

Legal Protection for Children Who Repeat Criminal Acts Through Special Child Development Institution (LPKA)

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Abstract

Children are the next generation of the nation, currently many criminal acts are committed by children. Guidance for children who commit crimes is carried out in LPKA. One of the current problems is the high number of cases of perpetrators who are former child convicts. The purpose of this study is to analyze the legal regulations related to criminal acts committed by children according to the SPPA Law, as well as to analyze legal protection for children who repeat criminal acts in LPKA. Legal regulations for children are included in *lex specialis derogat legi generali*, based on the SPPA Law which emphasizes diversion efforts if the sentence is under seven years and is not a repetition. Guidance for those who repeat criminal acts is not differentiated from the guidance of children who are new. Children who conflict with the law undergo guidance at LPKA, such as education, personality development, and independence development.

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Introduction

The Republic of Indonesia upholds the values of Pancasila and is based on the Constitution of the Republic of Indonesia of 1945. The evolving civilization of the times has led to an increase in human desires, which often do not align with their income (Sudarnita, Sukandia, & Widyantara, 2024). The influence of globalization, technology, and social change plays a significant role in the development of deviant behavior. This aligns with the saying, "The taller the building, the longer the shadow," which means that crime rates may increase alongside economic development, widening the gap between different layers of society (Pranasita, Sugiarta, & Mulyawati, 2023). The formation of law is generally a result of intentional actions, except for laws derived from customs (Senastri & Suryani, 2018).

Crime is an act that does not conform to societal moral standards. A criminal act is a manifestation of deviant behavior in social life, which poses a significant threat to the integrity of social norms (Supriyadi, 2015). An act can be considered a crime if it contains two factors: 1) *mens rea* (the presence of malicious intent); and 2) *actus reus* (the execution of the act). For example, murder is considered a crime if the perpetrator has the intention to take the victim's life and carries out the act without coercion from others. Conversely, if the perpetrator suffers from a mental disorder that causes their intent to be outside their control or awareness, they cannot be held criminally responsible.

In the Indonesian Criminal Code (KUHP), the phrase "Whoever" represents the subject of a criminal act, indicating that anyone, whether a human being or a legal entity, can be the perpetrator of a crime. This is based on the KUHP system, where only humans (*natuurlijk persoon*) can commit criminal

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acts (Loho, 2019). Criminal law functions to regulate and limit the exercise of legal rights and to impose sanctions on criminal actions (Samponu, Dewi, & Karma, 2022).

The younger generation is the driving force of the nation, yet currently, many criminal acts are committed by children. The provision of sanctions and judicial processes for violations of children's rights contrast with those applied to adult offenders (Aziz, Sugiri, & Endrawati, 2022). Children can commit a wide range of crimes, from gambling to murder (Ihsan, & Jonyanis, 2016). The government implements rehabilitation for children in conflict with the law through the prison system. Children sentenced to prison undergo programs of rehabilitation, education, and training at the Child Special Correctional Institutions (LPKA).

Law No. 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA) mandates that LPKA serves as a place for children to undergo detention and rehabilitation. Various efforts have been made by LPKA to prevent children from committing repeated crimes, but these efforts have not been entirely effective in preventing children from becoming repeat offenders. Recidivism refers to repeated criminal acts that result in consequences such as repeat punishments, re-arrests, and re-imprisonment.

Legal protection for children who repeat criminal acts must be strengthened. The current issue is the increasing number of cases involving children who are former prisoners. The UU SPPA emphasizes resolving cases of children in conflict with the law through diversion. However, the main challenge lies in the high rates of recidivism among children who are former prisoners. According to reports from the National Commission for Child Protection, around 50%-70% of children involved in criminal acts and sentenced to prison end up worsening their behavior and are at risk of becoming recidivists in the future. Data from the Journal of the Bandung Juvenile Detention Center in March 2015 shows that 42.8% of child prisoners involved in theft were repeat offenders. This occurs when former juvenile offenders are not fully prepared for reintegration into society.

The UU SPPA states that children in conflict with the law must receive counseling and should not be given punishment. However, the handling of cases involving children who repeat criminal acts is not clearly regulated in the UU SPPA. Article 7 paragraph (2) letter b of the UU SPPA stipulates that diversion cannot be applied to repeat offenses. This includes both similar and dissimilar acts that can be resolved through diversion. In practice, diversion is still implemented even when a child has previously committed a crime and been punished. The legal framework for handling cases of juvenile recidivism remains unclear.

Based on the above description, two main issues have been identified for investigation in this study. First, how is the legal regulation of crimes committed by children under the UU SPPA? Second, how is the legal protection provided to children who commit repeated crimes through LPKA? Therefore, this study aims to analyze the legal regulation of crimes committed by children under the UU SPPA and the legal protection of children who commit repeated crimes through LPKA.

Method

Normative legal research is research that analyzes written law from various perspectives, such as theory, history, philosophy, comparison, structure, scope, material, consistency, general explanation, article-by-article analysis, formality, binding laws, and the use of legal language (Muhammad, 2004). The approach used in this study is a statutory approach, which involves studying all laws and regulations relevant to the legal issues being discussed (Marzuki, 2016). A case approach is used to examine the application of legal norms in practice. Although the cases are empirical in nature, this research aims to provide an overview of the impact of legal norm enforcement and uses the results of the analysis as input for further considerations (Ibrahim, 2007). The conceptual approach focuses on legal concepts, such as sources of law, functions of law, legal institutions, and other related matters (Nasution, 2008).

Discussion

Legal Regulation of Crimes Committed by Children According to Law No. 11 of 2012 on the Juvenile Criminal Justice System

Law regulates social interactions to create peace and order. However, as technological knowledge

develops, it can lead to behavior that contradicts the law. Such behavior can be either in line with societal norms or against them. Deviant behavior that violates these norms is categorized as criminal acts. A criminal act can be equated with the term “delict,” which comes from the Latin word *delictum*, meaning an act that is punished due to a violation of regulations. In criminal law, there are several elements, such as objective and subjective elements. The objective element refers to behavior that is contrary to the law, while the subjective element may involve fault or intent.

The presence of criminal law in society aims to limit the rights and actions of legal subjects, providing regulations on the imposition of sanctions for criminal acts and behaviors within society. Crimes can be committed by both adults and children. Legal violations committed by children are a concerning phenomenon that should attract government attention. This situation is troubling because children, by nature, should behave according to their age, such as attending school and playing with peers in their environment. This behavior is essential for supporting a child's development in a positive direction.

Deviant behavior committed by children has been increasing every year, and the rise in criminal acts involving children has caused concern, especially among parents (Susanti, 2021). Legal regulations related to crimes committed by children are covered under special legal provisions, which can override general legal provisions, following the principle of *lex specialis derogat legi generali* (Putra, Sugiarta, & Wirawan, 2024). Regulations on children are specifically designed to protect their rights, as children have needs that must be safeguarded. Children who commit criminal acts are governed by Law No. 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA).

The government has made various efforts through law enforcement agencies to prevent and address criminal acts committed by children. These efforts are carried out through the juvenile justice system. The implementation of this system is not solely for imposing criminal sanctions but is also aimed at supporting the welfare and protection of children who are offenders, ensuring that they can be reintegrated into society and accepted back into the community. Handling juvenile offenders requires a more specialized approach.

The UU SPPA provides special and distinct regulations for children facing the law, recognizing that children have psychological, social, and developmental needs that differ from those of adults. The enactment of the UU SPPA is a response to the need for regulations that protect children, particularly those in conflict with the law. The explanation of a child in conflict with the law is outlined in Article 1, Number (3) of the UU SPPA, which states that a child in conflict with the law is a person aged between twelve and eighteen years who is suspected of committing a criminal act.

This law introduces the process of diversion in handling cases involving children and promotes a restorative justice approach, which involves all elements of society to aid in the child's rehabilitation. Restorative justice can be understood as a legal resolution approach that prioritizes family dialogue to achieve justice for the offender, the victim, and others affected, while avoiding the creation of negative stigmas and reducing the backlog of criminal cases (Tambun, 2023).

Furthermore, diversion is an alternative process in line with international legal conventions, shifting the resolution of juvenile cases from criminal (judicial) proceedings to non-criminal (out-of-court) processes (Oktaviani, Dewi, & Sugiarta, 2021). The implementation of diversion in juvenile cases is also regulated by Article 7 of the UU SPPA. This article explains that diversion can be applied if the criminal act committed by the child carries a penalty of less than seven years and is not a repeat offense, either of the same or different nature. This provision is based on the consideration that offenses punishable by more than seven years are classified as serious crimes, and repeat offenses indicate that the purpose of diversion is not achieved.

Regulations regarding the diversion process for juvenile crimes are also set out in the Supreme Court Regulation No. 4 of 2014 on Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System. Article 2 of this regulation states that diversion can be applied to children aged twelve but under eighteen, or those who have been married but are still under eighteen and are suspected of committing a criminal act. From the author's perspective, diversion is more commonly implemented in minor cases or first-time offenses. If diversion is not successful, formal judicial proceedings may proceed, including efforts for rehabilitation as part of the process. This aligns with the primary objective of diversion, which is to provide rehabilitation and guidance for children in conflict with the law, while

preventing the negative consequences of the criminal justice process.

Legal Protection for Children Who Commit Recidivist Crimes Through the Juvenile Special Development Institute (LPKA)

Legal protection for children is essential, not only because of their vulnerable condition that requires special attention but also because children are the future generation of the nation. This protection is the state's responsibility, as stated in the 1945 Constitution of the Republic of Indonesia (Bou, Sujana, & Sukadana, 2020). Concerning legal protection for children, every child involved in the criminal justice system must be treated according to the principle of non-discrimination to ensure their survival and well-being. Legal protection can be carried out through both preventive and repressive approaches. Preventive measures are taken to prevent undesired events, while repressive measures are actions taken by the government to control or suppress groups, individuals, or actions that are considered threats to security or public order (Imran, & Yovita, 2024).

Children in conflict with the law include those who are offenders, witnesses, or victims of criminal acts. Actions taken toward children in conflict with the law must adhere to and apply the fundamental principles of the juvenile justice system. Children under the age of criminal responsibility may be subject to legal sanctions if proven to have committed a crime. Children in conflict with the law are processed according to the provisions in the Juvenile Criminal Justice System Law (UU SPPA), which is restorative in nature, and will undergo rehabilitation at the Juvenile Special Development Institute (LPKA). LPKA is part of the legal institution structure that has a specific role in carrying out rehabilitation, always adhering to the rules or norms in place and applied as procedures in the daily behavior within the LPKA (Pangestika, & Nurwati, 2020).

Article 50 of Law No. 22 of 2022 on Corrections clearly regulates the rehabilitation provided to children in the institution, including education, personality development, and independence training. Education includes formal, non-formal, and/or informal education. Personality development aims to improve the child's mental and spiritual aspects, while independence training covers skill development. The goal of rehabilitation is for the child to return to society as a better individual and not repeat the same mistakes. However, despite undergoing various rehabilitative programs at LPKA, many children continue to repeat their offenses and return to serve sentences at LPKA (Aryani, 2023). This situation presents a significant challenge for LPKA in addressing recidivism among children.

In a *lex specialis* manner, the UU SPPA, in Article 7 paragraph (2) letter b, explains that recidivism includes both similar and dissimilar crimes, including crimes resolved through diversion. This provision also emphasizes that crimes resolved through diversion are considered a single offense, even if the case does not reach trial or receive a judicial decision. Essentially, this provision expands the meaning of recidivism, requiring a final and binding court decision that the child has undergone.

The rehabilitative approach for children categorized as recidivists is not fundamentally different from the rehabilitation process for first-time offenders. This approach, however, does not seem to have a sufficient deterrent effect, given that children classified under correctional rehabilitation should undergo specialized rehabilitation, especially those who are recidivists (Elias, Pasalbessy, & Wadjo, 2023). According to the author, this rehabilitation effort is the government's approach to providing legal protection to children undergoing criminal proceedings as a form of accountability for their actions. Legal protection for children includes ensuring that their rights are fulfilled while they are in LPKA.

The causes of recidivism among children are linked to psychological factors and the development of the child's personality. Internal factors within the child, such as age, misconceptions, and a lack of religious values, can contribute to repeated criminal behavior. On the other hand, external factors such as family, economic conditions, and environmental influences may also play a role in encouraging recidivism.

These factors act as triggers for children to repeat criminal behavior. Everything around a child should serve as a positive example. This is because children tend to imitate what they see and consider it as good behavior to be emulated. Therefore, both internal and external factors need to be carefully addressed, especially in their application to encourage positive behavior in children and prevent them from engaging in deviant behavior. Deviant behavior can have serious consequences for a child's future.

The implementation of legal protection for children who commit criminal acts in Indonesia today

is based on the UU SPPA. According to the author, although there are regulations in place, the execution of legal protection for children still faces several challenges, such as the lack of child-friendly facilities, limited human resources with an understanding of child protection, and low legal awareness among parts of the community. The principle of protection for children involved in criminal acts, as regulated in the UU SPPA, is based on the principle of restorative justice, which emphasizes the restoration of relationships between the offender, victim, witness, and society. Restorative justice is understood as a method of resolving criminal issues by involving the offender, victim, and various parties in the process. Restorative justice aims to achieve viable justice, focusing on the recovery of the child's condition.

Forms of protection provided include community involvement in preventing violence against children, mandatory legal assistance throughout the judicial process, prohibition of child detention during the trial, and providing rehabilitation and reintegration services for children after completing their criminal process.

Conclusion

The legal regulation of children who commit criminal acts is included in special legal provisions that can override general legal provisions or follow the principle of *lex specialis derogat legi generali*, as governed by Law No. 11 of 2012 on the Juvenile Criminal Justice System. This Law emphasizes the importance of diversion efforts in resolving cases involving children, which can be applied if the criminal act committed threatens a punishment of less than seven years and does not involve recidivism, whether it is the same or a different type of crime. Legal protection can be carried out through preventive or repressive approaches. Children in conflict with the law are processed according to the provisions of Law No. 11 of 2012, which is restorative in nature, and they will undergo rehabilitation in the Juvenile Special Development Institute (LPKA). They will receive guidance in the form of education, personality development, and independence training. The rehabilitation model for children categorized as recidivists in the LPKA is not differentiated from that of non-recidivist children in the correctional system.

Based on the conclusions, the government is expected to expand the legal provisions related to rehabilitation for children who commit recidivist offenses. These regulations should aim to provide a deterrent effect for children so that they do not repeat their actions. The implementation of rehabilitation in the Juvenile Special Development Institute should be conducted by officers with high competence and professionalism. Furthermore, society, especially parents, should avoid providing negative examples to children, as children tend to imitate what they observe. After a child who has conflicted with the law completes their rehabilitation period, they should receive maximum attention and care, such as motivating encouragement, to prevent further recidivism.

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