



## Theoretical And Juridical Basis Concerning About Child Criminal Judgment System In Karawang, Indonesia

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### Abstract

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*In Indonesia, crimes committed by minors occur frequently in various regions; it cannot be avoided despite the fact that various efforts have been made to stop criminal activities committed by minors, ranging from counseling in various critical places where children are educated to arresting children in trouble with the law and posting warnings in various locations throughout the city of Karawang, but many cases of children conflict with the law continue. The goal of this study is to discover how the regulations governing the criminal justice system for children in Karawang work. Using the normative juridical research method, it is possible to conclude: The presence of The Juvenile Criminal Justice System desires practical progress in the context of the best protection for children who are viewed as a valuable asset of a nation and country in the future, and whose rights must be protected. Legal protection for children can be interpreted as an effort to protect laws that violate children's rights and various interests related to child welfare. Criminal liability clashed with minors with the laws through provisions regulated in the Criminal Code and Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. Criminal threats for children who commit an act against the law are determined by the Criminal Law, and the penalty for children who commit an act against the law is half of the maximum criminal threats from the Criminal Law on adults, while life imprisonment and capital punishment are not imposed on children who commit an act against the law.*

**Keywords:** Children, Criminal Justice, Juvenile Criminal Justice System.

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## INTRODUCTION

In the Constitution of the Law No. 35 on 2014 concerning Child Protection gave a definition about 'Child Protection itself in Chapter 1 verse (2), as follows : "Child Protection is all activities to guarantee and protect children and their rights in order to live, grow, develop, and participate optimally in accordance with the dignity humanity, and receive protection from violence and discrimination"

Constitution of Law No. 23 of 2002 Articles 20 to 26 regulates that child protection is the responsibility and obligation of the parents, the general public and institutions authorized by the courts as well as the central government as well as area. Especially when children do deeds that breaking the law.



Problems with children who commits an act against the law, either in the position as an object (victim) and child as subject (perpetrators) of criminal acts, are problems facing all countries. On this basis, society internationally through institutions which is under United Nation has issued various instruments protection for children that must be used as a reference by all countries. In Indonesia with the enactment of Law Number 3 of 1997 concerning Juvenile Court is a follow-up of the agreement. Constitution Number 3 of 1997 has provided legal basis in an effort to protect children. The child who did unlawful act of course will continue to be processed according to the provisions applicable law.

Regarding juvenile justice, it is regulated in Law No. 11 Year 2012 on the Juvenile Criminal Justice System, Juvenile justice is a court that handle criminal cases concerning children who are included in the a system called a system criminal justice in a society to tackle child delinquency, At the same time, it is also hoped that provide protection to children who are in conflict with the law who are perpetrators of child delinquency. Children who commit a permanent crime can be held accountable, criminal threats for children who commit an act against the law determined by the Criminal Law, where is the drop the penalty is determined by half of maximum criminal threat from adults, while the sentencing life imprisonment and no death penalty applied to children.

## **METHODS**

This study employs normative legal research technique, which entails doing research on legal principles, legal rules in terms of values (norms), actual legal laws, and legal systems. This study employs normative legal research technique, which entails doing research on legal principles, legal rules in terms of values (norms), actual legal laws, and legal systems.

## **RESULTS & DISCUSSION**

### **Definition Of Juvenile Criminal Judgment**

The settlement of criminal cases against children will of course be different from the process of resolving cases against adults, the settlement of criminal cases against children has a special nature because it is regulated in special regulations. Public understanding of the process of resolving child crimes often creates a misunderstanding, people often assume that minors are immune to the law or get preferential treatment in handling cases of children in conflict with the law, even though it is not like that, children still receive legal threats if they are in conflict with the law. commit a crime, and the process of handling child cases is specifically regulated by law.

Juvenile Court is a form of exercise of judicial power within the scope of general court. While the juvenile criminal justice system is a process of resolving cases of children who are dealing with the law covering all processes, starting from the investigation stage to the stage of mentoring after the child has undergone a crime for the good and interests of the child so that his rights and obligations are still fulfilled as a child. This process includes all examinations and decisions in cases involving the interests of children as well as court intervention in the lives of children and their families, which is always shown in an effort to remedy bad

conditions related to deviant behavior and law violations by children within the jurisdiction of the state of Indonesia.

Ani Purwanti in her book states that "the juvenile criminal justice system is a system of criminal law enforcement against children which is carried out in an organized manner by 4 (four) sub-systems of power, namely investigation, prosecution, trial, implementation of crimes based on material and formal criminal law for children emphasizes the protection of children and child welfare (Purwanti, 2020).

In juvenile court, there are several instruments involved according to Law Number 3 of 1997 concerning Juvenile Court, namely:

1. Article (1) paragraph 4: Detention is the placement of a suspect or defendant in the State Detention Center, Branch of the State Detention Center or in a certain place;
2. Article (1) paragraph 5: Investigators, namely child investigators;
3. Article (1) paragraph 6: Public Prosecutor is a child Public Prosecutor;
4. Article (1) paragraph 7 : Judges are Child Judges;
5. Article (1) paragraph 8: Appeal Judge is a juvenile appellate judge;
6. Article (1) paragraph 9 : Judge of cassation is judge of child cassation;
7. Article (1) paragraph 10: Ash's parents are people who actually take care of children, as parents of children;
8. Article (1) paragraph 11: Community Counselor is a correctional officer at the correctional center who conducts guidance for the Correctional Assisted Citizens;
9. Article (1) paragraph 12: Correctional Organization is a community organization that has special attention to the problem of naughty children;
10. Article (1) paragraph 13: Legal Counsel is a legal advisor as referred to in Law Number & Year 1981 concerning Criminal Procedure Code.

The principle of juvenile criminal justice is stated in Law No. 11 of 2012 concerning the juvenile justice system, it is stated in article 2 which reads: "The Juvenile Criminal Justice System is implemented based on the following principles:

1. Protection,
2. Justice;
3. Non-discrimination;
4. The best interests of the child;
5. Respect for children's opinions;
6. Survival and development of children;
7. Guidance and guidance of children;
8. Proportional;
9. Deprivation of liberty and funding as a last resort; and
10. Avoidance of retaliation."

Starting from the concept of complete, comprehensive and comprehensive child protection, this law places the obligation to provide protection to children based on the following principles (Sarawati, 2009):

1. The principle of non-discrimination

The principle of non-discrimination is a principle that does not distinguish, limit or isolate children, either directly or indirectly based on religion, ethnicity,

race, social status, economic status, culture, or gender which can affect the fulfillment and protection of children's rights.

2. The principle of interests that are not in the best interests of the child

The principle for the best interests of the child is the principle that emphasizes that in all actions related to children carried out by the government, society, or legislative and judicial bodies, the best interests of children must be the main consideration.

3. The principle of the right to life, survival and development

The principle based on the right to life, survival, and development is the principle that emphasizes that every child has the right to live safely, peacefully, peacefully, happily, physically and mentally. As well as the right to fulfill their basic needs to grow and develop properly, and the right to achieve a decent standard of living for children's physical, mental, spiritual, moral and social development which must be fulfilled by the parties mentioned by the Child Protection Act. obligations and responsibilities for it, namely parents, society, and government.

4. The principle of respect for the views/opinions of children.

The principle of hope for children's views/opinions is a principle that gives children the right to express opinions in all matters that affect children, including:

- a. The right to have an opinion and get his or her opinion or opinion;
- b. The right to obtain and know information and to express it;
- c. The right to form associations to join ; and The right to obtain appropriate information and protection from any unhealthy information.

Furthermore, it is further regulated in the Juvenile Criminal Justice System Act which is stated as follows:

"In the event that a child under the age of 12 (twelve) years of age commits or is suspected of committing a criminal act, the investigator, the community advisor, makes a decision to hand it over to the parents/guardian or to include him/her in educational programs, coaching at government agencies or social welfare administration institutions that dealing with the social welfare sector" (Child Criminal Justice, 2015)

Meanwhile, children who are more than 12 (twelve) years old can be sentenced to various types of crimes based on Article 71 of the Law on the Juvenile Criminal Justice System, which are as follows:

1. The main criminal penalties for children consist of:
  - a. Criminal warning;
  - b. Criminal conditions:
    - 1) coaching outside the institution;
    - 2) community service; or
    - 3) supervision.
  - c. work training;
  - d. coaching within the institution; and
  - e. prison.
2. Additional penalties consist of:
  - a. deprivation of profits derived from criminal acts; or
  - b. fulfillment of customary obligations.

### **Description Of Child Criminal Action In Karawang**

Karawang is one of the cities in Indonesia in West Java Province which is bordered by other cities, such as the city of Bekasi in the west, Bogor in the south and southwest, Subang in the east, while in the north it is bordered by the Java Sea. Karawang itself stands on an area of 1,652 km<sup>2</sup>, with a population of 2,361,019 (data per year 2020).

Based on data obtained from the Case Tracking Information System, child criminal cases recorded at the Karawang District Court from 2014 to 2022 were 118 cases (Data update: Sunday, 24 Apr, 2022 08:23:07 WIB). The large number of cases of criminal cases specifically for children in Karawang is one illustration that the city of Karawang is increasingly dealing with criminal cases specifically for children.

Then what about the regulations used in the criminal justice process for juvenile offenders? Quoted from the Karawang District Court Class 1 B page, here are some regulations sourced from the Administrative and Technical Guidelines for General and Special Criminal Courts, Book II, 2007 Edition, Supreme Court of the Republic of Indonesia, 2008, Pg. 83-88, which is as follows :“

1. In the event that a child commits a crime before the age of 18 (eighteen) years and is submitted to a court session after the child concerned has exceeded the age limit, but has not yet reached the age of 21 (twenty one) years, it is still submitted to the juvenile court.
2. Judges who try children's cases are judges who are appointed based on the Decree of the Chief Justice of the Supreme Court on the recommendation of the Head of the District Court concerned through the Head of the High Court.
3. In the event that there is no Juvenile Judge, the Chief Justice of the Court may appoint a Juvenile Judge by taking into account the provisions of Article 10 of Law no. 3 of 1997, with the provisions concerned immediately proposed as a Juvenile Judge.
4. Juvenile Judges examine and adjudicate children's cases with a single judge, and in certain cases the Chief Justice of the District Court may appoint a panel of judges. difficult to prove).
5. In the event that a child commits a crime together with an adult and/or a member of the Indonesian National Army, the child concerned shall be referred to the juvenile court, while the adult and/or Indonesian National Army member shall be submitted to the relevant trial.
6. In the event that a child commits a serious human rights crime, it is submitted to the juvenile court.”

The trial process for children is carried out as follows: “

1. The trial shall be conducted behind closed doors;
2. The Judge, Public Prosecutor and Legal Counsel for the Defendant did not use the Toga;
3. Before the trial is opened, the Judge orders the Community Counselor to submit a report on the results of the Community Research (Litmas) regarding the child concerned;
4. During the trial, the Defendant must be accompanied by his parents or guardians or foster parents, legal advisors and community advisors;

5. When examining witnesses, the Judge may order the Defendant to be taken out of the courtroom, but the parents, guardians or foster parents, Legal Counsel, and Community Advisor are still present;
6. During the trial, the Child Defendant and the Child Victim Witness may also be accompanied by an Assistant Officer with the permission of the Judge or the Panel of Judges;
7. The decision must be pronounced in a session open to the public.”

How to detain child criminals: “

1. The judge in court has the authority to detain a child for a maximum of 15 (fifteen) days and may be extended by the Head of the District Court concerned for a maximum of 30 (thirty) days;
2. Detention is carried out after seriously considering the interests of the child and or the interests of the community. The reason for the detention must be stated explicitly in the detention order;
3. Places of detention for children must be separated from adults.”

Decision: “

1. Before pronouncing his decision, the Judge gives an opportunity to parents, guardians or foster parents, to express all matters that are beneficial to the child.
2. The decision must take into account the community research report from the Community Advisor.”

Against bad behavior children can be sentenced to criminal acts or actions: “

1. The punishments imposed consist of the main and additional penalties.
2. Principal punishment includes: imprisonment, confinement, fine or criminal supervision.
3. Additional punishment in the form of confiscation of certain goods and/or payment of compensation.”

Actions that can be imposed on bad behavior children are: “

1. Return to parents, guardians or foster parents;
2. Leave it to the State to take part in education, coaching and job training; or
3. Submit to the Ministry of Social Affairs or Social Organizations that are engaged in education, coaching and job training.
4. The child accused shall not be sentenced to imprisonment as far as possible (vide: Law No. 23 of 2002 concerning Child Protection).
5. Imprisonment, confinement or fines that can be imposed on naughty children for a maximum of (one half) of the maximum penalty for adults. This provision is also applied in the case of minimum criminal penalties for children (permanent jurisprudence).
6. If a naughty child commits a crime punishable by death or life imprisonment, the maximum imprisonment that can be imposed on the child is 10 years, but if the naughty child has not reached the age of 12 (twelve) years, then the naughty child can only be sentenced to submit to the state for education, coaching and job training or submit it to the Ministry of Social Affairs or Social Organizations engaged in education, coaching and job training.

7. If a naughty child who commits a criminal act has not yet reached the age of 12 (twelve) years who is not threatened with the death penalty or life imprisonment, then the naughty child shall be subjected to one of the actions as referred to in point 3b above, and can be accompanied by warnings and additional conditions set by the judge.
8. In the event that a naughty child is sentenced to a fine and the fine cannot be paid, it will be replaced with mandatory job training.
9. Mandatory work training as a substitute for fines is carried out no later than 90 (ninety) working days and work training is not more than 4 (four) hours a day and is not carried out at night.
10. A conditional sentence may be imposed by a judge if the sentence imposed is a maximum imprisonment of 2 (two) years, and the term of the conditional sentence is a maximum of 3 (three) years.
11. In the event that a child commits a road traffic violation, an examination procedure is applied according to the provisions as regulated in the Criminal Procedure Code, for the benefit of the child concerned (permanent jurisprudence).”

### **The Right Of A Children As a Perpetrator**

This country is one of the countries that upholds human rights, including the rights of the child as a legal subject with regulations that guarantee both the protection and fulfillment of children's rights. Child Protection Law Number 35 of 2014, Article 1 Number 12 states that "Children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, state, government, and local governments".

Based on the Convention on the Right of Child which has been ratified by the Presidential Decree concerning the ratification of the Convention on the Rights of Child Number 36 of 1990, M Nasir (2013), in his book concludes that the protection of children consists of 4 (four) principles for each country in providing protection against children, including:

1. The principle of non-discrimination;
2. Best Interest of the Child (Principle of the best interest of the child);
3. The Rights to Life, Survival and Development (Principles of the right to life, survival, and development); and
4. Respect for the views of the Child.

Based on data obtained from the Child Protection Data Bank website under the auspices of KPAI, there are 6500 cases of children in conflict with the law recorded from 2016 to 2020. The classification of children in conflict with the law is divided into three, namely children in conflict with the law as victims, children in conflict with the law, and children in conflict with the law. who are in conflict with the law as witnesses, and children who are in conflict with the law as perpetrators. For children who are in conflict with the law as the perpetrators themselves, there are 2626 cases. The definition of children who act as perpetrators of criminal acts is regulated in the Juvenile Criminal Justice System Law which states that "Children in conflict with the law, hereinafter referred to as children, are children who are 12 (twelve) years old, but not yet 18 years old. eighteen) years who are suspected of committing a crime”

A child who commits a crime, must pay attention to what causes them to commit the act, whether it can be said as a crime or merely juvenile delinquency, because in essence, a child has not yet reached the level of maturity both physically and mentally. The rights of children as perpetrators of criminal acts must also be considered because children as perpetrators of criminal acts are still required to receive special protection in accordance with the law.

The following are the rights of children in the criminal justice process citing the law on the juvenile criminal justice system which regulates the rights of children in the criminal justice process Article 3 points A-P, which are as follows:

“Every child in the criminal justice process has the right to:

1. Treated humanely by taking into account the needs according to their age;
2. Being separated from adults;
3. Obtain legal aid and other assistance effectively;
4. Carry out recreational activities;
5. Free from torture, punishment, or other cruel, inhuman and degrading treatment;
6. Not sentenced to death or life imprisonment;
7. Not to be arrested, detained or imprisoned, except as a last resort and for the shortest time;
8. Obtaining justice before a juvenile court that is objective, impartial, and in a trial that is closed to the public;
9. Unpublished identity;
10. Obtain assistance from parents/guardians and people who are trusted by the child;
11. Obtaining social advocacy
12. Acquire a private life;
13. Gaining accessibility, especially for children with disabilities;
14. Obtaining education;
15. Obtaining health services; and
16. Obtain other rights in accordance with the provisions of the legislation.

Meanwhile, the rights of children who are currently serving a criminal period have rights which are regulated in the juvenile criminal justice system law, Article 4 Paragraphs (1) and (2), as follows:

1. Children who are serving a criminal period have the right to:
  - a. Get a reduction in the criminal period;
  - b. Gaining assimilation;
  - c. Obtaining leave to visit family;
  - d. Obtaining parole;
  - e. Obtaining leave before being released;
  - f. Obtain conditional leave; and
  - g. Obtain other rights in accordance with the provisions of the legislation.
2. The rights as referred to in paragraph (1) are granted to children who meet the requirements as regulated in the provisions of the legislation.

In paragraph (2) it is further explained in the explanation chart article by article in the same law. namely that what is meant by "statutory regulations" include, among others, the law on correctional facilities.

In the Correctional Law Number 12 of 1995, Article 14 in conjunction with Article 22, it is regulated on the rights of children as prisoners, namely as follows:

“ Prisoners have the right to:

1. Performing worship according to their religion or belief;
2. Get treatment, both spiritual and physical care;
3. Getting education and teaching;
4. Obtaining health services and proper food;
5. Submit a complaint;
6. Obtain reading materials and participate in other mass media broadcasts that are not prohibited;
7. Receive visits from family, legal counsel, or certain other people;
8. Get a reduction in the criminal period (remission);
9. Get opportunities for assimilation including time off to visit family;
10. Get parole;
11. Get leave before being free; and
12. Obtain other rights in accordance with the applicable laws and regulations.”

In another article in the Juvenile Criminal Justice System Act, it is also stated that several other rights that can be obtained by children who are perpetrators of crimes, include the following: “

1. The right to get parole if of good behavior (Article 80 Paragraph (4)) reads "Children who have undergone 1/2 (one half) of the length of coaching in the institution and are not less than 3 (three) months of good behavior are entitled to receive parole"
2. The right to obtain guidance (Article 85 Paragraph (2)) reads "Children who are sentenced to prison have the right to obtain guidance, guidance, supervision, assistance, education and training, as well as other rights in accordance with the provisions of the legislation"
3. The right to receive rehabilitation (Article 91 Paragraph (3)) reads “Based on the results of community research from community advisors and social reports from professional social workers or social welfare workers, children, child victims, and/or child witnesses have the right to obtain medical rehabilitation, social rehabilitation, and social reintegration from institutions or agencies that handle child protection.”

### **Diversion On Juvenile Criminal Jurisdiction**

Often we forget the main purpose of holding a judicial process against children, namely as a process that must end with efforts to protect the best interest of the child. Often the criminal justice process against child perpetrators of crime only focuses on formal law enforcement but loses focus on the interests of the child (Ratomi, 2013).

Efforts to achieve and fulfill the interests of children as perpetrators of criminal acts are by holding diversion at every level, as has been regulated in the Law on the Juvenile Criminal Justice System Article 7 Paragraphs (1) and (2), which are as follows: “

1. At the level of investigation, prosecution, and examination of children's cases in the District Court, diversion must be sought.

2. The diversion as referred to in paragraph (1) is carried out in the case of a criminal act being committed;
  - a. Threatened with imprisonment under 7 (seven) years; and
  - b. It is not a repetition of a crime.”

In carrying out the diversion process in the juvenile criminal justice process, citing the juvenile criminal justice system law, Article 8 Paragraph (3) as the legal basis, the diversion process must pay attention to several things, including the following: “

1. The interests of the victim
2. Child welfare and responsibilities;
3. Avoidance of negative stigma;
4. Avoidance of retaliation;
5. Community harmony; and
6. Propriety, decency, and law and order.”

The diversion process does not only involve investigators, public prosecutors, and judges, but also other parties and is carried out through deliberation to reach consensus between the parties in accordance with the provisions of the Juvenile Criminal Justice System Act Article 8 Paragraphs (1) and (2) which reads “The Diversion Process is carried out through deliberation involving the child and his/her parents/guardians, victims and/or their/her parents/guardians, community advisors, and professional social workers based on a restorative justice approach. If necessary, deliberation can involve social welfare workers, and/or the community.

Restorative Justice itself is a procedure for resolving a case of a criminal act that can be carried out by bringing together two parties, namely the victim and the perpetrator (the defendant) to discuss the actions taken accompanied by a mediator, the mediator here provides an opportunity for the defendant to tell or describe the actions he has taken (Kaimuddin, 2015).

In article 6 of the juvenile criminal justice system law itself, it is stated that the purpose of doing diversion is as follows: “

1. Achieving peace between victims and children;
2. Resolving child cases outside the judicial process;
3. Protecting children from deprivation of liberty;
4. Encourage the community to participate; and
5. Instill a sense of responsibility in children.”

There are several things that must be considered by Investigators, Prosecutors, and Judges in carrying out the diversion process, which are regulated in the juvenile criminal justice system Article 9 Paragraph (1), including the following: “

1. Category of crime
2. Child's age
3. The results of community research from the Fathers' Council; and
4. Support the family and community environment.”

In Article 9 Paragraph (2) the diversion agreement itself must obtain the consent of the victim and/or the victim's child's family as well as the willingness of the child and his family, except for: “

1. A criminal act in the form of a violation;

2. Minor crime;
3. Crime without victims; or
4. The value of the victim's loss is not more than the value of the local provincial minimum wage.”

In Article 10 Paragraph (2) the Diversion Agreement carried out by the Investigator on the recommendation of the community supervisor can take the form of: “

1. Refund of losses in the event of a victim;
2. Medical and psychological rehabilitation;
3. Handing back to parents / guardians;
4. Participation in education or training in educational institutions or LPKS for a maximum of 3 (three) months; or
5. Community service for a maximum of 3 (three) months.”

In article 11 the results of the diversion agreement can take the form, among others;

1. Peace with or without compensation;
2. Submission to parents/guardians;
3. Participation in education or training in educational institutions or LPKS for a maximum of 3 (three) months; or
4. Community service.

From what has been discussed about the diversion process in the juvenile criminal justice system law, it can be concluded that the conditions for diversion in juvenile cases can be concluded as follows (Dewi, 2011)“

1. The child who is the perpetrator of a crime is the first time to be caught in a crime;
2. The age of the child tends to be too young;
3. The application of the forms of programs in the diversion process that is agreed upon for the child is approved by the parent/guardian or the child who is in conflict with the law himself;
4. The actions taken can be in the form of minor or serious crimes (in certain cases);
5. The child who commits a crime regrets and admits the crime he has committed;
6. The community does not object to the diversion process;
7. If the diversion fails to produce an agreement, the child who is the perpetrator of the crime is returned to be processed in juvenile criminal justice.”

## **CONCLUSION**

Based on the research that has been done, the authors conclude as follows:

1. That with the existence of a Judicial System Criminal Child who wants it practical progress in order to the best protection for children who are seen as assets valuable for a nation and a country in future that must be guarded and protected their rights. This matter because in any case Children's hands are progress the nation will be determined. Legal protection for children can be interpreted as an effort to protect law against various freedoms and children's rights as well as various interests related to child welfare. Child welfare is the main orientation of legal protection. In general, the welfare of the child is a way of life and livelihood child

who can guarantee growth and development naturally, both spiritually, physical and social.

2. That criminal liability conflicted minors with the law is in accordance with the provisions that have been regulated in Criminal Code and Law no. 11 2012 on the Juvenile Judicial Crime System. The child who did criminal acts can still be prosecuted responsibility, threat punishment for a child who commits a unlawful act determined by the law Criminal Law, where is the drop the penalty is determined by half of maximum criminal threat from people adults, while the sentencing life imprisonment and no death penalty applied to children.

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