

CRIMINAL RESPONSIBILITY FOR CHILDREN WHO PERPETRATE SERIOUS ABUSE TO ACHIEVE JUSTICE IN SOCIETY

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Abstract: This article is an analysis of cases of serious abuse by child perpetrators, which were analyzed normatively using a statutory approach. The results of the analysis show that the age limit for criminal responsibility for children who commit serious abuse cannot be the same because each child has a different development process which affects their maturity in thinking. If the child's age is used as the only basis for consideration in deciding a child's case, then children who are perpetrators of criminal acts who are not yet 12 (twelve) years old cannot be given any sanctions in the form of actions or criminal penalties and to children who are not yet 14 (fourteen) old. years can only be given sanctions in the form of action. It is feared that this will become a legal loophole so that cases of crimes by children will continue to occur. The best interests of the child must be fought for for the child's optimal growth and development, but justice for the community, especially for the victim, must also be achieved, especially if the victim is also a child who must receive protection. Forensic psychologists are needed to assess and provide an overview of the psychological condition of children who have suffered serious abuse. So, when deciding on children's cases, the judge will refer to 2 (two) things, namely the age limit for criminal responsibility for children and the results of forensic psychological examinations. There is a need for reformulation in Article 21 paragraph (1) and Article 69 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System by adding the results of forensic psychological examinations as a basis for consideration in deciding juvenile cases.

Keywords: Child criminal responsibility; Community justice; Serious abuse.

1. Introduction

Children are the next generation of the nation who are the greatest hope for society, so that they are given protection for their rights for optimal growth and development and the best interests of the child. Protection for children is also provided to children who are in conflict with the law (ABH), including children who are perpetrators of criminal acts. This can be proven by the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) which differentiates the judicial process for children and adults. The characteristics of children are very different from those of adults, so children need special attention considering that children's physical and mental conditions are not yet fully mature.¹ There are many differences and privileges in the criminal justice process for children. This is done because children are considered immature parties both

¹ I Ketut Arjuna Satya Prema, Masruchin Ruba'i, and Nurini Aprilianda, "Pembatasan Usia Pertanggungjawaban Pidana Anak Dalam Peraturan Perundang-Undangan," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 4, no. 2 (2020): 232–241.

intellectually and emotionally and cannot differentiate between good and bad actions and the consequences resulting from their actions.

Based on this, the theory of cognitive development put forward by Jean Piaget states that children's way of thinking is not only less mature than adults because they lack knowledge, but is also qualitatively different.² Children's maturity in thinking is one of the factors causing cases of children in conflict with the law which have increased sharply recently. Crimes involving child perpetrators are increasing day by day, this makes the National Legal Development Agency (BPHN) to provide legal guidance to schools. by collaborating with thousands of advocates and thousands of paralegals, based on data collected by BPHN there were 2,304 criminal cases involving child perpetrators consisting of :³

No	Types of Crime	Number of Cases
1	Theft	838
2	Drugs	341
3	Persecution	232
4	Sharp weapon	153
5	Obscenity/Harassment	173
6	Murder	48
7	Rape	26
8	Others (pornography, child protection, fraud, threats of violence, detention, traffic accidents, vandalism, smuggling, embezzlement etc.)	491

BPHN noted that 36% (thirty six percent) of cases of children as perpetrators were crimes of theft, 15% (fifteen percent) were narcotics abuse, 10% (ten percent) were abuse, the rest were child criminal behavior involving sharp weapons, obscenity or harassment, murder, rape, etc. This fact is quite disturbing and has attracted the attention of the wider community.

Children who are considered immature in thinking can commit criminal acts like adults so that their actions can no longer be called juvenile delinquency but can be categorized as crimes or evil acts.⁴ One example of a crime case by a child is the premeditated murder case committed by NS against Putri Wulandari, a class 1 student at Santun Untan High School who was 16 years old. Murder committed by a child is not a naughtiness, but it is considered a crime because this act is related to the taking of someone's life.⁵ This fact is difficult to believe because the perpetrator

² Kementerian Pendidikan, Kebudayaan, Riset, dan Teknologi Republik Indonesia, "Perkembangan Kognitif : Teori Jean Piaget," Accessed 9 September 2023 https://lmsspada.kemdikbud.go.id/pluginfile.php/558951/mod_resource/content/1/Kognitif%20Piaget_O_K.pdf.

³ Subhan Ramadhan, "Tindak Pidana Pembunuhan Yang Dilakukan Oleh Anak Di Kabupaten Kuburaya Propinsikalimantan Barat (Studi Kasus Di Pengadilan Negeri Pontianak) Putusan Hakim No:(255/Pidsus/2014/Pn. PtK," *Jurnal Hukum Prodi Ilmu Hukum Fakultas Hukum Untan (Jurnal Mahasiswa S1 Fakultas Hukum) Universitas Tanjungpura* 3, no. 3 (n.d.).

⁴ Nety Hermawati, "Kejahatan Anak Menurut Hukum Pidana Positif Dan Hukum Pidana Islam," *Istinbath: Jurnal Hukum* 12, no. 1 (2015): 82–132.

⁵ Admin Berita Kalimantan, "Kronologis Pembunuhan Putri Wulandari," accessed July 2, 2023, <https://beritakalimantan.co.id/kronologis-pembunuhan-putri-wulandari/>.

is a child. Apart from that, murder carried out with prior planning also shows that the child is capable. think like an adult.

Children who violate the law or commit criminal acts are greatly influenced by several other factors outside the child.⁶ The lack of parental supervision is currently a problem in society, especially for children. It will become a serious problem if parents cannot place themselves as supervisors in the family.⁷ The rise in cases of crimes committed by children has been a blow to society. Several cases that have been in the spotlight include cases of planned serious abuse committed by the son of a former Tax Directorate General official, namely MDS (20), against the victim David (17) involving AG (15). The abuse of the child of the GP Ansor administrator was triggered by a complaint from AG who was said to be MDS's friend and David's ex-girlfriend.⁸ Apart from that, there was also a case of abuse of a child with the initials MWF (7) in Malang which was carried out by his seniors in a group who were also minors, the impact was quite severe so that the victim experienced a seizure and went into a coma. MWF is a class 2 (two) student at a state elementary school (SDN) in Jenggolo Village, while the perpetrator of the abuse is thought to be a class 6 (six) student at the same school.⁹ A case of child abuse which resulted in the loss of life also occurred in a 2nd grade elementary school (SD) student in Sukabumi, namely MDH (9), the perpetrator was an older classmate and his classmate.¹⁰

In fact, children are also able to abuse people with mental disorders (ODGJ) in a sadistic way. The child who abused ODGJ was an elementary school (SD) student, namely HB (13), whose role was to stomp on the victim's head using wood and drink urine and petrol. at the victim, then the perpetrator AD (14) was even more sadistic because he hit the victim on the head using wood and stones and burned the face and hands of the victim, who is an ODGJ.¹¹ Based on several of these cases, we can see that children's behavior at this time can be an indication of the child's maturity in thinking because quite a few of them commit evil acts in a sadistic way and are not suitable for a child to do, even children are also capable of committing crimes. with advance planning and neat arrangement, so that the actions carried out by children are actually not much different from the actions carried out by adults.

Child delinquency is not only a threat to security and comfort in the community, but can also be a sign of danger that could threaten the future of the nation and

⁶ Zulfikar Judge, "Pelaksanaan Kebijakan Anak Yang Berhadapan Dengan Hukum Dalam Mendukung Pembangunan Hukum Dan HAM Di Polres Jakarta Barat," *None* 10, no. 3 (2013): 18039.

⁷ I Kadek Bagas Dwipayana, I Made Minggu Widyantara, and Luh Putu Suryani, "Kebijakan Hukum Pidana Terhadap Anak Sebagai Pelaku Tindak Pidana Pembunuhan," *Jurnal Konstruksi Hukum* 3, no. 1 (2022): 207–211.

⁸ Tim Detik.com, "Perjalanan Kasus Penganiayaan Mario Dandy Hingga Diadili Hari Ini," accessed October 1, 2023, <https://news.detik.com/berita/d-6757110/perjalanan-kasus-penganiayaan-mario-dandy-hingga-diadili-hari-ini>.

⁹ Tim Kompas, "Siswa Kelas 2 SD Di Malang Diduga Dikeroyok, Polisi: Pelaku Rata-Rata Kelas 6 Halaman All - Kompas.Com," accessed July 30, 2023, <https://surabaya.kompas.com/read/2022/11/23/191941278/siswa-kelas-2-sd-di-malang-diduga-dikeroyok-polisi-pelaku-rata-rata-kelas-6?page=all>.

¹⁰ CNN Indonesia, "Polisi Periksa 6 Saksi Kasus Bocah SD Di Sukabumi Tewas Dianiaya Teman," accessed September 11, 2023, <https://www.cnnindonesia.com/nasional/20230521203320-12-952166/polisi-periksa-6-saksi-kasus-bocah-sd-di-sukabumi-tewas-dianiaya-teman>.

¹¹ Fadriah Nurdiarsih, "Peran 2 Anak SD Dalam Kasus Penganiayaan ODGJ Di Lebak - Regional Liputan6.Com," accessed September 11, 2023, <https://www.liputan6.com/regional/read/5321399/peran-2-anak-sd-dalam-kasus-penganiayaan-odgj-di-lebak?page=2>.

state.¹² Child delinquency which has now led to crimes which result in serious injury or even death to the victims is a serious problem.¹³ On the other hand, Indonesia, which has ratified the Convention on the Rights of the Child, is obliged to uphold the rights of children, especially children who commit criminal acts.¹⁴ On the other hand, the impact resulting from A child's actions have a huge impact and injure the legal interests of other people. However, if we return to the SPPA Law as the legal basis for resolving cases of children in conflict with the law, then children will still have privileges, including children as perpetrators of criminal acts of serious abuse.

This certainly creates a sense of injustice for the victim, especially if the victim is also a child whose future is still long. For example, in the case example given by the author in the previous explanation, namely when a 9 (nine) year old child commits abuse that causes the death of his classmate who is also a child whose rights must be protected, including the right to life, then based on the law SPPA for the perpetrator's child cannot be given sanctions in the form of action or criminal action. Based on this background, it is necessary to carry out a deeper study to find a solution to this problem in order to create justice for all parties. The main topic of this research is whether the regulation of criminal liability for children who commit serious abuse fulfills a sense of justice for society? and what is the criminal responsibility as *ius constituendum* for children who commit serious abuse?

2. Method

This research uses a type of normative legal research and a statutory approach, namely an approach carried out by understanding and analyzing the provisions in statutory regulations to relate them to the legal issue to be researched, namely serious abuse committed by children. The author will carry out an analysis using the grammatical interpretation method using 3 (three) legal materials, namely primary, secondary and tertiary legal materials.¹⁵ Primary legal material is the main legal material that will be used by the author in this research, namely statutory regulations,¹⁶ especially Law Number 11 of 2012 concerning the Juvenile Criminal Justice System as well as several examples of crime cases by child perpetrators obtained by the author through several trusted sources. Secondary legal materials were obtained by the author from books and legal journals which are the results of previous research as a basis for strengthening the results of the author's analysis.¹⁷ Tertiary legal materials are legal materials to complement primary and secondary legal materials. For example, in this research there are terms that are difficult to

¹² Muhammad Naufal Luthfi and Yohanes Suwanto, "Perlindungan Hukum Bagi Anak Dibawah Umur Sebagai Pelaku Tindak Pidana Dalam Persidangan Anak Menurut Peraturan Perundang-Undangan," *Sovereignty* 1, no. 1 (2022): 107–116.

¹³ Wiranda Putri Madamba et al., "Application Of Territorial Principles Against Pedophile Criminal Act Perpetrated By Foreign Citizens," *JURNAL LEGALITAS* 14, no. 01 (2021): 77–84.

¹⁴ Moh Rusdiyanto U Puluhalawa, Jufryanto Puluhalawa, and Moh Fahrurrozie Hidayatullah Nur Musa, "Kebijakan Kriminal Dalam Penanggulangan Tindak Pidana Penganiayaan Menggunakan Panah Wayer Oleh Anak Di Kota Gorontalo," *Jurnal Yuridis* 6, no. 2 (2019): 93–117.

¹⁵ S H I Jonaedi Efendi, S H Johnny Ibrahim, and M M Se, *Metode Penelitian Hukum: Normatif Dan Empiris* (Prenada Media, 2018).

¹⁶ Irwansyah, *Penelitian Hukum ; Pilihan Metode & Praktik Penulisan Artikel*, ed. Ahsan Yunus (Yogyakarta: Mirra Buana Media, 2020).

¹⁷ Zainuddin Ali, *Metode Penelitian Hukum*, ed. Sinar Grafika, Cetakan 1 (Jakarta, 2009).

understand, so the author will use the Big Indonesian Dictionary (KBBI) to help understand the meaning of these terms.

3. Analysis or Discussion

3.1. Community Justice in Arranging Criminal Liability for Children Perpetrated in Serious Abuse

Criminal law has 3 (three) main problems which are also referred to as the Triad of Criminal Law or The Three Basic Concepts, namely Actions Liability, and Criminal.¹⁸ Apart from actions carried out by legal subjects, the existence of error or responsibility is also a main factor that must be fulfilled as a condition for someone to be subject to criminal sanctions. The principle of "no crime without fault" states that the condition for someone to be held accountable in criminal law is that there is an error, whether in the form of *dolus* or *culpa*. *Dolus* is a criminal act carried out intentionally, while *culpa* is an unintentional criminal act.¹⁹

A person is said to be capable of responsibility if he has fulfilled certain conditions, including being mentally healthy and having no reason to cancel the crime, either justifying reasons or forgiving reasons.²⁰ Justifying reasons eliminate the unlawful nature of an act, while forgiving reasons eliminate the element of wrongdoing from a criminal act. The reasons for forgiveness are regulated in Article 40 of Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code) which states that criminal responsibility cannot be imposed on children who are not yet 12 (twelve) years old. Apart from that, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System also regulates this in article 21 paragraph (1) which reads :

In the event that a child under the age of 12 (twelve) years has committed or is suspected of committing a criminal act, the investigator, community counselor and professional social worker will make a decision to :

- a. Hand it back to the parent/guardian; or
- b. Involve them in educational, coaching and mentoring programs in government agencies or LPKS in agencies that handle the field of social welfare, both at the central and regional levels, for a maximum of 6 (six) months.

The child's age is very determining in resolving children's cases according to the SPPA Law.²¹ A child under the age of 12 (twelve) years is considered incapable of taking responsibility for his or her actions, so that when a criminal act occurs by the child then a forgiving reason applies which removes the element of error from the

¹⁸ Marcus Priyo Gunarto, "Tindak Pidana, Ajaran Melawan Hukum, Tindak Pidana Aduan, Dan Alasan Pembena" (Jakarta, 2023).

¹⁹ Neni Sri Imaniyati and Panji Adam, *Pengantar Hukum Indonesia: Sejarah Dan Pokok-Pokok Hukum Indonesia* (Sinar Grafika, 2021).

²⁰ Andika Wardhana Machmud et al., "Analisis Upaya Penanganan Anak Berhadapan Hukum Dalam Konsep Restorative Justice," *Journal of Comprehensive Science (JCS)* 2, no. 6 (2023): 1607–1615.

²¹ S H R Wiyono, *Sistem Peradilan Pidana Anak Di Indonesia* (Sinar Grafika, 2022).

act that has been committed, the legal sanctions given must refer to statutory regulations:²²

- a. Handing it back to parents/guardians; or
- b. Participate in educational, coaching and mentoring programs in government agencies or LPKS in agencies that handle the field of social welfare, both at the central and regional levels, for a maximum of 6 (six) months.

Furthermore, for children who are 12 (twelve) years old but not yet 14 (fourteen) years old, children who commit criminal acts can only be given sanctions in the form of action, namely:²³

- a. Return to parent/guardian;
- b. Submission to someone;
- c. Treatment in a mental hospital;
- d. Treatment at LKPS;
- e. Obligation to attend formal education and/or training provided by the government or private bodies;
- f. Revocation of driving license; and/or
- g. Repairs resulting from criminal acts.

If a criminal act is committed by a child, the legal sanctions given must be in accordance with applicable legal regulations. The SPPA Law also requires diversion efforts to be carried out²⁴ towards Children in Conflict with the Law²⁵ in the best interests of the child.

Crime cases involving children as the main perpetrators, based on several examples of cases that occur in society,²⁶ as the author explained in the previous explanation, of course cause unrest in society. Children who are considered different by law because they are not yet able to think well, cannot differentiate between right and wrong actions like adults, they are given privileges in the judicial process.²⁷ However, in reality there have been various kinds of criminal acts committed by children, one of which is serious abuse.

Persecution is an act that damages health and anyone who seriously injures another person will be punished for serious abuse with a maximum imprisonment of 8 (eight) years, this is regulated in articles 466 and 468 of the National Criminal Code. Several cases of abuse by children that have occurred recently, if we try to analyze them more deeply, will certainly fall into the category of serious abuse. This can be known from the impact it causes. The threat of punishment given is a maximum imprisonment of 8 (eight) years, but because the perpetrator is a child,

²² Ketentuan ini diatur dalam Pasal 21 Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak dan Pasal 41 Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana

²³ Ketentuan ini diatur dalam Pasal 82 Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak

²⁴ Diversi menurut Pasal 8 Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak yaitu dilakukan melalui musyawarah dengan melibatkan Anak dan orang tua/Walinya, Pembimbing Kemasyarakatan, dan Pekerja Sosial Profesional berdasarkan pendekatan Keadilan Restoratif.

²⁵ Pasal 1 UU SPPA, anak berkonflik dengan hukum yaitu anak yang telah berumur 12 (dua belas) tahun, tetapi belum berusia 18 (delapan belas) tahun yang diduga melakukan tindak pidana.

²⁶ Firda Salam, Lisnawati W Badu, and Jufryanto Puluhulawa, "Legal Protection for Children as Victims of the Crime of Sexual Intercourse," *Estudiante Law Journal* 4, no. 2 (2022): 17–29.

²⁷ David Archard, *Children: Rights and Childhood* (Routledge, 2014).



the sentence must be based on the SPPA Law which requires prioritizing a restorative justice approach through diversion. One of the conditions for diversion to be implemented as an effort to resolve children's cases outside the judicial process is that criminal acts committed by children are threatened with imprisonment for under 7 (seven) years. Considering that the maximum penalty for serious abuse is 8 (eight) years, the diversion process for children cannot be carried out so that the criminal justice process for children will continue.

Criminal liability for children who commit serious abuse in the SPPA Law can be grouped into several categories as follows:

No	Age	Legal sanctions
1	< 12 years	-
2	12 - 14 years	Action
3	< 18 years	Criminal ($\frac{1}{2}$ of the maximum prison sentence for adults)

If a child who commits serious abuse is less than 12 (twelve) years old, the child perpetrator cannot be given sanctions in the form of action or criminal action. Children who commit serious abuse who are less than 14 (fourteen) years old can only be given sanctions in the form of action.²⁸ Furthermore, for children who commit serious abuse who are less than 18 (eighteen) years old, legal sanctions as stipulated in Article 79 of the SPPA Law apply, namely a penalty of restriction of freedom of a maximum of $\frac{1}{2}$ (one-half) of the maximum prison sentence threatened against the person. mature. So in cases of serious abuse committed by a child, if the child is aged 14 (fourteen) years - 18 (eighteen) years then the maximum penalty given is 4 (four) years.

Based on this description, the author concludes that in regulating criminal responsibility for children who commit serious abuse, especially children under 14 (fourteen) years of age, sanctions can only be given in the form of action, even for those under 12 (twelve) years of age. be returned directly to the parent/guardian or participate in education, training or coaching. This is done for the child's future and the best interests of the child, but what about justice for the victim? The regulation of criminal liability for children as perpetrators of abuse does not fully reflect a sense of justice, the law only prioritizes the interests of children without considering the rights of victims whose legal interests have been injured by child perpetrators. Justice is a value that is aspired to, so it must be realized in written regulations for the welfare of all parties.

3.2. Criminal Liability as *Ius Contituendum* for Children Perpetrating Serious Abuse

Community life continues to develop along with the times, in order to create prosperity in society, dynamic laws are needed.²⁹ According to Satcipto Rahardjo, legal thinking needs to return to its basic philosophy, namely law for humans, not

²⁸ Lihat pasal 82 UU SPPA

²⁹ Douglass Cecil North, John Joseph Wallis, and Barry R Weingast, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History* (Cambridge University Press, 2009).

the other way around, so that humans become the determinants and points of orientation of law so that the idea of progressive law emerges, namely that law must be fluid, flowing, and follow the existing society and what it regulates.³⁰ Laws must follow changes and developments in society in order to create a safe, orderly and prosperous life. There are several key words that are worth paying attention to if we want to raise the meaning of progressivism, namely:

- a. "Law follows the development of community aspirations (law depends on the situation and conditions of community regulatory needs);
- b. The law must side with the interests of the people and in the interests of justice;
- c. Law aims to lead humans to prosperity and happiness;
- d. Law is always moving in the process of change (*law as a process, law in the making*);
- e. The law emphasizes a better life as the basis of good law;
- f. The law is of a responsive type;
- g. The law encourages the role of the public;
- h. The law builds a constitutional state with conscience."³¹

In its implementation, the law must pay attention to basic values, as stated by Gustav Radbruch who proposed 3 (three) basic values that must be contained in the law, namely certainty, usefulness and justice.³² In reality, to achieve these legal objectives, it is possible that there will be a clash between justice and certainty, justice and expediency, or expediency and certainty.³³ If a conflict occurs, justice becomes the main goal that must be fought for. Justice is a fundamental principle used to protect and uphold human rights and ensure that everyone is treated fairly and equally without discrimination. Human rights are basic rights that everyone has regardless of religion, ethnicity, race, nationality, etc. Human rights are a gift from God so they must always be respected and upheld as stated in Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia which reads :

"Protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government."

As a country that respects legal norms and human rights, the Indonesian government has a central role in ensuring the protection of the rights of its citizens.³⁴ Protection of human rights is a state obligation that must be implemented to ensure justice for its citizens. The Constitutional Court in its Public Discussion activity with the theme "Legal Review Efforts from the Perspective of Justice and Human Rights" stated that justice must be prioritized over legal certainty, especially

³⁰ N U R Aziz Hakim, "Titik Taut Relevansi Pemikiran Hans Kelsen Tentang Hukum Bagi Pembangunan Konsep Hukum Progresif," *Jurnal Ilmiah Hukum Dan Keadilan* 5, No. 1 (2018): 1–14.

³¹ H Deni Nuryadi and M H Sh, "Teori Hukum Progresif Dan Penerapannya Di Indonesia," *Jurnal Ilmiah Hukum DE JURE: Kajian Ilmiah Hukum* 1, no. 2 (2016): 394–408.

³² Faissal Malik, "Tinjauan Terhadap Teori Positivisme Hukum Dalam Sistem Peradilan Pidana Indonesia," *Jurnal Pendidikan Kewarganegaraan Undiksha* 9, no. 1 (2021): 188–196.

³³ John Kenedi, "Justification of Pancasila Law State as an Effort to Realize Indonesian Progressive Law," *Baltic Journal of Law & Politics* 15, no. 2 (2022): 172–91.

³⁴ Taufik H Simatupang, "Dukungan Sub Sistem Peradilan Pidana Terhadap Perlindungan Saksi Dan Korban (Eksistensi Lembaga Perlindungan Saksi Dan Korban)," *Lex Jurnalica* 8, no. 1 (n.d.): 18030.

in criminal cases.³⁵ If a sense of justice has been achieved, it will automatically provide benefits.³⁶ Certainty as one of the objectives of law is something important, but if certainty defeats the sense of justice and expediency then the law will no longer prioritize the interests and welfare of society.³⁷

The principle of equality before the law is one of the characteristics of the rule of law,³⁸ so that justice in society is the main thing and is the noblest legal ideal. In cases of serious abuse by child perpetrators, such as the legal issues being discussed by the author, justice must be achieved for all parties.³⁹ Children as perpetrators of criminal acts do have privileges in the judicial process based on the SPPA Law, this is done in the best interests of the child considering that children are always considered immature and unable to think well.

In psychological studies, each child experiences different development and this is related to how the child's mind works.⁴⁰ There are several things that should be taken into consideration in this matter, along with the times, can it be ensured that all children are not yet able to think well and cannot differentiate between good and bad actions? Various cases spread in the news regarding the behavior of elementary school children are the impact of sophisticated information and communication technology which provides all aspects of convenience, but on the other hand it also has a negative impact on underage children which directs them to actions that should not occur. at their age.⁴¹

Based on several cases of serious abuse involving children, for example in the case involving the child AG (15), we can all know that at the age of 15 (fifteen) years, the child had a biological relationship with his girlfriend, this act was certainly unexpected because it was carried out by the child. who according to statutory regulations are considered immature and immature in thinking. AG's children can think well, this is proven by their ability to formulate perfect plans and their good role in helping cases of serious abuse against child victims. From this it can be ascertained that AG's children have the ability and maturity in thinking.

In another case, namely the serious abuse of MWF (7) by his upperclassmen which occurred in Malang, we also know that the perpetrator was a child who was still in elementary school (SD) and was less than 12 (twelve) years old, as a result The action is quite fatal and it is still unreasonable when this action is carried out by children under 12 (twelve) years with the motive of bullying. These things are actually an indication of maturity of thinking in certain children.

³⁵ Sri Pujiarti, "Keadilan Lebih Utama Daripada Kepastian Hukum | Mahkamah Konstitusi Republik Indonesia," accessed September 8, 2023, <https://www.mkri.id/index.php?page=web.Berita&id=18319&menu=2>.

³⁶ Zainal B Septiansyah and Muhammad Ghalib, "Konsepsi Utilitarianisme Dalam Filsafat Hukum Dan Implementasinya Di Indonesia," *Ijtihad* 34, no. 1 (2018): 27–34.

³⁷ Sutrisno, Puluhulawa Fenty, and Lusiana Margaereth Tijow, "Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim Tindak Pidana Korupsi," *Gorontalo Law Review* 3, no. 2 (2020): 168–187.

³⁸ Bambang Waluyo, *Penyelesaian Perkara Pidana* (Sinar Grafika, 2020).

³⁹ Howard Zehr, *The Little Book of Restorative Justice: Revised and Updated* (Simon and Schuster, 2015).

⁴⁰ Ahmad Syarifin, "Percepatan Perkembangan Kognitif Anak: Analisis Terhadap Kemungkinan Dan persoalannya," *Al-Bahtsu: Jurnal Penelitian Pendidikan Islam* 2, no. 1 (2017).

⁴¹ Rif'ah Purnamasari, "Hubungan Kedewasaan Dini Dan Perilaku Pacaran Terhadap Kematangan Emosi Pelajar Sekolah Dasar," *Jurnal Tunas Bangsa* 6, no. 1 (2019): 82–92.

If the provisions as stipulated in the SPPA Law apply to the child, the AG child, whose actions have a major influence in the commission of the crime, namely serious abuse, will only be given a maximum sentence of 4 (four) years. Furthermore, children who commit serious abuse against MWF because they are under 12 (twelve) years old cannot be given sanctions in the form of action or criminal action. The perpetrator's child will only be returned to the parent/guardian, in the best interests of the child. This is felt to be unfair because his actions have caused the child victim of MWF to experience seizures and even go into a coma, so it is feared that the absence of this sanction will be a loophole and have an adverse impact in the future, it is very likely that incidents like this will continue to occur and be repeated in people's lives.

Based on this, legal certainty as one of the legal objectives has indeed been achieved because the judicial process for children as perpetrators of serious abuse is in accordance with the SPPA Law.⁴² However, are justice and benefits also achieved? Benefits have indeed been achieved for the children of the perpetrators because they have prioritized the best interests of the children, but what about the benefits for society, especially for the child victims? There are often expressions "*The victim has long been the forgotten party in criminal justice*".⁴³ Victims are those who suffer physically and spiritually as a result of the actions of other people who seek to fulfill their own or other people's interests which conflict with the interests and human rights of those who suffer.⁴⁴ So the position of the victim is very important to be given protection in order to create justice for all parties.⁴⁵

At this time, there have been many changes in society, including in children, both in thinking patterns and behavior which are influenced by developments over time which then also influence the psychological maturity of children.⁴⁶ Is it fair if sanctions are given to children who commit criminal acts only referring to the age limit? criminal liability in the SPPA Law? The author believes that the child's age can no longer be used as the only basis for consideration in deciding a child's case. There are various factors that can influence a child's maturity in thinking, including family, social, educational environment, and even technology can also have quite a big influence so that one child and another child have differences in their development and maturity.

The ability to be responsible is a normal state of psychology and maturity that brings 3 (three) abilities, namely being able to understand the consequences of one's actions, being able to realize that these actions are not permitted by society, and being able to determine one's will regarding those actions.⁴⁷ If a child's age is used

⁴² Ratri Novita Erdianti and Sholahuddin Al-Fatih, "Fostering as an Alternative Sanction for Juveniles in the Perspective of Child Protection in Indonesia," *JILS* 4 (2019): 119.

⁴³ Topo Santoso, "Hukum Pidana: Suatu Pengantar," 2020.

⁴⁴ S H Nandang Sambas and S H Dian Andrisari, *Kriminologi: Perspektif Hukum Pidana* (Sinar Grafika (Bumi Aksara), 2021).

⁴⁵ Febrianika Maharani, "Legal Protection for Victims of Minor Crimes against Assets by Child Perpetrators in a Restorative Justice Perspective," *Jurnal Independent* 11, no. 2 (2023): 463–72.

⁴⁶ Sarah-Jayne Blakemore and Suparna Choudhury, "Development of the Adolescent Brain: Implications for Executive Function and Social Cognition," *Journal of Child Psychology and Psychiatry* 47, no. 3-4 (2006): 296–312.

⁴⁷ Rena F Subotnik, Paula Olszewski-Kubilius, and Frank C Worrell, "Rethinking Giftedness and Gifted Education: A Proposed Direction Forward Based on Psychological Science," *Psychological Science in the Public Interest* 12, no. 1 (2011): 3–54.

as the only basis for criminal responsibility, then this will not fulfill a sense of justice for society. The best interests of children must be protected, but a deeper analysis needs to be carried out regarding determining the psychological maturity and thinking ability of children as the basis for criminal responsibility, so that justice will be felt proportionally according to the circumstances of each child as the perpetrator of a criminal act.⁴⁸

4. Conclusion

Children as perpetrators of criminal acts of serious abuse have privileges in the judicial process as regulated in the SPPA Law, there is an age limit for responsibility for child perpetrators which is used as a basis for consideration in deciding children's cases. However, this is no longer in accordance with the development of society considering that the law must be dynamic and keep up with the times. Age can no longer be used as the only basis for deciding a child's case, considering that at this time the child's psychological condition cannot be hit equally. Forensic psychologists are needed to assess and provide an overview of the condition of children who have suffered serious abuse. This is important to do to find out the child's psychological condition, whether he is able to think and differentiate between good and bad things, or not. The results of this test are also used as a basis for consideration in deciding children's cases apart from the age limit for children's criminal responsibility. Based on the results of this research, the author provides suggestions for reformulation of Article 21 paragraph (1) and Article 69 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System by adding the results of forensic psychological examinations as a basis for consideration in deciding children's cases.

References

- Admin Berita Kalimantan. "Kronologis Pembunuhan Putri Wulandari." Accessed July 2, 2023. <https://beritakalimantan.co.id/kronologis-pembunuhan-putri-wulandari/>.
- Ali, Zainuddin. *Metode Penelitian Hukum*. Edited by Sinar Grafika. Cetakan 1. Jakarta, 2009.
- Archard, David. *Children: Rights and Childhood*. Routledge, 2014.
- Blakemore, Sarah-Jayne, and Suparna Choudhury. "Development of the Adolescent Brain: Implications for Executive Function and Social Cognition." *Journal of Child Psychology and Psychiatry* 47, no. 3-4 (2006): 296–312.
- CNN Indonesia. "Polisi Periksa 6 Saksi Kasus Bocah SD Di Sukabumi Tewas Dianiaya Teman." Accessed September 11, 2023. <https://www.cnnindonesia.com/nasional/20230521203320-12-952166/polisi-periksa-6-saksi-kasus-bocah-sd-di-sukabumi-tewas-dianiaya-teman>.
- Dwipayana, I Kadek Bagas, I Made Minggu Widyantara, and Luh Putu Suryani. "Kebijakan Hukum Pidana Terhadap Anak Sebagai Pelaku Tindak Pidana Pembunuhan." *Jurnal Konstruksi Hukum* 3, no. 1 (2022): 207–11.

⁴⁸ Marianne Hester, "Making It through the Criminal Justice System: Attrition and Domestic Violence," *Social Policy and Society* 5, no. 1 (2006): 79–90.

- Fadjriah Nurdiarsih. "Peran 2 Anak SD Dalam Kasus Penganiayaan ODGJ Di Lebak - Regional Liputan6.Com." Accessed September 11, 2023. <https://www.liputan6.com/regional/read/5321399/peran-2-anak-sd-dalam-kasus-penganiayaan-odgj-di-lebak?page=2>.
- Gunarto, Marcus Priyo. "Tindak Pidana, Ajaran Melawan Hukum, Tindak Pidana Aduan, Dan Alasan Pembenaar." Jakarta, 2023.
- Hakim, N U R Aziz. "Titik Taut Relevansi Pemikiran Hans Kelsen Tentang Hukum Bagi Pembangunan Konsep Hukum Progresif." *Jurnal Ilmiah Hukum Dan Keadilan* 5, no. 1 (2018): 1–14.
- Hermawati, Nety. "Kejahatan Anak Menurut Hukum Pidana Positif Dan Hukum Pidana Islam." *Istinbath: Jurnal Hukum* 12, no. 1 (2015): 82–132.
- Hester, Marianne. "Making It through the Criminal Justice System: Attrition and Domestic Violence." *Social Policy and Society* 5, no. 1 (2006): 79–90.
- Imaniyati, Neni Sri, and Panji Adam. *Pengantar Hukum Indonesia: Sejarah Dan Pokok-Pokok Hukum Indonesia*. Sinar Grafika, 2021.
- Irwansyah. *Penelitian Hukum ; Pilihan Metode & Praktik Penulisan Artikel*. Edited by Ahsan Yunus. Yogyakarta: Mirra Buana Media, 2020.
- Jonaedi Efendi, S H I, S H Johnny Ibrahim, and M M Se. *Metode Penelitian Hukum: Normatif Dan Empiris*. Prenada Media, 2018.
- Judge, Zulfikar. "Pelaksanaan Kebijakan Anak Yang Berhadapan Dengan Hukum Dalam Mendukung Pembangunan Hukum Dan HAM Di Polres Jakarta Barat." *None* 10, no. 3 (2013): 18039.
- Kenedi, John. "Justification of Pancasila Law State as an Effort to Realize Indonesian Progressive Law." *Baltic Journal of Law & Politics* 15, no. 2 (2022): 172–91.
- Luthfi, Muhammad Naufal, and Yohanes Suwanto. "Perlindungan Hukum Bagi Anak Dibawah Umur Sebagai Pelaku Tindak Pidana Dalam Persidangan Anak Menurut Peraturan Perundang-Undangan." *Sovereignty* 1, no. 1 (2022): 107–16.
- Machmud, Andika Wardhana, Dian Ekawaty Ismail, Jufryanto Puluhulawa, and Mohamad Rusdiyanto U Puluhulawa. "Analisis Upaya Penanganan Anak Berhadapan Hukum Dalam Konsep Restorative Justice." *Journal of Comprehensive Science (JCS)* 2, no. 6 (2023): 1607–15.
- Madamba, Wiranda Putri, Fenty Usman Puluhulawa, Lisnawaty Wadju Badu, Jufryanto Puluhulawa, and Mohamad Rivaldi Moha. "Application Of Territorial Principles Against Pedophile Criminal Act Perpetrators Perpetrated By Foreign Citizens." *JURNAL LEGALITAS* 14, no. 01 (2021): 77–84.
- Maharani, Febrianika. "Legal Protection for Victims of Minor Crimes against Assets by Child Perpetrators in a Restorative Justice Perspective." *Jurnal Independent* 11, no. 2 (2023): 463–72.
- Malik, Faissal. "Tinjauan Terhadap Teori Positivisme Hukum Dalam Sistem Peradilan Pidana Indonesia." *Jurnal Pendidikan Kewarganegaraan Undiksha* 9, no. 1 (2021): 188–96.
- Nandang Sambas, S H, and S H Dian Andrisari. *Kriminologi: Perspektif Hukum Pidana*. Sinar Grafika (Bumi Aksara), 2021.
- North, Douglass Cecil, John Joseph Wallis, and Barry R Weingast. *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*. Cambridge University Press, 2009.

- Novita Erdianti, Ratri, and Sholahuddin Al-Fatih. "Fostering as an Alternative Sanction for Juveniles in the Perspective of Child Protection in Indonesia." *JILS* 4 (2019): 119.
- Nuryadi, H Deni, and M H Sh. "Teori Hukum Progresif Dan Penerapannya Di Indonesia." *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum* 1, no. 2 (2016): 394-408.
- Prema, I Ketut Arjuna Satya, Masruchin Ruba'i, and Nurini Aprilianda. "Pembatasan Usia Pertanggungjawaban Pidana Anak Dalam Peraturan Perundang-Undangan." *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 4, no. 2 (2020): 232-41.
- Puluhulawa, Moh Rusdiyanto U, Jufryanto Puluhulawa, and Moh Fahrurrozie Hidayatullah Nur Musa. "Kebijakan Kriminal Dalam Penanggulangan Tindak Pidana Penganiayaan Menggunakan Panah Wayer Oleh Anak Di Kota Gorontalo." *Jurnal Yuridis* 6, no. 2 (2019): 93-117.
- Purnamasari, Rif'ah. "Hubungan Kedewasaan Dini Dan Perilaku Pacaran Terhadap Kematangan Emosi Pelajar Sekolah Dasar." *Jurnal Tunas Bangsa* 6, no. 1 (2019): 82-92.
- R Wiyono, S H. *Sistem Peradilan Pidana Anak Di Indonesia*. Sinar Grafika, 2022.
- Ramadhan, Subhan. "Tindak Pidana Pembunuhan Yang Dilakukan Oleh Anak Di Kabupaten Kuburaya Propinsikalimantan Barat (Studi Kasus Di Pengadilan Negeri Pontianak) Putusan Hakim No:(255/PIDSUS/2014/PN. PTK." *Jurnal Hukum Prodi Ilmu Hukum Fakultas Hukum Untan (Jurnal Mahasiswa S1 Fakultas Hukum) Universitas Tanjungpura* 3, no. 3 (n.d.).
- Salam, Firda, Lisnawati W Badu, and Jufryanto Puluhulawa. "Legal Protection for Children as Victims of the Crime of Sexual Intercourse." *Estudiante Law Journal* 4, no. 2 (2022): 17-29.
- Santoso, Topo. "Hukum Pidana: Suatu Pengantar," 2020.
- Septiansyah, Zainal B, and Muhammad Ghalib. "Konsepsi Utilitarianisme Dalam Filsafat Hukum Dan Implementasinya Di Indonesia." *Ijtihad* 34, no. 1 (2018): 27-34.
- Simatupang, Taufik H. "Dukungan Sub Sistem Peradilan Pidana Terhadap Perlindungan Saksi Dan Korban (Eksistensi Lembaga Perlindungan Saksi Dan Korban)." *Lex Jurnalica* 8, no. 1 (n.d.): 18030.
- Sri Pujianti. "Keadilan Lebih Utama Daripada Kepastian Hukum | Mahkamah Konstitusi Republik Indonesia." Accessed September 8, 2023. <https://www.mkri.id/index.php?page=web.Berita&id=18319&menu=2>.
- Subotnik, Rena F, Paula Olszewski-Kubilius, and Frank C Worrell. "Rethinking Giftedness and Gifted Education: A Proposed Direction Forward Based on Psychological Science." *Psychological Science in the Public Interest* 12, no. 1 (2011): 3-54.
- Sutrisno, Puluhulawa Fenty, and Lusiana Margaereth Tijow. "Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim Tindak Pidana Korupsi." *Gorontalo Law Review* 3, no. 2 (2020): 168-87.
- Syarifin, Ahmad. "Percepatan Perkembangan Kognitif Anak: Analisis Terhadap Kemungkinan Dan persoalannya." *Al-Bahtsu: Jurnal Penelitian Pendidikan Islam* 2, no. 1 (2017).
- Tim Detik.com. "Perjalanan Kasus Penganiayaan Mario Dandy Hingga Diadili Hari

Ini.” Accessed October 1, 2023. <https://news.detik.com/berita/d-6757110/perjalanan-kasus-penganiayaan-mario-dandy-hingga-diadili-hari-ini>.

Tim Kompas. “Siswa Kelas 2 SD Di Malang Diduga Dikeroyok, Polisi: Pelaku Rata-Rata Kelas 6 Halaman All - Kompas.Com.” Accessed July 30, 2023. <https://surabaya.kompas.com/read/2022/11/23/191941278/siswa-kelas-2-sd-di-malang-diduga-dikeroyok-polisi-pelaku-rata-rata-kelas-6?page=all>.

Waluyo, Bambang. *Penyelesaian Perkara Pidana*. Sinar Grafika, 2020.

Zehr, Howard. *The Little Book of Restorative Justice: Revised and Updated*. Simon and Schuster, 2015.

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