



---

## Legal Protection For Juvenile Offenders In The Criminal Justice Process (Comparative Study Of Islamic Law And Positive Law In Indonesia)

Dudy Ruchendi

Islamic Family Law Study Program

Postgraduate Program of Institut Agama Islam Negeri Syekh Nurjati Cirebon

[dudiruchendi@gmail.com](mailto:dudiruchendi@gmail.com)

---

### Article info:

Received: 30  
August 2022  
Accepted: June  
2024  
Available online:  
December 2024

### ABSTRACT

This study aims to determine the rights of children who commit criminal offenses in the judicial and investigative processes in legal protection. The method used is the normative juridical and sociological juridical approach. The results of this study are as follows: first, the investigation process at the Polres is carried out by child investigators who are accompanied by parents/guardians, legal counsel, and Bapas. At the Polsek level, the investigation is carried out by investigators who usually conduct investigations on adults due to the need for more human resources. Legal counsel must accompany children who are still suspects. There is no intimidation during the investigation process; everything is done according to the investigation procedure for children. Second, children's rights during the trial period are fulfilled and protected by judges and public prosecutors by the Law on Juvenile Justice System. The rights contained in Article 3 of Law No. 11/2012 have fully met the principles of legal protection consisting of 4 (four) principles: The child cannot fight alone, the best interests of the child, the life cycle approach, and cross-sectoral.

**Keywords:** Protection, law, juvenile offenses

## I. INTRODUCTION

Indonesian Criminal Justice still uses punishment against juvenile offenders, even for the benefit of the child, even in the criminal process in the form of community research (litmus) made by Balai Pemasyarakatan (Bapas) officers, many still recommend to juvenile judges to punish juvenile offenders and more than 4,000 Indonesian children are brought to court each year for minor crimes such as theft and generally they do not receive support from lawyers or social services, so it is not surprising that nine out of ten of these children end up being sentenced to prison or detention<sup>1</sup>

Facing and handling the judicial process of children involved in criminal acts, the first thing that should not be forgotten is to see their position as children with all their unique characteristics and characteristics, thus starting from the concept of protection of children in the handling process so that this will rest on the idea of child welfare and the interests of the child. Handling children in the legal process requires a unique approach, service, treatment, care, and protection to provide legal protection for children in conflict with the law. The four pillar institutions of the juvenile criminal justice system have been regulated in separate rules and regulations as a juridical basis for law enforcement officials in carrying out their authority.

Preliminary results of the study showed that children in conflict with the law were treated poorly compared to adults in the same situation. The majority of children in conflict with the law claimed to have experienced violence. In contrast, at the police station, in addition to the violence committed in the preparation of the Minutes of Examination (BAP), where violence is part of the effort to obtain a confession, another form of violence occurs, namely the deprivation of money available to children. Based on the background stated above, there are two problem formulations. What are the rights of juvenile offenders in the process of

---

<sup>1</sup> Mamik Sri Supatmi and Ni Made Martini Tindu, *Analisa Situasi Sistem Peradilan Pidana Anak (Juvenile Justice System) Di Indonesia* (Indonesia: Unicef, 2003), p 1.

investigation and investigation? Second, what are the rights of children who commit criminal offenses in the trial process?

## **II. RESEARCH METHODS**

The method used in this research is normative juridical and sociological juridical. In collecting data, the author uses the literature study method, such as reviewing laws and regulations, books, legal journals, court decisions, and articles related to the research. The author also obtained data by interviewing juvenile offenders, investigators, public prosecutors, and judges.

This research will be conducted at Majalengka Police Station, Majalengka District Court, Majalengka District Attorney's Office, Majalengka Correctional Agency (BAPAS), and Bandung Special Correctional Institution for Children (LPKA). The data analysis used is qualitative descriptive analysis. Collecting data, which is then grouped according to specific criteria, will draw an analysis in this study.

## **III. DISCUSSION**

### **A. Results of Research on the Rights of Juvenile Offenders in the Investigation Process**

Investigation means a series of actions carried out by investigating officials by the methods in the law to seek and collect evidence, and with that evidence, make or become clear the criminal offense that occurred and, simultaneously, find the suspect or perpetrator of the criminal offense.<sup>2</sup> This means that investigation in juvenile criminal cases is an activity of juvenile investigators to search for and find an event considered or suspected of being a criminal offense committed by a child. Article 26 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states:

1. Investigations into children's cases are carried out by Investigators who are determined based on the Decree of the Chief of the Indonesian National Police or other officials appointed by the Chief of the Indonesian National Police.

---

<sup>2</sup> Yahyah Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP, Penyidikan Dan Penentuan* ( Jakarta : Sinar Grafika, 2006), p109.

2. The Investigator shall conduct examinations of Child Victims or Child Witnesses as referred to in paragraph (1).
3. The requirements to be designated as an Investigator, as referred to in paragraph(1), include:
  - a) Has experience as an investigator;
  - b) Have an interest, concern, dedication, and understanding of children's issues and;
  - c) Has attended technical training on Juvenile Justice.

Children must be understood as people who cannot yet understand the legal problems that occur to them. The presumption of innocence must be respected and upheld by the child's dignity in making arrests. Arresting children suspected of delinquency must be based on sufficient evidence and a limited period.

In protecting children, investigators must examine suspects in a family atmosphere, requiring a practical and sympathetic approach. This is also regulated by Article 42 paragraph (1) of Law Number 3 of 1997, but it is no longer included in the new Child Criminal Justice System Law Number 11 of 2012.

A practical approach means that the examination does not take a long time, using language that is easy to understand and can invite the suspect to provide information as clearly as possible. The sympathetic approach means that during the examination, the investigator must be polite and friendly, and the investigator can carry out law enforcement activities in a pleasant atmosphere towards child offenders so that psychological and physical pressures can be minimized. This is an absolute procedure that must be followed at every level of examination.

The legal protection of children has been reflected in the provisions of Article 42 paragraph (1) of Law Number 3 of 1997, as well as the legal protection of children regulated in the Child Criminal Justice System Law Number 11 of 2012 if carried out by investigators as regulated in these provisions. However, suppose the investigator does not examine these provisions. In that case, some sanctions can be imposed but

do not have any implications for the examination results. The Juvenile Criminal Justice System Law also states this in Articles 96, 97, 98, 99, 100, and 101.

To investigate a child's case, the investigator must ask for consideration or advice from the Community Supervisor after the criminal offense is reported or complained about. The Investigator may request consideration or advice from education experts, psychologists, psychiatrists, religious leaders, Professional Social Workers or Social Welfare Workers, and other experts if necessary. Even in conducting examinations of Child Victims and Child Witnesses, investigators must request social reports from Professional Social Workers or Social Welfare Workers after a criminal offense is reported or complained about. Thus, the results of the community research must be submitted by Bapas to the investigator.

A maximum of 3 x 24 (three times twenty-four) hours after receiving the investigator's request.<sup>3</sup> In principle, investigators must seek diversion within a maximum of 7 (seven) days after the investigation begins. The diversion process, as referred to above, is carried out 30 (thirty) days after the start of the diversion. Suppose the diversion process succeeds in reaching an agreement. In that case, the investigator submits the diversion minutes and the diversion agreement to the Chief of the District Court to decide. If the diversion fails, the investigator must continue the investigation and submit the case to the Public Prosecutor by attaching the diversion minutes and community research report.

The following will describe the handling of juvenile criminal cases in the investigation and inquiry stages based on the results of research through questionnaires that the author gave to the speakers as follows:

1. Handling juvenile criminal cases in the PPA Unit of Majalengka Police.

The police, as investigators, are authorized to examine juvenile offenders who are 12 (twelve) years old but not yet 18 (eighteen) years old. The police can function to issue a stipulation for juvenile offenders who are not yet 12 (twelve) years old (not yet 18 years old) to be handed over to parents/guardians or

---

<sup>3</sup> Nasir Djamil M, *Anak Bukan Untuk Dihukum* (Jakarta: Sinar Grafika, 2013). p 155.

participate in education and coaching programs. The police, as investigators, can also conduct diversion on the condition that the child criminal is punishable by a maximum of 7 (seven) years imprisonment and is not a repeat offender. The diversion process can be implemented at the level of investigation, prosecution, and examination of cases in court. The diversion process involves juvenile offenders, victims and parents/guardians, community counselors, and professional social workers based on the therapeutic justice system. The age limit for diversion is children 12 (twelve) years old but not yet 18 (eighteen) years old who are suspected of committing a criminal offense.

In the trial process, investigators, public prosecutors, community counselors, legal aid providers, and other officers, by not wearing toga or official attributes in every examination, criminal offenders must be given legal assistance and accompanied by Bapas / other assistants by applicable rules/regulations. The investigator's statement is needed in the trial if there is a difference in the statement explained by the child as the perpetrator and the witness's statement in a court decision that states coaching or returning to parents, depending on the SPPA Law that regulates it. For example, juvenile offenders aged 11 to 14 years old are only given punishment in the form of action. Regarding juvenile offenders aged 14 years or older, the provisions of Article 71 of the SPPA Law regarding the return or guidance depends on the case violated by the juvenile offender. Every recommendation of Bapas, whether or not the recommendation can be approved/ followed, depends on the assessment of the juvenile judge.

## 2. Handling of juvenile criminal cases in the Majalengka District Attorney's Office

The function of the Majalengka State Attorney's Office in handling cases where the perpetrator is a child is to carry out prosecution. The stages of the case-handling process at the Majalengka District Attorney's Office are as follows:

- a. The Majalengka District Attorney's Office received an SPDP (Notice of Commencement of Investigation) from the Police Investigator.

- b. The Head of the Majalengka District Attorney's Office appointed a Public Prosecutor (P-16).
- c. The Public Prosecutor receives the case file from the investigator (Phase I).
- d. The Public Prosecutor examines the case file for formal and material requirements.
- e. After the file was complete, the Public Prosecutor declared the file complete (P-21).
- f. Admission of juvenile offenders for detention and evidence (Phase II).
- g. Case submission to Majalengka District Court
- h. Court proceedings.
- i. Execution.

As stipulated in the Criminal Procedure Code, the suspected perpetrator of a criminal offense has not yet been determined during the investigation. Still, in the investigation process, the perpetrator must have been defined so that legal counsel can be involved based on Article 65 of the Criminal Procedure Code.

Bapas, according to Article 23 paragraph (1) of the SPPA Law, is mandatory in every process, from the investigation process to prosecution to execution. The police investigator carries out the application for Bapa's assistance, while the Prosecutor's Office and the Court determine the assistance process only through summoning for trial to execution.

According to the Majalengka District Attorney, Bapas's presence in handling juvenile criminal cases is practical and mandatory. Bapas is obliged to read out the results of community research during the trial process based on Article 23 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

## **B. Results of Research on the Rights of Juvenile Offenders in the Trial Process**

The Juvenile Criminal Justice System stipulated in Law No. 11/2012 imperatively required in Article 105 that each District Attorney has a Juvenile Public Prosecutor to handle juvenile criminal cases. Still, suppose the District

Attorney does not have a Juvenile Public Prosecutor because no one meets the specified requirements or is due for transfer. In that case, prosecuting cases of Juvenile Delinquents is imposed on Public Prosecutors who carry out prosecution duties for criminal offenses committed by adults.<sup>4</sup>

When viewed from the aspect of child protection, it can be said that children do not receive protection. Suppose. In that case, the Public Prosecutor for Children does not carry out the prosecution of children. It is feared that the target of child protection will be ignored because the Public Prosecutor concerned does not understand children's issues, so the legal actions taken by the prosecution have the possibility of not reflecting the principles of protection of children because the absolute requirements to become a Public Prosecutor who handles criminal cases involving children, namely having interest, attention, dedication and most importantly understanding children's issues, are not fulfilled.

The Public Prosecutor for Children, in carrying out his duties, is to examine the minutes submitted by the Investigator; if deemed necessary, the Public Prosecutor, because of his position, can recommend to the investigator not to continue the investigation, or the public prosecutor can stop the prosecution of child offenders. The child is sufficiently returned to his parents with reprimand and advice. The role of juvenile judges is vital in juvenile criminal justice; judges must look at children, from the criminal offense committed to the child's psychology. Until now, there has been no standardization of legal considerations, even though judges in trying minors have their own beliefs in assessing the justice and truth of the facts in the trial, and there is also no obligation for judges to make the same decision as other judges. However, in dealing with the same Object, the same perpetrator (both minors), and the same threat, it is not necessary to impose a sentence that is far different in severity from the others.

Judges handling juvenile criminal cases should take measures that do not separate children from their parents on the basis that a wrong home is better than

---

<sup>4</sup> Pasal 41 Ayat (3) Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak., n.d.



a good institution/prison.<sup>5</sup> Judges should be thorough and know the child's background before the trial. Judges must pay close attention to the child's emotional, mental, and intellectual maturity in making decisions. Judges should avoid decisions that result in lifelong mental suffering or resentment of the child, with the realization that the judge's decision is motivated by protection.

In making a decision, the judge must listen to and consider the Community Research Officer's research results. The usefulness of the Community Research Report for judges in handing down their decisions must be wise and fair. Judges make decisions that correct lawbreakers and uphold the authority of the law. Judges who examine and adjudicate a case, as humans, are not free from mistakes, forgetfulness, and various kinds of errors that can cause harm to others. The Juvenile Judge explained that the judge's considerations in reaching a verdict in cases committed by children include juridical and non-juridical considerations.

#### 1) Juridical Considerations

In this context, the decision of the Juvenile Judge must consider the elements (*bestandellem*) of the article charged by the Juvenile Public Prosecutor in his indictment. The aspects of the article must be fully proven, and if one of the elements is not proven, the child will be acquitted. In considering the elements, the Juvenile Judge is not only based on the provisions of evidence as stipulated in Article 184 of the Criminal Procedure Code but also on the opinions of doctrine and jurisprudence. In addition, to determine the length of sentence (*sentencing or straftoemeting*), the Juvenile Judge also elaborates on aggravating and mitigating circumstances. The author's assumption and polarization of thought, the Juvenile Judge's decision should also outline considerations other than juridical factors such as the child's psychological factors, whether suffering from kleptomania, sociopathic, schizophrenic symptoms or mental depression, the child's

---

<sup>5</sup> Maidin Gultom, *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia* (Bandung: Aditama, 2008). p 120.

socioeconomic factors, educational factors, environmental factors where the child lives and grows up, religious factors, and others.<sup>6</sup>

Normatively, according to the provisions of Article 197 paragraph (1) letter d of the Criminal Procedure Code, the systematics and content of the Juvenile Judge's decision on "Legal Considerations" are determined limitedly as considerations that are concisely compiled regarding the facts and circumstances along with the means of proof obtained from the examination at the trial which is the basis for determining the guilt of the Child.

The juridical consideration of the criminal offense charged is essential to the juvenile judge's decision. The essence of juridical considerations is to prove the elements (bestandellen) of a criminal offense and whether the child's actions have been fulfilled and are by the criminal offense charged by the Juvenile Public Prosecutor. It can be said further that these juridical considerations will directly affect the verdict of the juvenile Judge.

Typically, in the judicial practice of the Juvenile Judge's decision, before juridical considerations are proven and considered, the Juvenile Judge will first draw facts in the trial that arise and are cumulative conclusions from the testimony of the Child Victim and Child Witnesses, Children and evidence submitted and examined at trial. The prosecution is oriented to the dimensions of locus and tempus delict, the modus operandi of how the criminal offense was committed, the cause or background of why the child committed a criminal offense, then what the direct and indirect consequences of the child's actions, what evidence was used by the child in committing a criminal offense, and so on.

## 2) Non-Juridical Considerations

Juridical considerations alone are insufficient to determine the value of justice in the punishment of minors without being supported by non-juridical considerations that are sociological, psychological, criminological, and philosophical. This statement is relevant to the results of the author's interview

---

<sup>6</sup> Lilik Mulyadi, *Wajah Sistem Peradilan Pidana Anak Indonesia, Alumni*. (Jakarta, 2014), p 295

with the Chairman of the Majalengka District Court on 31 March 2022, Dr. Eko Yulianto, S.H, MM, S.H. then delegated to a judge named Dr.Yustika Tatar Fauzi S.H., M.H. to fill out a questionnaire stating that non-juridical considerations such as: sociological, psychological, criminological, and philosophical are also considered in the punishment of minors. Therefore, the problem of legal responsibility committed by minors is not enough if it is only based on normative aspects, the vision of harm alone, but the internal and external factors of the child behind the child in committing delinquency or crime must also be considered wisely by the judge who tries the child. A person's behavioral problems and psychiatric and social conditions are challenging to measure precisely and solve *zakelijk*. For this reason, a wise profile of juvenile criminal law must be able to conduct an appropriate sociological approach to children who have committed criminal offenses to find out the actual condition of the child, for example, mental instability, education level, socioeconomic, sociocultural at home, at school and in the community. This step needs to be taken so that the judge can make an appropriate decision that is not detrimental to the child's mental development and future. Suppose the judge's decision is only based on juridical considerations. In that case, the decision will be fatal for the child, not only depriving and harming the child's life, but also the judge's actions can be called a stigmatic maker's decision for children.

In imposing punishment, the judge can consider the child's physical, mental, and future interests rather than the existing juridical interests; in other words, non-juridical considerations are more favorable to the child's interests than juridical considerations. In addition, the imposition of punishment is done with the hope that while in the juvenile. In a correctional institution, the child concerned will receive guidance and education from the community supervisor.

The following will describe the handling of juvenile criminal cases in the trial stage at the Majalengka District Court, as well as the execution stage at the

Bandung Special Penitentiary for Children, based on the results of research through questionnaires that the author gave to the speakers as follows:

1. Handling of Juvenile Criminal Cases in Majalengka District Cour

Majalengka District Court has the authority to examine, try, and decide criminal cases of children who are 12 (twelve) years old but not yet 18 (eighteen) years old and suspected of committing a criminal offense. The Majalengka District Court has the function of issuing a decision on children who are not yet 12 (twelve) years old to be handed over to parents/guardians or participate in education and guidance programs. The age limit for diversion is children 12 (twelve) years old but not yet 18 (eighteen) years old who are suspected of committing a criminal offense. The stages of examination in the trial at the Majalengka District Court are as follows:

- a. The Substitute Registrar receives the file from the judge to make a detention order (14 years sentenced to imprisonment of 7 years or more), determination of legal counsel, determination of diversion if sentenced to imprisonment under 7 years and not a repeat offender, provided:
  - 1) If the conviction is punishable by a cumulative sentence of imprisonment and fine, the fine shall be replaced by vocational training.
  - 2) Criminal punishment with conditions such as guidance outside the institution, community service, and supervision can be imposed for a maximum of 2 (two) years.
- b. Detention carried out for examination at a Court session is a maximum of 20 (20) days. The President of the District Court may extend such detention for a maximum of 15 (fifteen) days.

Bapas has accompanied every juvenile offender in the trial process since the investigation stage, so the Court institution only sends the determination of the day of trial to the Public Prosecutor along with the juvenile offender, evidence, Bapas, and Social Worker. Legal counsel is always involved during

the trial by appointing a pro bono legal counsel if the juvenile offender does not have his/her legal counsel.

The presence of Bapas has been effective because, with the Correctional Center (Bapas), juvenile offenders receive assistance, guidance, and supervision. Bapas can also assist juvenile offenders in the trial process to obtain their rights. The judge/judge panel uses the Bapas research report to decide. While the investigator's statement can be used as a guideline for judges in examining child offenders, it is not binding because it is considered in the decision.

Majalengka District Court agrees with the decision to coach outside and inside the institution, which is carried out at a vocational training center or other coaching institutions. At the same time, the warning punishment in the form of returning the criminal offender to the parents can only be imposed for a maximum of 2 (2) years. In the Majalengka Regency, there is no Special Correctional Institution for Children, so criminal offenders are always sentenced to LPKA in other cities, especially in Bandung City.

## 2. Handling of Juvenile Criminal Cases at the Cirebon Class I Correctional Center

The Correctional Center (BAPAS) is a sub-part of the correctional subsystem, a sub of the criminal justice subsystem, and part of the justice system, which carries out community research, guidance, assistance, and supervision of children in conflict with the law.

The implementation of the role of BAPAS in the implementation of community research, guidance, mentoring, and supervision of children in conflict with the law is carried out by Community Counselor (PK) officers who have qualifications and competencies in their fields and have legality in the form of a decree from the Minister of Law and Human Rights of the Republic of Indonesia. The process of carrying out the task begins with a request from the investigator, followed by the appointment of a PK through an order from the Head of BAPAS.

The involvement of BAPAS in the juvenile justice process can begin at the investigation stage through initial coordination and child assistance. The stages of case handling in juvenile justice by BAPAS are as follows:

- a. Community Counselors (PK) have been assisting since the beginning of the examination.
- b. PK's participation in the investigation stage begins with data collection on children through the Litmas process for Diversion or Litmas for Court Hearing.
- c. In addition, for criminal cases that qualify for the Diversion process, the PK is responsible for participating in the deliberation process at each stage (Police, Prosecutor's Office, and Court). In the process, the Litmas made by the PK become one of the Diversion considerations in addition to the criminal offense category, the age of the child, and the support of the family and community environment.
- d. The PK is responsible for following the entire Diversion process until the resulting agreement is implemented through assistance, guidance, and supervision. Suppose the deal on the results of the Diversion is not implemented according to the agreed time. In that case, the PK reports to the superior official according to the level of examination so that follow-up steps can be taken.
- e. In addition, PKs are required to assist at every level of examination for all cases without wearing a toga or official attributes for the sake of the child's psychological interests.
- f. In the trial stage, PKs carry out mentoring tasks and are obliged to read out the Litmas report for the court session.

BAPAS applies for assistance through a request for help and a request to prepare a Community Research Report (Litmas) on ABH. Legal counsel is involved both in the trial process and before the trial, even during execution after the Eintracht decision. In reality, juvenile offenders are not always placed

in LPKA because the existence and capacity of the existing LPKA are far from fulfilling.

### 3. Handling of Juvenile Convicts in Bandung Specialized Correctional Institution for Children.

The function of the Special Correctional Institution for Children (LPKA) is as a place of detention for children under the age of 18 (eighteen) years). LPKA functions as a place to foster, guide, and educate children who commit criminal offenses based on Court decisions that have permanent legal force (Eintracht).

## IV. CONCLUSIONS

The existing law governs the current juvenile criminal justice system, Law No. 11/2012, on the juvenile criminal justice system. The investigation process at the Polres is carried out by child investigators who are accompanied by parents/guardians, legal counsel, and Bapas. At the Polsek level, the investigation is carried out by investigators who usually conduct investigations on adults, but this is due to the lack of human resources. Legal counsel must accompany children who are still suspects. There is no intimidation during the investigation process; everything is done according to the investigation procedure for children.

Children's rights during the trial period are fulfilled and protected by the judge and public prosecutor by the Law of the Juvenile Justice System. The case is null and void if legal counsel does not accompany the child (defendant). The rights contained in Article 3 of Law No. 11/2012 have fully met the principles of legal protection consisting of 4 (four) principles: The child cannot fight alone, the best interests of the child, the life cycle approach, and cross-sectoral.

## V. LITERATURE

- Gultom, Maidin. *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia*. Bandung: Aditama, 2008.
- Harahap, Yahyah. *Pembahasan Permasalahan Dan Penerapan KUHAP, Penyidikan Dan Penentuan*. Jakarta : Sinar Grafika, 2006.
- M, Nasir Djamil. *Anak Bukan Untuk Dihukum*. Jakarta: Sinar Grafika, 2013.
- Mulyadi, Lilik. *Wajah Sistem Peradilan Pidana Anak Indonesia*. Alums. Jakarta, 2014.
- Pasal 41 Ayat (3) Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak*, n.d.
- Supatmi, Mamik Sri, and Ni Made Martini Tindu. *Analisa Situasi Sistem Peradilan Pidana Anak (Juvenile Justice System) Di Indonesia*. Indonesia: Unicef, 2003.