

**SANCTIONS AGAINST CHILDREN WHO COMMIT CRIMINAL OFFENSE IN INDONESIA****Haeranah<sup>1</sup>, Nur Azisa<sup>2</sup>, Slamet Sampurno Soewondo<sup>3</sup>, Rafika Nur<sup>4</sup>, Handina Sulastrina Bakhtiar<sup>5</sup>**

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**Abstract**

*In Indonesia the regulation of the age limit of children is very much regulated in various kinds of existing laws and regulations. related to the imposition of sanctions against children who commit a crime is regulated in detail in law no 11 of 2012 the Criminal Justice System for Children which regulates the age limit of children who can be sanctioned are children who have aged 12 (twelve) years, but have not yet age 18 (eighteen) years and for the types of sanctions imposed on children are divided into 2 types namely criminal sanctions and sanctions of actions.*

**Keywords:** *Children; Criminal Offense; Indonesia; Sanctions*

**INTRODUCTION**

Children are an inseparable part of human survival and the survival of a nation and state. In the Indonesian constitution, children have a strategic role that is explicitly stated that the state guarantees

the right of every child to survival, growth and development and to protect from violence and discrimination.<sup>1</sup> Therefore, the best interests of children should be lived

<sup>1</sup> Sofyan, A. M., Haeranah., Bakhtiar, H. S. (2019) Criminal Justice System of Children in Indonesia. *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*. Vol. 24 No. 09. p.1.

in as the best interests of the survival of humanity. The consequences of the provisions of Article 28 B of the 1945 Constitution of the Republic of Indonesia need to be followed up with making government policies aimed at protecting children.<sup>2</sup>

Children need to be protected from the negative effects of rapid development, the flow of globalization in the field of communication and information, advances in science and technology, and changes in the style and way of life of some parents who have brought fundamental social changes in people's lives that greatly affect the value of and child behavior. Deviations of behavior or acts that violate the law committed by the child, among others, are caused by factors outside the child's self.<sup>3</sup>

Indonesia is one of the countries that had ratified the Convention on the Rights of the Child (CRC) in 1990 which was approved by the UN General Assembly on November 20, 1989. In Article 4 the CRC stated: Participating States will take all legislative, administrative and other steps to the exercise of rights recognized in the convention. Also in Article 6 the CRC states: The State Party recognizes that

every child has an inherent right to life. A decade later, precisely in 2001, Indonesia declared its commitment to the declaration of a World Fit for Children. In accordance with the provisions of the Convention on the Rights of the Child which was ratified by the Indonesian government through Presidential Decree Number 36 of 1990, then also set forth in Law Number 4 of 1979 concerning Child Welfare and Law Number 23 of 2002 concerning Child Protection and Law Number 11 of 2012 concerning the Criminal Justice System for Children, all of which state the general principles of child protection, namely non-discrimination, the best interests of children, survival and development and respect for children's participation.<sup>4</sup>

Crimes involving children as perpetrators of crime are certainly not new things. Today many criminal incidents such as theft, mugging or extortion are carried out by a child. Aditya Wisnu Muljadi dan Ida Bagus Rai Djaja. 2013). Limits on children's delinquency are emphasized on children's behavior which is an act that violates the norm, but if it is done by an adult it is called a crime, because it is unethical if the child is called a child criminal instead of a child's mischief be-

<sup>2</sup> *Ibid.* See too Part Explanation Law No. 11 Of 2012 Concerning Criminal Justice System for Children.

<sup>3</sup> Bakhtiar, H. S. (2015) Penerapan Sanksi Pidana dan Tindakan Terhadap Anak Menurut UU No.11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak. *Universitas Muslim Indonesia*. p.1. Doi: 10.13140?RG.2.2.14748.69764

<sup>4</sup> Nevey Varida Ariani. (2014). Implementasi Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak Dalam Upaya Melindungi Kepentingan Anak. *Media Hukum*, 21(1), 16. p. 108.

cause remembering that the child who committed the crime still needs supervision or coaching actions.<sup>5</sup>

Deviations of behavior or unlawful acts committed by children are caused by various factors including the negative impact of rapid development, the flow of globalization in the field of communication and information, advances in science and technology and changes in style and way of life as parents. This has brought about fundamental social changes in people's lives and has greatly influenced children's values and behavior<sup>6</sup>

Children who lack or do not get affection, care and guidance as well as guidance in the development of attitudes of adjustment behavior, as well as supervision from parents, guardians or foster parents will be easily dragged into the flow of unhealthy community and environment and detrimental to their personal development.<sup>7</sup> Due to the influence of the surrounding circumstances, it is not uncommon for children to participate in committing criminal acts. That can be caused by persuasion, spontaneity or just a bandwagon. Even so it is still a criminal of-

fense. But for the growth and mental development of children, it is necessary to pay attention to the difference in treatment in procedural law and criminal threats.<sup>8</sup>

Imposition of sanctions is an instrument of power to strengthen the application of a norm and to prevent and eradicate actions that interfere with the application of a norm. The aim to be achieved from imposing sanctions on children is so that the child can recycle to the community.<sup>9</sup> Double track system is a two-track system regarding sanctions in criminal law, namely criminal sanctions and types of sanctions for actions. Even though in practice, the difference between criminal sanctions and sanctions is often a bit vague, but at the level of the basic ideas both have fundamental differences, where criminal sanctions are based on the basic idea "why criminal acts are held", while sanctions act based on the basic idea "for what criminal acts are held that".<sup>10</sup>

Therefore, through Article 103 of the Criminal Code (KUHP), other acts are still justified that according to the law other than the Criminal Code can be convicted as long as the law is related to the

<sup>5</sup> Nashriana. 2011. *Perlindungan Hukum Pidana Bagi Anak di Indonesia*. Jakarta: PT. Raja Grafindo Persada. p.29.

<sup>6</sup> Bilher Hutahaean. (2013). Penerapan Sanksi Pidana Bagi Pelaku Tindak Pidana Anak. *Jurnal Yudisial*, 6(1), 64-79. p. 65.

<sup>7</sup> Gatot Supramono. (2000). *Hukum Acara Pengadilan Anak*. Jakarta: Djambatan.

<sup>8</sup> Gatot. 2000. *Hukum Acara Pengadilan Anak*. Jakarta: Djambatan.

<sup>9</sup> Bilher Hutahaean. *Loc.Cit.*

<sup>10</sup> Bakhtiar, H. S. *Op. Cit.* p.3.

<sup>10</sup> M. Sholehuddin. (2004). *Sistem Sanksi dalam Hukum Pidana*. Jakarta: PT. Raja Grafindo Persada. p.17.

problem of children and does not contradict the provisions of the Criminal Code (*lex specialis derogat legi generalis*) or the principle of legal interpretation that states that special law (*lex specialis*) overrides general law (*lex generalis*).<sup>11</sup> It is also through this principle that the child criminal law justifies other laws, outside of the Criminal Code relating to child issues such as the legal provisions stipulated in Law Number 11 of 2012 concerning the Criminal Justice System for Children, in this law regulates the differentiation of treatment in in the procedural law and the threat of punishment.

The differentiation of treatment and threats regulated in this law is intended to provide more protection and protection for children in facing their long-term future. In addition, the distinction is intended to provide opportunities for children so that after going through coaching they will obtain their identity to become a better human being, which is useful for themselves, family, society, nation and state.<sup>12</sup> Specifically, the sanctions for children are determined based on the difference in the age of the child, namely for children who are under 14 (fourteen) years of age only subject to action sanctions, whereas for chil-

dren who have reached 14 (fourteen) years of age up to 18 (eighteen) year can be sanctioned with action and criminal.<sup>13</sup> For this reason, this article will discuss how legal arrangements regarding the age limit of children who can be sanctioned and the legal arrangements regarding sanctions that can be imposed on children in Indonesia.

## DISCUSSION

### Definition of Children And Legal Arrangements Regarding Children's Age Limits

Children are a gift from God Almighty that must be guarded because in him inherent dignity, human dignity and rights that must be upheld. Children are an inseparable part of human survival and the survival of a nation and state. In the Indonesian constitution, children have a strategic role that is explicitly stated that the state guarantees the right of every child to survival, growth and development and to protect from violence and discrimination. There are several definitions of children according to statutory regulations as well as according to experts. But there is no uniformity regarding the child's understanding. In general we know what is meant by children, those who are still im-

<sup>11</sup> Bakhtiar, H. S. *Op. Cit.* p.5.

<sup>12</sup> Wigiati Soetedjo. (2010). *Hukum Pidana Anak*. Cetakan ketiga. Bandung: Refika Aditama. p.29.

<sup>13</sup> Bakhtiar, H. S. *Op. Cit.* p.4.

mature or still not married.

The following are some differences in the understanding of children in legislation:

***According to Article 45 of the Criminal Code***

Children are if an immature person is prosecuted for an act he has done when he is not yet 16 (sixteen) years old, the judge may: order, so that the crime is returned to his parents; his guardian or caretaker, with no penalty imposed; or order, so that the offended person is handed over to the government without any penalty being imposed, that is if the act is part of a crime or one of the violations described in Articles 489, 490, 492, 496, 497, 503-505, 514, 417-32, 519, 526, 531, 532, 536 and 540 and the act was committed before then two years after the previous decision which blamed him for one of these violations or after the crime; or punish the guilty child.

***According to Article 330 of the Civil Code***

1. Contains the boundary between not yet adult and adult, which is 21 (twenty one) years of age, except:

- a. Children who have married before age 21 (twenty one) years
- b. Maturity (article 419 Civil Code)

2. Mention that the act of marriage that occurs to a person not yet 21 (twenty one) years of age, has no influence on his maturity status. So, according to civil law called children are those who have not reached the age of 21 (twenty-one) years and not before marriage.

***According to Article 153 paragraph 5 of Law Number 8 of 1981 concerning the criminal procedure code***

"The presiding judge may determine that children who have not reached the age of 17 (seventeen) are not permitted to attend the hearing".

***According to Article 1 paragraph 1 and 2 of Law Number 3 of 1997 concerning Juvenile Court***

1. Child is a child is a person who in the case of a naughty child has reached the age of 8 (eight) years but has not reached the age of 18 (eighteen) years and has never been married.

2. Bad kids are:

- a. Children who commit crimes; or
- b. Children who commit acts that are prohibited for children, both according to the laws and regulations and according to other legal regulations that live and apply in the community concerned.

Regarding the age limit above, it has been changed by Constitutional Court Decision No. 1 / PUU-VIII / 2010, from 8 to 12 years and before 18 years. So according to this law, that a person who is eighteen years of age or older at the time of 18 commits a criminal offense, the charges imposed are the same as those against an adult. In this case they are considered adults.

***According to Article 47 paragraph 1 of Law Number 1 of 1974 concerning Marriage***

"Children who have not reached the age of 18 (eighteen) years or have never entered into a marriage are under the authority of their parents as long as they do not deprive them of their authority.

***According to Article 1 number 2 of Law Number 4 of 1979 concerning Child Welfare***

"A child is someone who has not reached 21 (twenty one) years and has never been married."

***According to Article 1 number 26 of Law Number 13 of 2003 concerning Employment***

"Children are every person under the age of 18 (eighteen) years".

***According to Article 1 number 8 letters a, b and c of Law Number 12 of 1995 Concerning Correctional Institutions***

Correctional students are:

- a. Criminal children, namely children who, based on a court decision, undergo criminal acts in a child penitentiary, up to the age of 18 (eighteen) years;
- b. State Children, namely children who, based on a court decision, are handed over to the state to be educated and placed in a correctional facility for children no later than 18 (eighteen) years of age;
- c. Civil Child, a child who, at the request of a parent or guardian, receives a court order to be educated at a correctional facility for a child up to the age of 18 (eighteen) years.

***According to Article 1 number 5 of Law Number 39 of 1999 concerning Human Rights***

Children are every human being under 18 (eighteen) years old and not married, including children who are still in the womb if it is in their interest.

***According to Article 1 number 1 of Law Number 23 of 2002 concerning Child Protection***

Child is someone who is not yet 18

(eighteen) years old, including children who are still in the womb.

***According to Article 1 number 3 of Law Number 11 Year 2012 concerning the Criminal Justice System for Children***

Children are children who are 12 (twelve) years old, but are not yet 18 (eighteen) years old who are suspected of committing criminal offenses.

Some of the definitions above have been described in detail and can be concluded that the child who is said to be immature and who can be brought to the court is a child who is 12 (twelve) years old but not yet 18 (eighteen) years old who is suspected of committing a crime. In this law does not mention whether the child is or has not married, so if the child is bound in a marriage or marriage is broken because of divorce, then the child is considered an adult even though his age is not 18 (eighteen) years. From various things according to science or the Law gives different understanding of the child according to each according to what is needed and the limitations that exist in each of them tailored to the development and needs of the community.

**Definition Of Criminal Sanctions And Actions**

Sanction is a logical consequence of an action that is done. Sanctions can have the same meaning as punishment but the understanding is different from the criminal. Criminal (starf) is a sanction that only applies in the field of criminal law. The definition of criminal sanctions covers all types of criminal both in the Criminal Code and criminal provisions outside the Criminal Code. In Indonesia, a country that uses two types of criminal sanctions at once, namely in the form of criminal (straf) and action (maatregels).<sup>14</sup>

Theoretically, the criminal contains more suffering, although the elements of education and guidance and supervision are the main objectives. While the action is more directed at the activities of protection, education and guidance for children. Criminal is defined as a suffering that is intentionally inflicted or inflicted on a country or a number of people as a result of the law (sanctions) for him for his actions that have violated the prohibition of criminal law.<sup>15</sup> Criminal is an uncomfortable feeling (for example in the form of restrictions, fulfillment of certain obligations) imposed by the state through crimi-

<sup>14</sup> Bakhtiar, H. S. *Op. Cit.* p.16.

<sup>15</sup> *Ibid.*

nal justice because a person or legal entity that was convicted of violating the law legally and convincingly guilty. The mildness of the action, the personal condition of the child, or the state at the time the act was committed or what happened then can be used as a basis for judges not to impose a criminal offense or impose an act by considering aspects of justice and humanity.<sup>16</sup>

### 1) Criminal Sanctions

According to Law Number 11 of 2012 concerning the Criminal Justice System for Children, children who are in conflict with the law can be sentenced to a criminal offense, namely the principal and additional crimes. By listening to article 71 paragraph 1 and paragraph 2 the main and additional crimes are regulated against children who are in conflict with the law.

#### a. Criminal Principal

There are several basic crimes against children, namely:

##### 1. Criminal warnings

Criminal punishment is a minor criminal offense that does not result in restrictions on children's freedom.

##### 2. Criminal conditions

Regarding criminal with the condition in Law Number 11 Year 2012

Regarding the Criminal Justice System for Children, divided into 3 namely:

##### 1) Coaching outside the institution

In coaching outside the institution, which in essence is as follows:

a) In the event that the Judge determines that the Child is being fostered outside the institution, the institution where the education and guidance is determined is determined in the decision.

b) Criminal guidance outside the institution can be in the form of:

- Following the guidance and counseling program conducted by the supervisory officer

- Following therapy in a mental hospital

- Following therapy due to alcohol abuse, narcotics, psychotropic substances, and other addictive substances.

c) If during the guidance of the child violates the special requirements, the

<sup>16</sup> *Ibid.*



guiding officer may propose to the supervisory judge to extend the coaching period which does not exceed the maximum 2 (two) coaching periods that have not been carried out.

## 2) Community service

In service to the community, the main points are as follows:

- a) Criminal community service is a crime intended to educate children by increasing their awareness of positive community activities.
- b) If the child does not fulfill all or part of his obligations in carrying out community service crimes without a valid reason, the guiding officer may propose to the supervisor judge to order the child to repeat all or part of the community service crime that is imposed on him.
- c) Criminal community service for children is to be imposed with a minimum of 7 (seven) hours and a

maximum of 120 (one hundred and twenty) hours.

## 3) Supervision.

In the case of criminal supervision, the main points are as follows:

- a) Criminal supervision which can be imposed on a Child for a minimum of 3 (three) months and a maximum of 2 (two) years.
- b) In the event that the Child is sentenced to criminal supervision, the Child is placed under the supervision of the Public Prosecutor and is guided by the Community Guidance.

And in general criminal with the condition, which in principle is as follows:

- a) Criminal conditions can be imposed by the Judge in the case of imprisonment which is up to 2 (two) years.
- b) In a court decision regarding a criminal with conditions, general conditions and special conditions are also determined.
- c) The general condition is

that the child will not commit another crime while serving a criminal term on condition.

- d) Special requirements are to do or not do certain things that are determined in the judge's decision while still paying attention to the freedom of the child.
- e) The criminal period with special conditions is longer than the criminal period with general conditions.
- f) The term of a criminal period with a maximum term of 3 (three) years.
- g) During serving the criminal period on condition, the Public Prosecutor conducts supervision and the Community Guidance conducts guidance so that the Child occupies the stipulated requirements.
- h) As long as the child is serving a criminal condition, the child must attend 9 (nine) years compulsory education.

### 3. Job training

Job training is given to children,

with the following conditions:

- a) Criminal work training is carried out in institutions that carry out job training that is appropriate for the age of the child.
- b) Criminal work training is subject to a minimum of 3 (three) months and a maximum of 1 (one) year.

### 4. Coaching in institutions

Guidance for coaching in institutions is imposed on children under the following conditions:

- a) Criminal guidance in an institution is carried out in a job training place or a training institution that is held, both by the government and the private sector.
- b) Criminal coaching within the institution is dropped if the circumstances and actions of the child do not endanger the community.
- c) Coaching in institutions is carried out for a minimum of 3 (three) months and a maximum of 24 (twenty four) months.
- d) Children who have undergone 1/2 (one half) of the length of coaching in the institution and not less than 3 (three) months of good behavior are entitled to parole.

### 5. Prison

In imposing imprisonment there are several provisions that need to be considered as follows:

- a) Criminal restrictions on freedom are imposed in the event that the child commits a felony or a criminal offense accompanied by violence.
- b) Criminal restriction of freedom imposed on Children no later than 1/2 (one half) of the maximum imprisonment that is threatened against adults.
- c) Special minimum imprisonment does not apply to children.
- d) Provisions regarding imprisonment in the Criminal Code also apply to Children as long as they do not conflict with this Law.
- e) Children are sentenced to prison in LPKA if the circumstances and actions of the Child will endanger the community.
- f) Criminal imprisonment that can be imposed on Children no later than 1/2 (one half) of the maximum threat of imprisonment for adults.
- g) Coaching in LPKA is carried out until the child is 18 (eighteen) years old.
- h) Children who have undergone 1/2 (one half) of the length of training

in LPKA and are of good character are entitled to parole.

- i) Criminal imprisonment against children is only used as a last resort.
- j) If the crime committed by the Child is an offense that is threatened with capital punishment or life imprisonment, the sentence imposed is a maximum prison sentence of 10 (ten) years.

#### **b. Additional Crimes**

As it has been said that in addition to the principal crimes that can be imposed on children, a criminal can also be imposed in the form of:

1. Deprivation of profits derived from criminal acts
2. Fulfill customary obligations.

#### **2) Sanction of Action**

Aside from criminal sanctions, action sanctions are also known. Actions constitute sanctions for someone who is legally proven and convicted of wrongdoing with the aim of providing education and guidance and certain other actions. According to Law Number 11 of 2012 concerning the Child Criminal Justice System article 69 paragraph 2 that a child who is not yet 14 (fourteen) years old may only be subject

to action.

Article 82 of Law Number 11 of 2012 is determined regarding sanctions actions that can be imposed by a judge on a child in conflict with a law that is proven to be in a guilty manner, namely:

1. Actions that are applied to children include:

- a. Returns to parents / guardians
- b. Submission to someone;
- c. Care in a mental hospital
- d. Nursing at an institution providing social welfare;
- e. Obligation to attend formal education and / or training provided by government or private bodies
- f. Revocation of driving license
- g. Repairs due to criminal acts

2. The actions referred to in paragraph (1) letter d, letter e, and letter f are subject to a maximum of 1 (one) year.

In the case of surrender to someone referred to is surrender to adults who are deemed competent, of good behavior, and responsible, by the Judge and trusted by the Child and this is done for the benefit of the child concerned.

## CONCLUSION

The imposition of sanctions against children who commit a crime is regulated in detail in Law No. 11 of 2012 concern-

ing the Criminal Justice System for Children which regulates the age limit of children who can be sanctioned. 18 (eighteen) years and the imposition of sanctions itself there are differences with adults where children can be imposed sanctions in the form of criminal sanctions and sanctions actions. Imposition of sanctions against children takes into consideration the child's condition and the consequences resulting from the child's actions.

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