



Reformulation of Juvenile Justice Policy in Handling Sexual Offenses by Children Under Twelve

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Abstract: Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) presents significant challenges in addressing immoral crimes committed by children under the age of twelve. According to Article 1 paragraph (3) of the law, children below 12 years old cannot be processed through formal legal proceedings and must instead be returned to their parents or handed over to social institutions. However, when immoral acts are committed by children in this age group often under the supervision of neglectful or incapable parents returning them home raises concerns of repeated offenses and a lack of proper intervention. This research employs a normative legal method, using secondary sources such as legal literature, journals, books, and official websites. The data analysis is qualitative, emphasizing the contextual relevance of information rather than its quantity. The findings reveal that effective protection and rehabilitation for children who commit immoral acts at such a young age require the development of a strong interdisciplinary network. This includes cooperation between social institutions, law enforcement agencies, and child protection services. Rehabilitation programs for Children in Conflict with the Law (ABH) should not only address legal dimensions but also support children's rights, personal development, and successful reintegration into society. Such programs must create safe, educational, and playful environments tailored to children's developmental needs. This approach ensures that even at a young age, children involved in criminal behavior are given the opportunity to recover, grow, and contribute positively to society without being subjected to the conventional punitive system.

Keywords: SPPA, ABH, immoral perpetrators, and child rehabilitation

Introduction

Child Protection Law No. 35 of 2014 guarantees the protection of children who commit crimes as stipulated in Articles 16 to 18 which in essence regulates children who are deprived of their liberty in accordance with existing laws have the right to benefit from legal remedies that are appropriate for protection. The criminal justice system in Indonesia through Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) seeks to provide special protection to children who are in conflict with the law. The SPPA Law introduces a restorative justice and diversion approach to handle the cases of children of criminal offenders to prevent them from criminal stigma that can damage their future.¹

However, the implementation of the SPPA Law faces challenges when dealing with cases of children under 7 years old who are involved in immoral crimes. Article 1 paragraph (3) of the SPPA Law states that children who have not reached the age of 12 years cannot be submitted to a formal legal process, but returned to their parents or referred to social institutions. This approach, although in accordance with non-penal principles, has not fully answered the needs of victim protection and rehabilitation of child offenders. This lack of regulation has the potential to create injustice for victims, especially in cases of immorality that leave severe psychological impacts.

Data from the Ministry of Women's Empowerment and Child Protection shows that cases of sexual violence by children continue to increase from year to year. In many cases, children of immoral offenders are often influenced by environmental factors, lack of parental supervision, or exposure to harmful content in the media (KPPPA, 2021). However, existing legal policies have not accommodated an effective mechanism to deal with children as perpetrators and victims in that context.

The reformulation of the policy on the criminalization of children of immoral perpetrators under the age of 7 is very important to ensure a balance between the protection of children as perpetrators and justice for victims. The proposed approach must consider the psychological, social, and educational dimensions of the child, as

¹ Setyowati, I., *Restorative Justice in the Juvenile Criminal Justice System*, Bandung: Alfabeta, 2020, 31

well as apply the principle of restorative justice that provides rehabilitation opportunities without ruling out the rights of the victim.²

Through rehabilitation, children must be given a court order, a transfer order, or a child who has been given a determination and/or court decision that has permanent legal force. ABH must be able to carry out its social functions. The reason for the legal protection of children is because it is a manifestation of justice in a society as explained in Law No. 23 of 2002 in Article 20 which stipulates that the state, government, community, family, and parents are obliged and responsible for the implementation of child protection.

In the process of growing up, children need a good education to support that journey. In the modern era, many elementary and middle school children have electronic devices such as mobile phones that are used for learning or communication. However, there are also children who are addicted to playing games or social media. The role of parents is to provide an understanding of the impact of excessive mobile phone use.

Today, the internet is widely used by children, both for learning and for accessing negative content such as adult videos, which can be quickly imitated by children because they learn quickly from what they see. In daily life, there are still minors who are involved in juvenile criminal acts, promiscuity, or even immoral acts and rape. Asusila is considered a criminal act because it violates the human rights of victims, especially women, so its resolution requires law enforcement to seek justice. This action can make children face the law if their actions deviate from the existing rules, and the impact can harm others, both physically and mentally.

Sexual crimes are not new, but they are becoming more frequent and potentially increasing every year. Article 285 of the Criminal Code (KUHP) states "Whoever uses force or threat of violence to force a woman to have sex outside of marriage, is threatened with rape, a maximum of 12 years in prison." However, the reality is that the punishment handed down to rapists is often lighter, which is one of the reasons why these incidents often occur, including in corporate environments. Rape is not only committed by adults, but also increasingly involves children, with perpetrators who are

²Mahmud, A., *Perspectives on Juvenile Criminal Law: A Case Study of Sexual Violence in Minors*, Jakarta: Rajawali Press, 2023 H.89
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also minors. Rape cases are common all around us, from children to adults. This shows that "anyone can commit unlawful acts, including children." In criminal acts, mistakes are admitted only if the perpetrator is an adult who knows the consequences of his actions, while minors have legal protection.

According to this problem, the author is interested in studying more deeply the efforts of legal institutions in providing the right to justice in their social life in society in an article entitled, "Reformulation of Criminal Policy in the Law on the Juvenile Criminal Justice System No. 11 of 2012 (Perspective on Children Under 12 Years of Age Perpetrators of Immoral Crimes)".

According to the description above, the author formulates the main points of discussion in this study:

1. How is the regulation of immoral crimes against child offenders in the law in Indonesia?
2. How to reformulate the ideal responsibility policy to deal with children under 12 years old as perpetrators of immoral crimes so that they are in accordance with the principles of child protection and restorative justice?

This research is expected to be an innovative reference in the reform of child penalization policies in Indonesia, especially in cases of immoral crimes involving children under 12 years old. Through this comprehensive approach, it is hoped that it will be able to make a new contribution to child protection.

In this study, the author uses a normative (*doctrinal*) research method through the approach of the Law (*Statute Approach*) with the type of library *research*, namely research whose object of study uses library data in the form of books as a source of data, in this method the author needs to understand the hierarchy, and the principles in the laws of the Law. This qualitative research, according to the purpose of the research, is to describe social phenomena in detail about a social situation, social arrangement, or social coherence of children as perpetrators of immoral crimes.

This research aims to understand the process of social rehabilitation for Children Facing the Law (ABH). A law is a written regulation that contains generally applicable legal norms, compiled or determined by state institutions or authorized officials through procedures specified in laws and regulations. In accordance with this understanding, it can be concluded that a law is a form of legislation and regulation. Therefore, the approach in this study uses legislation and regulations.

Criminal Arrangements for Child Offenders in the Law in Indonesia

Children basically do not fully understand that what they are doing is a violation, so according to sociological, psychological, and pedagogical considerations, they cannot be fully held accountable for their actions, in accordance with Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) article 21. The weak ability of children and adolescents to "calculate risks" and "control impulses" is caused by biological processes in their brains and bodies. However, with technological advances and access to the internet or social media, both negative and positive impacts can be felt by children. The negative impact is, among others, the ease with which minors access pornographic sites. The lack of supervision and lack of positive activities make children access the site as a way to fill their free time. Due to children's weak ability to control impulses, they tend to imitate what they see and end up doing the same to their peers, which leads to rampant cases of immorality involving children as perpetrators and victims, both in big cities and in villages.

In the Juvenile Court Law, there are differences in legal treatment, ranging from investigation to consideration of children's cases in court. The crime of intimidation of children is regulated in the Criminal Code, with penalties not exceeding half of the penalties for adults, and the death penalty or life imprisonment is not applied to children. Penalties for children are determined according to age, where children aged 8 to 12 cannot be prosecuted, while children aged 12 to 18 years can be criminally charged.

Combined punishment theory tries to combine both absolute theory and relative theory, namely that punishment is not only to avenge the perpetrator, but also as a means for prevention, rehabilitation, and protection of society. In this theory, punishment has a multifunctional purpose, namely seeking accommodation for aspects of justice, deterrent and improvement for perpetrators so that they can return to society. According to Andi Hamzah, some combined theories emphasize retribution and some want the element of retribution to be balanced with the element of prevention.

This can be seen from various laws and regulations that accommodate several penal purposes at once. One of the ways in which this combined approach is seen in Law No. 1 of 2023 concerning the new Criminal Code which is valid for 3 years from the date of promulgation. Children involved in crimes and processed in the criminal

justice system must be treated humanely in accordance with Law No. 3 of 2003 concerning Child Protection, without discrimination, and pay attention to the right to life, survival, development, and respect for children. Article 64 of Law No. 23 of 2002 regulates the protection of children by ensuring humane treatment in accordance with their dignity, providing special support personnel, adequate facilities and infrastructure, applying appropriate sanctions, monitoring the development of children who are in conflict with the law, and maintaining the relationship between children and parents or families.

In the trial process, the judge is obliged to protect children, both victims and perpetrators of crimes. For example, in the case of moral violations by minors, even though the final punishment is in the form of returning the perpetrator to his parents, the protection of the child is maintained in accordance with the provisions of Law No. 3 of 1997 concerning the Children's Court. "If a child perpetrator who is not 12 (twelve) years old commits a criminal act that is not threatened with the death penalty or is not threatened with the death penalty, then the child perpetrator is subject to life imprisonment. One of the actions regulated in Article 24 of Law Number 3 of 1997". The court must impose appropriate sentences for children who commit crimes, including sexual abuse. The application of sanctions on children is aimed at education, even if minors are not fully criminally responsible, they can still be subject to investigative action. Indonesia firmly upholds the principle of equality before the law and the protection of the law without discrimination. Judges are responsible for carrying out their functions fairly and impartially. Criminal sanctions related to child rape are also regulated in Law No. 23 of 2002 concerning Child Protection, especially in Article 81, which is as follows:

1. Any person who deliberately uses violence or threatens to use violence to force a child who has sexual intercourse with himself or another person shall be sentenced to imprisonment for a maximum of 15 (fifteen) years, imprisonment for a minimum of 3 (three) years, and a maximum fine of 15 years or more. ping as much as Rp 300,000,000 (three hundred million rupiah) and at least Rp 60,000,000 (sixty million rupiah).
2. The criminal provisions as intended in paragraph (1) also apply to every person who deliberately deceives, lies in a chain, or persuades a child to have intercourse with him or with another person.

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Reformulation of the Ideal Responsibility for Immoral Perpetrators Under 12 Years Old

In the context of crimes or sexual violence committed by children against children, Howard E. Barbaree and William L. Marshall³ distinguish between children and adolescents. Children under the age of 12 are not held legally responsible for acts of sexual abuse, so they cannot be criminally prosecuted. Meanwhile, minors, who are generally between 12 and 17 years old, can be held legally accountable for the criminal acts they commit. In criminal law, there is a principle of *geen straf zonder schuld*, which means that even if someone has committed a criminal act, it must be proven first whether they can be held accountable for their actions or not.

The dualistic theory of criminal acts (*straffbaar feit*) must be separated from guilt (*schuld*), because only guilt is the basis for criminal liability. In this view, criminal acts only include criminal conduct (*actus reus*), while criminal liability is related to the characteristics of the perpetrator. Guilt is considered the doing the same to their peers, which leads to rampant cases of immorality involving children as perpetrators and victims, both in big cities and in villages.

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³ disuprpto, Paulus, *Child Delinquency: Understanding and Countering it*. Malang: Bayumedia Publishing, 2021, 57

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The government and related organizations have made efforts to reduce moral violations committed by children, one of which is by implementing the diversion method, which is to find alternative solutions other than prison through a restorative justice approach. The diversion method has a condition, according to Article 7 paragraph (2) of Law No. 11 of 2012, which regulates criminal acts with a threat of imprisonment of less than 7 years and are not a repeat criminal offense can be through diversion. The social rehabilitation process for ABH refers to PERMENSOS No. 7 of 2021, which involves stages such as intake, assessment, service planning, implementation, monitoring, evaluation, termination, and supervision.

Conclusion

The enforcement of law against children under twelve who commit immoral acts reveals a tension between the normative framework of child protection and the demand for justice for victims. Law No. 11 of 2012 on the Juvenile Criminal Justice System (SPPA), which prohibits formal legal proceedings against children under twelve, is

⁴ disuprpto, Paulus, *Child Delinquency: Understanding and Countering it*. Malang: Bayumedia Publishing, 2021, 57

designed to protect children as individuals who lack full moral and legal capacity. However, in practice, this provision often leads to legal ambiguity, especially when child perpetrators are returned to negligent or dysfunctional families. Such a return without structured intervention increases the risk of recidivism and fails to address the root causes of deviant behavior.

While Law No. 35 of 2014 strengthens child protection from sexual violence, its punitive provisions are only effectively applied to children aged fourteen and above. This creates a legal gap that inadequately protects victims and fails to hold very young offenders accountable in a meaningful way. The novelty proposed in this research is the urgent need to reformulate existing policies not merely by amending legal texts, but by constructing a holistic, interdisciplinary framework that bridges law, child developmental psychology, and social protection systems.

The principle of *the best interest of the child* must become the foundation of legal treatment, as enshrined in the Convention on the Rights of the Child (CRC). According to the developmental theories of Piaget and Kohlberg, children under twelve are still in heteronomous moral stages and do not fully comprehend the concepts of right and wrong. Therefore, a rehabilitative, educational, and restorative approach not punitive treatment must guide future policies addressing children in conflict with the law. This reform ensures child protection, promotes restorative justice, and lays the groundwork for sustainable social transformation.

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