acts, must be considered about the purpose of juvenile justice.

Diversi done with reason to giving an opportunity to lawbreakers to be the ones who either back through non-formal channels by involving resources society, diversion attempts to bring justice to the case of children who have already committed criminal acts up to law enforcement officers as the law enforcement. Implications are expected in the Diversi setting is the reduction in the number of children enrolled in the criminal justice process, increasing the settlement of child cases by prioritizing restorative justice and diversion, increased public participation in the handling of conflicting children with the law, and the increasing role of advocates in cases of children in court (Kopong, 2014). Therefore, in carrying out the examination of children as perpetrators of criminal acts, must be considered about the purpose of juvenile justice. That is to make corrections and rehabilitation, so that children can return to a normal and independent life for the future potential (Soekanto, 1984; Jufri, Nazeri, & Dhanapal, 2019).

## **2. METHOD**

Research is a basic tool in the development of science and technology (Wadong, 2000). Because the research is a scientific means for the development of science and technology, the research methodology applied should always be adapted to the science of its parent. To be able to know and discuss a problem required by using certain methods of a nature scientific. The research method used by the author in the preparation this thesis is as follows: Writing method using descriptive research specification

Analysis. This research should be able to achieve a goal wherecalled Descriptive Analysis, which is intended to provide as accurate data as possible about humans, circumstances or symptoms certain. The point is to reinforce the hypothesis, in order to strengthening old theories or within the framework of composing theories new.

This paper uses the descriptive analysis research specification is to centralize the applicable legislation is associated with the theories and implementation of positive law or laws that apply in the present, especially concerning the problem of crime of rape and solving problems that exist in the present and actual. And Approach method in this research is done by method of Juridical Normative approach, that is: Method approach which is done by examining the library material which is secondary data and also referred to the biblical legal research. This paper uses the Juridical-Normative approach method, Mresearch on the legal principles contained in the rules of regulations, related scientific literature and writings with the object of research and the juridical approach of the vicarious, can be revealed and obtained a profound meaning of position victims and protection.

### **3. RESULT AND DISCUSSION**

#### **A. Understanding Children Conflicting With the Law**

When viewed from the juridical aspect, the definition of "child" in the eyes of Indonesian positive law is commonly defined as an adult person (*minderjarig* or person underage), underage or underweight (*minderjarigheid* or *inferionity*) or often also referred to as children under guardianship (*minderjarige onvervoodij*) (Mulyadi, 2005). At the international level there seems to be no uniformity in the formulation of boundaries about children, the age level of a person categorized as a child between one country with another country is quite diverse, namely: According to Article 1 of the Convention the Child formulates the definition of the child as "any human being under the age of 18 except that under the law applicable to the child is determined that the age of adulthood is reached earlier" (Rochaeti, 2016; Darmika, 2018; Amanda, 2019).

The criteria for child age restrictions are essentially the age grouping of maximums as a manifestation of a child's abilities in legal status so that the child will switch to

adult status or become a legal subject whose data is responsibly responsible for the actions and legal acts committed by that boy.

Some things to note that the indicator to say that a person has been said to have grown is that he can commit his own legal deeds without the help of others, both parents and guardians. Based on the explanations of several laws and regulations above, it can be seen that the definition of children is varied where it is seen from the limits of age limit given to a child whether the child is under age or immature and it can be seen from the understanding of each legislation in force in Indonesia, however, in principle, a minor is a person who grows in its development which the child needs guidance for the future (Sriwiyanti, Saefudi, & Aminah, 2021; Juliana & Mohammad, 2020).

Children who are dealing with the law are children who have reached the age of 12 (twelve) years but have not reached the age of 18 (eighteen) years and not married, namely:

- 1) suspected, alleged, indicted, or convicted for committing a crime;
- 2) The victim of a criminal offense or who sees and / or hears the occurrence of a crime.

Children who are dealing with the law can also be said to be a child who is forced to come into contact with the criminal justice system because:

- 1) Suspected, indicted, or found guilty of violating the law; or
- 2) Has been victimized by a violation of law committed by person /group of person /institution /country to him/her; or
- 3) Have seen, heard, felt, or acknowledged a violation of the law.

Viewed the scope of the child who is dealing with the law can be divided into:

- 1) The perpetrator or suspect of a crime;
- 2) Victims of criminal offense;
- 3) Witness a criminal offense.

## **B. Process of Handling Against Children Conducting Criminal Acts**

The judicial process is a juridical process, where there should be a chance for people to discuss and be able to fight

for a particular position of expressing interest by various parties, considering it and where the decision is taken has a certain motivation (Supramono, 2000), as well as adults, children as perpetrators of crime will also undergo a legal process that is identical with an adult who commits a crime, the meaning of the word identical here means "almost the same", which differ only long time and how to handle it. According to Article 1 letter 2 of Act No. 3 of 1997 on Juvenile Justice, there are two categories of child behavior that can make a child against the law of offensive status and criminal offenses. Status offences are delinquency behaviors of children who, when committed by an adult, do not include a crime or a child who commits a prohibited act to a child. For example, disobeying, ditching school, running away from home, while criminal offenses are delinquency behaviors of children who, when committed by an adult, include a category of crime or a child who is in conflict with the law (Rochaeti & Sutanti, 2018; Jananuraga & Cahyaningtyas, 2021).

In addition to case settlement against children dealing with the law in courts, also known outside solutions court line or also called "The concept of restorative justice". Restorative justice has emerged over 20 years ago as an alternative to the settlement of criminal cases with child abusers. Team work Juvenile Justice of the United Nations (UN) defines restorative justice as a process of all related parties with certain criminal offenses seated together to solve the problem and think about how to deal with the consequences in the future.

Theft by minors may be translated as special thefts, ie as a theft in certain ways so that it is lighter, but in criminal law the penal law may be punished with a higher maximum penalty of more than a prison sentence of five years or more of the criminal sanction imposed in Article 362 of the Criminal Code. This is stipulated in Article 363 and Article 365 of the Criminal Code. Article 363 of the Criminal Code: (1) Sentenced to seven years imprisonment (2) If the theft described in point 3 is accompanied by any of the items in 4 and 5, then it shall be punishable by a maximum imprisonment of nine years.

Article 365 of the Criminal Code: (1) With a jail sentence of nine years imprisonment preceded, accompanied, or followed by violence or threat of violence



against another person, with the intent to prepare or facilitate the theft, or the thief if caught, in order to have an opportunity for himself himself or those who have committed the crime to escape or that the stolen item remains in his hands, (2) Imprisonment for twelve years, (3) Sentenced to fifteen years of imprisonment if the act resulted in the death of a person; (4) The death penalty or life imprisonment or imprisonment for twenty years shall be imposed if the act resulted in a person being seriously injured or dead, and again the act was committed jointly by two or more persons, and again accompanied by one of the items mentioned in number 1 and number 2.

Differentiation of treatment and threats which is regulated in Law No. 3 of 1997 on "Juvenile Court", is intended to better protect and nurture the child in order to welcome the period front and for member opportunity to the child for through coaching obtained identity to be human which is responsible and useful for themselves, family, community, nation and state. During this time the punishment system applied to the child below age 18, who commits a crime determined in accordance with the provisions of the Criminal Code, namely the existence of policy institutions, prosecution and punishment of children (Hafrida, 2019; Yanto, Darusman, Susanto, & Harahap, 2020).

The handling of children in their legal process requires approaches, services, treatment, care and special protection for children in an effort to provide legal protection against children in conflict with the law. he process of handling children in the face of law is closely related to the rule of law itself, which is in the Juvenile Justice System (Juvenile Justice System). Judged from the perspective of the Criminal Justice System (Criminal Justice System) then in Indonesia is known 5 (five) institutions that are sub Criminal Justice System. The terminology of the five institutions is known as Panca Wangasa law enforcers, namely Police, Attorney, Court, Penitentiary and Advocate Institutions (Budiardjo, 2010; Sarwadi & Bawono, 2021).

The elements contained in Article 365 of the Penal Code (1) of the Criminal Code are:

- 1) Theft;
- 2) Preceded or accompanied or followed;

- 3) Violence or threat of violence;
- 4) Against people;
- 5) Done with the intent:
  - a. Preparing or;
  - b. Ease or;
  - c. In case of being caught;
  - d. To enable escape for himself or other participants;
  - e. To guarantee the stolen goods.

The process of criminal law enforcement is a form of examination conducted according to the procedure prescribed by law (Article 3 KUHAP), this Act determines their rights and obligations which exist in the process where the implementation and the rights and obligations they become the core of the process (Rasdi, 2018).

According to Law Number 3 In 1997 there were two alternative actions can be taken if the child is aged under 8 years of committing a crime certain, that is first left to parents, guardians or foster parents, if the child can still be nurtured. Second, submitted to the Ministry of Social Affairs if the child can not be nurtured by the person parents, guardians or foster parents. However in terms of attention to the interests of children, the judge may wish to be submitted to social organization, such as pesantren, social institutions and social institutions others with regard to the child's religion concerned (Dellyana, 1988; Kasturi, Setyorini, & Yudianto, 2021).

Legal protection of children in the judicial process begins since the level of investigation, investigation, prosecution, examination in the court until the implementation of the court decision (Eleanora, 2013; Supriyanti, et.al., 2020; Utari, et.al., 2019). During the course of the judicial process, the rights of the child shall be protected by applicable law and shall therefore be consequently performed by the parties concerned with the settlement of the child's misbehavior. Based on the rule, diversion is the granting of authority to the enforcement apparatus law to take policy actions in handling or resolve child abuse issues by not taking formal roads inter alia, stopping or not proceeding from criminal proceedings or returns to the community. Diversion implementation can be done inside all levels of examination, intended to reduce



negative impacts involvement of children in the judicial process ([Listyarini, 2017](#)).

### **C. Provision of Criminal Sanctions and Action Against Children as Criminal Actors**

Criminal sanctions that can be imposed on children as perpetrators of the offense under Act No. 3 of 1997 on Juvenile Justice Article 22 are criminal and acts.

#### **1) Criminal Sanctions**

Criminal sanctions that can be imposed on a child as perpetrator of offense are the principal and additional criminal, as follows:

##### **a. Criminal law**

The principal punishment that can be imposed on the child as perpetrator of offense is regulated in Law Number 3 of 1997 concerning Juvenile Justice Article 23 paragraph (2) namely:

##### **- Prison Criminal**

According to Article 26 paragraph (1) of Law no. 3 of 1997 reads: The imprisonment that can be imposed on a child as referred to in Article 1 sub-article 2 letter a shall be maximum of one percent of the maximum of imprisonment for adults. According to Article 26 paragraph (2) of Law no. 3 Year 1997 reads: If the bad boy as referred to Article 1 sub-article 2 letter a, commits a crime punishable by death penalty or life imprisonment, the imprisonment that can be imposed on the child shall be a maximum of ten years ([Suryamizon, 2010](#)). According to Article 26 paragraph (3) of Law No. 3 of 1997 reads: If the child as bad as referred to Article 1 sub-article 2 letter a, has not reached the age of 12 years to do offense punishable by capital punishment or life imprisonment, such child can only be imposed the action as intended in Article 24 paragraph 1) letter b that is to submit to the state to follow education, coaching and work training. According to Article 26 paragraph (4) of Law No. 3 of 1997 reads: If the

bad boy as referred to in Article 1 sub-article 2 letter a, has not reached the age of 12 years to conduct a crime that is threatened with capital punishment or life imprisonment, the child shall be imposed one of the actions referred to in Article 24 ([Rahayu, 2019](#)).

- Criminal Cage

According to Article 27 of Law No. 3 of 1997 reads that: The imprisonment that can be imposed on the child as referred to in Article 1 Number 2 Letter a, shall be a maximum of one percent of the maximum penalty of imprisonment for an adult.

- Criminal fine

According to Article 28 paragraph (1) of Law no. 3 of 1997 reads that "Criminal penalty which can be imposed on a child at least one parent from the maximum penalty of penalty for an adult." According to Article 28 paragraph (2) of Law no. 3 of 1997 reads that: "If the fine as referred to in paragraph 1 can not be paid then replaced with mandatory work training". According to Article 28 paragraph (3) of Law No. 3 Year 1997 reads that: "Compulsory job training in lieu of fines shall be done no later than 90 working days and duration of work training not more than 4 hours a day and not done at night" ([Sударsono, 2015](#)).

- Criminal oversight

According to Article 30 paragraph (1) of Law no. 3 of 1997 reads "criminal oversight that may be imposed on the child as defined in Article 1 number 2 letter a, at least 3 months and 2 years at the most". According to Article 30 paragraph (2) of Law No. 3 Year 1997 reads: If the child as delinquent as referred to in Article 1 sub-article 2 letter a, shall be imposed the supervision as referred to in paragraph 1, then the child shall be placed under the supervision of the prosecutor and guidance of the supervisor of the society.

According to Article 30 paragraph (3) of Law No. 3 of 1997 reads "The provisions concerning the form and procedure of the implementation of criminal supervision shall be further regulated by government regulation".

b. Additional criminal

Additional criminal punishment for child as perpetrator of offense shall be regulated in Law Number 3 Year 1997 concerning Juvenile Justice Article 23 paragraph (1) that is:

- Deprivation of certain goods

Items that can be confiscated are goods acquired by crime or goods used to conduct offenses. In general, the goods that should be confiscated must belong to the prisoner.

- Payment of compensation

According to argued that "the payment of compensation imposed as an additional penalty is the responsibility of the parent or other person who exercises the authority of the parent".

2) Action Sanctions

Sanctions Measures that can be imposed on children as perpetrators of offense are regulated in Article 24 paragraph (1) of Law Number 3 Year 1997 regarding Juvenile Justice as follows:

a. Return to parent, guardian or foster parent

According to the authors that: Although the child is returned to a parent, guardian or foster parent, the child remains under supervision and guidance. Counselor of Society, among others follow scouting activities and others (TPF PUG, 2002).

b. Submit to the State to attend education, coaching

and work training According to Gatot Supramono writes that: If the judge is of the opinion that the parent, guardian or foster parent does not provide better education and coaching, then the judge may determine the child is set at the Child Correctional Institution for education, coaching and work training. The Work Exercise is intended to provide the provision of skills to the child, for example by

providing skills about carpentry, agriculture, workshop, makeup and so on after completion of the action can live independently.

- c. Submitting to the Ministry of Social Affairs, or Social Organizations engaged in education, coaching and work training The punishment that can be imposed on the child is contained in Article 23 of Law Number 3 Taun 1997, namely the principal and additional criminal sanctions. Criminal penalties include:

- imprisonment,
- criminal confinement,
- criminal fines, and
- criminal supervision

In principle, education, coaching and work training are administered by the government in a Child Prison or Social Department, but in the case of the child's interest the judge may determine the child concerned to be submitted to the CSOs, such as pesantren, social institutions and other social institutions religion of the child in question (Maruapey, 2007). According to Law No. 3 of 1997 Article 24 paragraph (2) reads "The action as referred to in Article 24 paragraph (1) may be accompanied by additional warning and conditions stipulated by the Judge". Where the reprimand referred to is a warning from a judge either directly to a child being obeyed or indirectly through a parent, guardian or foster parent, so that the child does not repeat the act that resulted in the child being sentenced.

While the purpose of additional terms is the obligation to report periodically to the Public Counselor. The final stage in the process of examining a case is the final judgment (*verdict*) by the judge (Ardianto, 2013). The judge in the indictment and release of any lawsuit must be accompanied by judges' consideration. The judge's consideration in deciding a criminal case may include consideration in the case of nullification, mitigation and criminal penalties. The terms of mitigation and weighting in the draft Criminal Code are "mitigation of 1/3 (one-third)" or "1/3 (one third)" reduction of the threatened penalty.

#### **4. CONCLUSION**

Regulations governing theft of crimes committed by minors in accordance with acts committed by the child that is to

provide criminal sanctions according to Law no. 3 Year 1997 article 23 paragraph 2 on Juvenile justice. In addition, action sanctions under Law no. 3 Year 1997 article 23 paragraph 1 on Juvenile Justice.

According to Article 1 letter 2 of Act No. 3 of 1997 on Juvenile Justice, there are two categories of child behavior that can make a child against the law of offensive status and criminal offenses. Status offences are delinquency behaviors of children who, when committed by an adult, do not include a crime or a child who commits a prohibited act to a child. For example, disobeying, ditching school, running away from home, while criminal offenses are delinquency behaviors of children who, when committed by an adult, include a category of crime or a child who is in conflict with the law

Restorative Justice is a step towards developing non-custodial and step-based efforts society for the opposite child by law. Diversion and non-use implementation in line with justice for children as stated in the instrument international, in order to fulfill the right asasi for children facing with law. Restorative justice can di values and positive practice in a society in line with enforcement human rights. Law Number 23 Year 2002 regarding "Child Protection" is a reflection from the existence of justice, benefit and legal certainty in a society, which is the result of interaction as it is the result of interrelation between existing phenomena and interplay. Therefore, all business that protects the child, carries out rights and obligations of children is something who can fight for survival live the child and develop himself as a protection for him own.

The application of sanctions in the imposition of a crime against a minor who commits a criminal act of theft should consider mitigation for a minor who is a minimum of one-half of the maximum adult punishment penalty, and sanction measures such as returns to parents, guardians, foster parents, or submits to the state for education, coaching, and vocational training. Both sanctions are considered to provide a mild effect for the perpetrators of minors who commit a criminal act of theft.

Diversion is done with a reason to give an opportunity to lawbreakers to be good people back through the path non-formal with the involvement of community resources, diversion attempts to provide justice to the case

of children who have already done criminal acts up to law enforcement officers as enforcers law. The handling of children in their legal process requires approaches, services, treatment, care and special protection for children in an effort to provide legal protection against children in conflict with the law.

## 5. DECLARATION OF CONFLICTING INTERESTS

The Author declares that there is no potential conflict of interest in the research, authorship, and/or publication of this article.

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*Because of social pressure, individualism is rejected by most people in favor of conformity. Thus the individual relies mainly upon the actions of others and neglects the meaning of his own personal life. Hence he sees his own life as meaningless and falls into the “existential vacuum” feeling inner void. Progressive automation causes increasing alcoholism, juvenile delinquency, and suicide.*

## **Viktor E. Frankl**

### **ABOUT AUTHORS**

**Iin Geraldina Jalisna Parhusip** is a researcher at Juvenile Criminal Law Research Center, Bandung, West Java, Indonesia. Some of his publication such as *Jaminan Atas Udara Yang Sehat di Kota Besar (Jakarta) di Indonesia (Perspektif Kebijakan Nasional Dan Daerah)* (2017), and *Akses Masyarakat Disabilitas dalam Pendidikan (Sebuah Kajian Rights to Education Di Indonesia)* (2017).