



**Revitalising the Juvenile Criminal Justice System in Indonesia:
A Comparative Study with International Law and Evaluation of Practice**
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Abstract. Although it has been stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), the juvenile criminal justice system in Indonesia still faces challenges in ensuring the protection of children's rights. Therefore, this study aims to examine the urgency of revitalising the juvenile justice system with a normative legal approach and empirical analysis. In this study, the author compares the juvenile justice system in Indonesia with international legal standards and evaluates practices in courts to identify steps for improvement. The research findings indicate that the juvenile criminal justice system in Indonesia has not yet fully accommodated the principle of prioritising optimal protection for children. Some of the problems found include violations of children's rights, social stigma, and lack of psychosocial support. In addition, limited facilities and professional staff at the Special Child Development Institution (LPKA) also hamper the optimal rehabilitation of children. Thus, revitalising the juvenile criminal justice system is urgent by optimising diversion mechanisms, implementing restorative justice, increasing the capacity of law enforcement officers, strengthening the role of LPKA, and socialising with the community and families. With these efforts, the juvenile criminal justice system can be more responsive to developments in international law, and there are concrete recommendations for policymakers to create a legal system that is more in line with the main priority of child welfare.

Keywords: *revitalisation, juvenile justice system, child protection*

A. Introduction

In essence, one of the crucial aspects of contemporary criminal law is the effort to ensure and protect the rights of children in the criminal justice system.¹ As emphasized by the United Nations (UN) in The Beijing Rules, juvenile justice is a key element in the national development of every country to ensure comprehensive social justice for all children.² Thus, the juvenile justice system is not limited to efforts to fulfil the rights of children as vulnerable groups, but also participates in maintaining social order and

¹ D., Anatami, D., & Nofrial, R Dzulhizza, "Aspek Yuridis Dalam Pertanggungjawaban Hukum Profesi Dokter Pada Perspektif Pelayanan Informed Consent Untuk Mewujudkan Perlindungan Hukum," *Jurnal Kajian Ilmiah* 23, no. 1 (2023): 43-50.

² *Ibid.*

security.³ Therefore, the state is responsible for ensuring legal protection for children to ensure their welfare in a fair and prosperous justice system.

Indonesia adopted the Convention on the Rights of the Child (KHA) as part of the international legal instrument related to child protection as per Presidential Decree No. 36 of 1990.⁴ This action is taken to ensure the protection of children's rights in criminal justice. However, the juvenile criminal justice system in Indonesia still faces various obstacles, including the lack of implementation of the restorative justice approach and the lack of optimal protection of children's rights.⁵ This is certainly not in line with the SPPA Law, which is an important milestone in efforts to improve protection for children who are facing the law.

Until now, there are still many cases that indicate that children involved in legal problems must go through complex and prolonged legal procedures. For example, children involved in minor offences such as shoplifting or conflicts among classmates still have to undergo the same legal procedures as adults, including long incarceration with little psychosocial support.⁶ As a result, this condition can have an impact on children's psychology, such as the emergence of trauma, social stigma, and obstacles in the process of reintegration into society after serving a sentence.⁷

Taking this into account, the revitalisation of the juvenile criminal justice system in Indonesia is an urgent need. Through this study, the author will analyse the urgency of reforming the juvenile criminal justice system in Indonesia, compare it with international legal standards, and evaluate its practice in the courts to identify improvement measures that can be implemented.

This study is expected to provide concrete recommendations for policymakers, academics, and legal practitioners in formulating policies that are in the best interests of children. In addition, the findings in the results of this study are also expected to be a reference in the development of a more responsive juvenile criminal justice system, in line with the dynamics of international law, and focused on child rehabilitation and protection.

³ F. Bramita & Cahyaningtyas, I. Bramita, "Children Hearing System Sebagai Ide Pembaharuan Sistem Peradilan Pidana Anak Di Indonesia," *Jurnal Magister Hukum Udayana* 7, no. 4 (2020): 529–45.

⁴ Yulianto, "Standar Operasional Prosedur (SOP) Pelaksanaan Diversi Oleh Penuntut Umum Anak Dalam Sistem Peradilan Pidana Anak," *UNDIP Electronic Journal System (UEJS)* 10, no. 1 (2020): 109–25.

⁵ K.K Lewoleba, "Implementasi Sistem Peradilan Pidana Anak Dalam Rangka Mewujudkan Keadilan Restoratif," *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam* 11, no. 2 (2023).

⁶ M.S Iswari, "Keadilan Restorative Justice: Penanganan Anak Yang Berhadapan Dengan Hukum (ABH) Dalam Perspektif Kesejahteraan Sosial," *Journal of Social Work and Social Service* 1, no. 2 (2020).

⁷ *Ibid.*

B. Method

This study applies normative legal methods through a comparative legal approach and empirical analysis to analyse legal regulations in Indonesia that regulate the juvenile criminal justice system and various international regulations related to child protection. Furthermore, this study will also compare the juvenile criminal justice system in Indonesia with international regulations to identify best practices, especially in terms of fulfilling children's rights, diversion mechanisms, and rehabilitation strategies.

The data in this study were collected through library research by examining various sources of literature, such as books, scientific articles, legal regulations, and other legal documents. In addition, this study also uses empirical data to obtain a factual picture of the reality of the juvenile criminal justice system in Indonesia. The data collection is then examined qualitatively to identify challenges in the implementation of the law and formulate more effective policy recommendations that are oriented towards child protection.

C. Result & Discussion

1. The Urgency of Revitalising Indonesia's Juvenile Justice System to Improve the Protection of Children's Rights

The juvenile criminal justice system in Indonesia still faces various challenges that have the potential to ignore the rights of children as vulnerable individuals. Therefore, the revitalisation of the juvenile criminal justice system is important so that the principles of protection and the best interests of children can be upheld. Revitalisation is a process, way, and act of reviving something that was previously less expected. In this context, the revitalisation of the juvenile criminal justice system in Indonesia focuses on efforts to reform, improve, or strengthen the system to be more effective in ensuring the fulfilment of children's rights in conflict with the law.⁸ This is in line with the principle of the best interest of the child as stipulated in the SPPA Law. The purpose of revitalising the juvenile criminal justice system in Indonesia to improve the protection of children's rights is, of course, to ensure that children receive a fair legal process and, by human rights standards, as well as to minimise the negative impact of the justice system on child development.⁹ several factors are the basis for why the revitalisation of the juvenile criminal justice system is important, namely:

⁸ R Simatupang, "Pelaksanaan Sistem Peradilan Pidana Anak Di Indonesia Perspektif Nilai Keadilan.," *Jurnal Yuridis* 11, no. 1 (2024): 54–63.

⁹ T Chandra, "Penerapan Restorative Justice Dalam Sistem Peradilan Pidana Anak Di Indonesia.," *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam*, 10, no. 11 (2023): 61–78.

a. Increasing Cases of Crimes Involving Children

In this condition, children are not only perpetrators of crimes, but can also be victims. Children who are entangled in crime often come from less conducive environments, such as poverty, domestic violence, or lack of access to education. On the other hand, children who are victims of crime also need special protection and assistance. If the justice system does not provide appropriate handling, children are at risk of experiencing prolonged trauma, loss of confidence, and difficulties in the process of reintegration into society. Thus, appropriate treatment is needed to prevent trauma and negative impacts in the long term.

b. Violations of Children's Rights Still Occur

Although the SPPA Law has stipulated special treatment for children who have problems with the law, its implementation still shows various violations of children's rights. Some of them are detention that is not by procedures, interrogation that are not child-friendly, and repressive treatment without considering rehabilitation aspects. In addition, children involved in the justice system often experience social stigma that negatively impacts their future. This stigma can hinder children from getting a better education, job, and life opportunities after undergoing legal proceedings. Therefore, a more humane approach oriented towards the best interests of children needs to be applied in the criminal justice system.

c. Lack of Adequate Facilities and Resources

The Special Children's Development Institution (LPKA), which is supposed to be a forum for rehabilitation for children involved in criminal acts, is still limited in number and has not fully implemented a rehabilitation-oriented approach. In addition, the number of professionals, such as social companions, child psychologists, and special advocates for children, is still very limited, so that children who face legal problems do not receive optimal assistance. This certainly worsens the condition of children and reduces the effectiveness of rehabilitation and reintegration programs for them into society.

With the increase in cases of crimes involving children, violations of children's rights in the legal process, and limited facilities and resources, the revitalisation of the juvenile criminal justice system is an urgent need to ensure that children who are facing the law continue to receive protection for their rights. The following are some revitalisation steps that can be done, namely:

d. Optimising diversion and restorative justice

Diversion is an alternative to resolving children's cases from the criminal justice system to mechanisms outside the judicial system. One of the main goals of the implementation of diversion is to prevent children who have problems with the

law from being involved in the criminal justice process, so that they avoid negative stigma and can reintegrate into the social environment normally.¹⁰ Diversion for mild to moderate cases must be prioritised so that children do not directly enter the formal justice system or undergo criminal punishment. Broadly speaking, diversion is divided into three including:¹¹

1) Diversion through alerts.

This form of warning will be submitted to the police as a party that handles minor violations. The perpetrator will be allowed to apologise to the victim of the crime as a form of warning.

2) Informal diversion.

It is also applied to minor offences because warning the perpetrator is considered inappropriate and requires a more comprehensive intervention plan. In this case, the victim is required to be involved to know his perspective on the informal diversion that will be carried out and understand what the purpose of the plan is. The informal diversion plan is that the child will be responsible for his actions; if possible, the parents can be held accountable, and the needs of the victim are met.

3) Formal diversion.

When informal diversion is unsuccessful, formal diversion will be applied, but the court does not need to be involved in its implementation. This formal diversion occurs when the perpetrator and the victim of a crime meet face to face or in the sense of meeting each other. This can be internationally called restorative justice. Article 6, paragraph (1) of the SPPA Law interprets restorative justice as a method of resolving criminal cases that involves the perpetrator, victim, family, and other related parties to obtain a wise solution. This approach focuses more on restoring conditions as they were before the crime occurred, rather than the retaliation-oriented approach. Therefore, the application of diversion is aimed at children who conflict with the law to create restorative justice.

According to Satjipto Rahardjo, a lawyer in Indonesia, in his work entitled "Other Sides of Law in Indonesia," he emphasised that resolving cases through judicial mechanisms that end with a judge's decision is a form of law enforcement that tends to run slowly and can infringe on a person's rights. The restorative justice approach is seen as a superior way to resolve a case than using a retributive justice approach, as restorative

¹⁰ A.W.E Hastomo, "Upaya Diversi Terhadap Anak Pelaku Tindak Pidana Yang Diancam Pidana Penjara 7 Tahun Atau Lebih (Tinjauan Pada Pasal 7 Ayat (2) Undang-Undang No. 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak)," *Badamai Law Journal* 3, no. 1 (2020).

¹¹ Hastomo. *Loc. Cit.*

justice tends to be more effective at preventing future crimes because it is done by addressing the root causes of crime, repairing damaged relationships, and empowering perpetrators to take responsibility for their actions. This means that the likelihood of children being involved in crimes again in the future will be smaller, and children will still be protected in their rights as they should be.

a. Enhancing the Capacity of Law Enforcement Officers (APH)

In this regard, the APH in question includes police, prosecutors, judges, and correctional officers who must be given special training in handling children's cases to be more sensitive and focus on children's rights.

b. Strengthening LPKA

LPKA must be more focused on guidance and education, as well as skills training, so that children can adapt and participate optimally in the social environment.

c. Increasing public awareness and the role of the family

Raising public awareness and the role of the family can be done through socialisation, which aims to prevent discrimination against children who have faced the law and ensure that they can be accepted back properly. In this case, it is also necessary to play a more of role of the family in providing support and guidance to children so that they do not violate the law again.

Thus, the revitalisation of the juvenile criminal justice system is very important to ensure the protection of the rights of children who are facing the law. By optimising diversion, restorative justice approaches, increasing APH capacity, and the active role of the community and family, the juvenile criminal justice system can be more in the best interests of children, so that children do not experience long-term negative impacts due to the criminal justice system.

2. Comparison of the Juvenile Criminal Justice System in Indonesia with the International Legal System and Practices that Can Be Adopted for Its Implementation in Courts

The comparison of the juvenile criminal system in Indonesia with the international legal system can be reviewed from several main aspects, such as the age of criminal responsibility, the trial process, sanctions, and the main principles in child protection.

a. Age of Criminal Responsibility

Referring to the provisions in the SPPA Law, which states that children under 12 years old cannot be held criminally responsible. This provision is based on various considerations, including social, psychological, and educational aspects. In the draft SPPA Law, several factors support this regulation, including: (a) children of that age still need parental guidance, (b) criminal responsibility should be given at an age that allows children to understand the results of their actions, (c) the

emotional, mental, and intellectual development of children in that age range is still immature, and (d) based on the CRC, the minimum age for responsibility is 14 years.

The provisions regarding the age limit for criminal responsibility in the three regulations applied in Indonesia show differences. Based on the Criminal Code (KUHP), it is stated that children can be held criminally responsible starting at the age of 16. Meanwhile, Law Number 3 of 1997 concerning Juvenile Courts (Law No. 3/1997) stipulates that children aged 8 to 18 years can be held criminally responsible. According to the SPPA Law, the age limit for being held criminally responsible is set in the range of 12 to 18 years. The legal ratio of Article 21 paragraph (1) of the SPPA Law is based on several considerations, namely: (a) sociological, psychological, and educational aspects that assess that children under 12 years are not yet capable of being criminally responsible, (b) children in this age group need guidance from their parents, (c) an adequate age level is needed so that children can understand the results of their actions, and (d) at the age of 12-18 years, children's intellectual, emotional, and mental development is still in the development stage.¹²

The regulations related to criminal acts involving children in the Criminal Code are still limited by provisions contained in only three articles. One of the weaknesses of the child criminalisation system is the absence of a minimum age limit for children who can be subject to criminal responsibility, while the Beijing Rules apply the principle of an age limit for criminal responsibility for adolescents. In addition, the Criminal Code does not accommodate a special institution tasked with protecting children's rights. The rules governing children in the Criminal Code are also still relatively simple, so that what is measured is no longer in line with the development of society in Indonesia.¹³

The International Guidelines adopted by the UN General Assembly through the Beijing Rules emphasise that in legal systems that recognise the concept of the age of criminal responsibility for minors, the age limit should not be set too low, considering the fact of emotional, mental, and intellectual maturity. The determination of the minimum age should be based on research on the psychological development of children, not merely on repressive legal policies.

¹² I., Ruba'i, M., & Aprilianda, N Prema, "Pembatasan Usia Pertanggungjawaban Pidana Anak Dalam Peraturan Perundang-Undangan," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 4, no. 2 (2023): 232-41.

¹³ Prema. *Loc.Cit.*

This principle protects children from early criminalisation that can hurt the child's development.¹⁴

At the age of 12 to 18 years, growth and changes in the brain are still ongoing, which have an impact on individual behavioural patterns. From a neurolaw perspective, this indicates that the minimum age of criminal responsibility for children in Indonesia is still relatively low. In addition, there is increasing evidence that reveals differences in brain development in everyone, so the application of an age limit that is not in line with scientific findings is considered inappropriate. However, determining the age of criminal responsibility is a complex issue, not only depending on neurological factors, but also including various other aspects that need to be considered comprehensively.

b. Juvenile Criminal Justice Process

The criminal justice system for children in Indonesia focuses on the principle of diversion, namely diverting the resolution of cases from the judicial path to alternative mechanisms outside the court, as well as implementing the principle of restorative justice. Based on Rule 11.1, 11.2, and 17.4 of The Beijing Rules, diversion is the power given to law enforcement officers to resolve violations committed by children without going through formal channels. This step allows for the elimination or elimination of criminal proceedings and the return of children to society. Diversion can be applied at every stage of the examination and aims to minimise the negative impacts that may arise from the involvement of children in the criminal system.

Although Indonesia has established special regulations governing the juvenile criminal justice system, its implementation still faces challenges in achieving its true objectives, namely ensuring the welfare and protecting the interests of children. In practice, the legal process that children undergo is at risk of causing stigma, which can occur from the investigation, prosecution, trial, and correctional institution. The stigma that arises about the juvenile criminal justice system is caused, among others, by provisions that require child prisoners to undergo correctional institutions, namely.

- 1) Trauma due to APH treatment at every stage.
- 2) Negative labels are attached to the perpetrator's child so that he continues to be viewed as an individual who has the potential to commit crimes.
- 3) Children are expelled from school.¹⁵

¹⁴ M., Pujiono, P., & Rozah, U Agustiawan, "Usia Pertanggungjawaban Pidana Anak Dalam Perspektif Neurolaw," *Jurnal Penegakan Hukum Dan Keadilan* 4, no. 2 (2023): 152–65.

¹⁵ N Sambas, *Pembaruan Sistem Pemidanaan Anak Di Indonesia*, 1st edition (Yogyakarta: Graha Ilmu. , 2021).

Another aspect that must be considered is the classification of delinquency based on the actions committed by the child. This classification aims to divide criminal acts into three categories, namely.

1) Minor Crimes

Crimes that are classified as minor include acts such as small-scale theft, assault without causing injury, or destruction of property in limited quantities.

2) Moderate Crimes

Crimes in this category include acts that have various factors to consider in determining whether the resolution can be done through diversion or needs to be processed legally.

3) Serious Crimes

This category includes serious crimes such as sexual assault and physical assault causing serious injury.

Regulations related to diversion are expected to provide several benefits, such as reducing the number of children involved in the criminal justice process, increasing the resolution of children's cases through a restorative justice approach and diversion mechanisms, and encouraging community involvement in handling children in trouble with the law. In addition, the role of lawyers in accompanying children during the judicial process is also expected to be more optimal.

Based on the previous description, it can be concluded that diversion has an important role as an alternative solution to resolve criminal cases involving children. This is because diversion is the most effective penal mediation method in handling child cases. After all, it prioritises the protection of human rights with a restorative justice approach. In addition, the concept and regulation of diversion are in line with various international instruments that emphasise the importance of child welfare, namely:

- 1) Diversion functions as an educational process because it prevents negative impacts, such as stigmatisation or labelling, that can hinder a child's psychological development.
- 2) The implementation of the diversion concept is a method of resolving children's cases based on agreement, while also providing an opportunity for children to improve themselves voluntarily without coercion, but through advice.¹⁶

c. Sanctions and Punishments for Children

There are four key elements known as *catur wangsa* in the law enforcement system in Indonesia, namely the police who act as investigators, the prosecutor's office as

¹⁶ S. Rahayu, "Diversi Sebagai Alternatif Penyelesaian Perkara Tindak Pidana Yang Dilakukan Anak Dalam Perspektif Sistem Peradilan Pidana Anak," *Jurnal Ilmu Hukum Jambi* 6, no. 1 (n.d.).

prosecutors, judges who function in the trial process, and lawyers or advocates. To enforce the law and protect children's rights, law enforcement institutions are faced with various challenges, such as a lack of understanding of the law and children's rights, variations in quality, education, and expertise among law enforcement officers, and the ability of organizations to implement law enforcement that is oriented towards child protection. According to Article 22 of the SPPA Law, the following criminal penalties can be imposed:

- 1) Principal penalties, in the form of supervision penalties, fines, imprisonment, and prison sentences.
- 2) Additional penalties, in the form of confiscation of certain goods and/or the obligation to pay compensation.

There are differences in the legal consequences for children according to the provisions of the Criminal Code, where the sanctions applied to children may not exceed half of the punishment received by adults. In addition, the death penalty and life imprisonment are not applied to minors. The types of sanctions given are also adjusted to the age group, where children aged between 8 and 12 years will only be subject to certain measures, while children aged 12 to 18 years can be sentenced to imprisonment.

The CRC and the Beijing Rules explicitly state that the imprisonment of children should be a last resort and may only be applied for the shortest possible period. This principle is based on the understanding that children, who are still in the stage of emotional and intellectual development, have great potential for rehabilitation and social reintegration. Therefore, the juvenile criminal system in many countries has moved towards a restorative approach, which provides training and recovery for children rather than simply giving severe punishment. In Nordic countries such as Sweden, Norway, and Denmark, the approach to children in conflict with the law is very rehabilitation-based. These countries hardly apply imprisonment to children under 15 years of age. Instead, they prioritise social intervention programs, family training, special education, and psychological therapy to help children who have committed crimes not to re-offend. This system is based on research showing that isolated children often optimise their conditions and increase their risk of future criminality. Therefore, the Nordic countries emphasise community-based solutions and avoid systems that are repressive towards children.

In contrast, the juvenile criminal justice system in the United States (US) still has some harsher and more punitive practices, especially in some states. One of the most controversial policies is the possibility of life imprisonment without parole for children who commit serious crimes such as murder. Although the US Supreme

Court in several decisions, such as *Graham v. Florida* (2010) and *Miller v. Alabama* (2012), has limited the application of this sentence to children, there are still some states that maintain the possibility of life imprisonment for children without the opportunity for rehabilitation (Equal Justice Initiative, 2021; Human Rights Watch, 2005). This policy has been sharply criticised by the international community because it is considered contrary to the principles of the CRC.

Therefore, the best step that can be implemented to improve the effectiveness of the juvenile criminal justice system in Indonesia is to ensure that any changes made remain focused on the best interests of the child and ensure optimal protection of their rights. The implementation of the SPPA Law emphasises the application of diversion at every stage of prosecution, from investigation, prosecution, to trial, by considering factors such as the child's age and the limit of criminal threats that do not exceed seven years.

D. Conclusion

The juvenile criminal justice system in Indonesia still faces various obstacles that hinder efforts to fulfil children's rights. Based on research that has been conducted, the main challenges include the low implementation of restorative justice, violations of children's rights, and minimal psychosocial support throughout the legal process. In addition, limited facilities and resources at LPKA are also obstacles to providing optimal rehabilitation. This condition is not in line with the principle of the best interest of the child as stipulated in the SPPA Law and the KHA. As a result, children who are involved with the law often experience trauma, social stigma, and difficulty reintegrating into society after serving their sentences.

Based on the above, revitalisation of the juvenile criminal justice system is needed to ensure the fulfilment of children's rights more effectively. Then, when viewed from a comparison with international legal standards, Indonesia needs to adopt best practices in the juvenile criminal justice system, such as optimising diversion and a restorative justice approach. Then, special training is needed to increase the capacity of law enforcement officers so that they are more sensitive to children's rights. Strengthening the role of LPKA needs to be prioritised so that rehabilitation can focus on education and skills for children. Socialisation to the community and family is also an important factor in reducing social stigma and supporting the reintegration of children into their social environment. By implementing these steps, it is hoped that the juvenile criminal justice system in Indonesia can be more in line with international standards, oriented towards rehabilitation, and able to provide better protection for children.

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Author(s) Biography

Yasmin Arinda Lubis was born in Samarinda, January 3, 2006. She is currently a fourth-semester student of the Faculty of Law at Universitas Pembangunan Nasional "Veteran" Jakarta with a special interest in Criminal Law. Since the beginning of her studies, the author has actively developed her critical and analytical thinking skills through her involvement in student organisations, especially those engaged in research and debate. The author is an active member of the Faculty of Law Student Research and Debate Forum at Universitas Pembangunan Nasional "Veteran" Jakarta. In addition to being active in organisational activities, the author has also published several scientific writings in student journals and law journals managed by higher education institutions. Through writing activities, the author continues to contribute to the development of legal studies in the academic environment.

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