

## The implementation of imprisonment for incarcerated children from the perspective of child protection (A study at the Banda Aceh Special Child Development Institution)

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### Abstract

Article 1, paragraph 2 of Law number 35 of 2014, which amends Law number 23 of 2002 on Child Protection, defines child protection as all activities aimed at ensuring and safeguarding children and their rights, enabling them to live, grow, develop, and participate fully in accordance with human dignity and worth, while also receiving protection from violence and discrimination. Despite the focus on restorative justice and diversionary methods, numerous children in legal conflict continue to be handled through the criminal court system, potentially undermining their rights. This research seeks to elucidate the application of incarceration for minors from the standpoint of child protection. The employed study methodology is empirical juridical, utilising a sociological legal approach. The utilised data comprises both primary and secondary sources. Primary data was gathered using structured interviews, while secondary data was obtained via literature review. The data were then analysed qualitatively using deductive reasoning to address the research problem formulation. The research findings indicate that the state is mandated to recognise children subjected to punishment as legal entities whose human rights must be safeguarded and fulfilled. The restorative justice method constitutes the fundamental basis of the juvenile justice system, with its principal objectives being to rectify the situation, offer support and education, and safeguard the child's future.

**Keywords:** Imprisonment, inmate children, legal protection

### Introduction

According to Article 1, paragraph 2 of Law number 35 of 2014 concerning amendments to Law number 23 of 2002 on Child Protection, child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with the dignity and worth of humanity, as well as receive protection from violence and discrimination. Child protection is also part of the development of the younger generation to achieve the goals of National Development, namely a just and prosperous society, as well as a safe and secure one based on Pancasila and the 1945 Constitution.<sup>[1]</sup>

Children are not to be punished but should be given guidance and nurturing, so that they can grow and develop as normal, healthy, and fully intelligent children.<sup>[2]</sup> The concept of imposing criminal sanctions on Children in Conflict with the Law as a last resort is also regulated in Article 2 of Law No. 11 of 2012 on the Juvenile Criminal Justice System (later called as the SPPA Law), which states that the juvenile criminal justice system is implemented based on the principles of protection, justice, non-discrimination, the best interests of the child, respect for the child's opinion, the continuity of the child's life and development, the guidance and mentoring of the child, proportionality, deprivation of liberty and punishment as a last resort, and avoidance of retaliation.

Empirical data show that there has been an increase in cases of Children in Conflict with the Law (CCL) in Indonesia, whether as perpetrators, victims, or witnesses. In the past 10 years, the Indonesian Child Protection Commission (KPAI) has recorded 13,071 cases of the CCL, with several cases related to theft, sexual violence, and drugs. Although there is an emphasis on restorative justice and diversion

approaches, many juvenile offenders are still processed through the criminal justice system, which risks neglecting children's rights.

### Research Method

The type of research conducted in this study is empirical juridical research. Empirical juridical research, also known as sociological legal research, is a type of legal research that examines law conceptualized as actual behavior as an unwritten social phenomenon experienced by everyone in community life<sup>[3]</sup>. The data source in empirical legal research comes from field data. Field data is data obtained from respondents and informants, including experts as sources.<sup>[4]</sup> The data collection technique in this research is through direct field research using interview techniques, specifically non-directive interviews (free interviews) conducted directly with respondents and informants deemed capable of providing accurate information regarding the research conducted. This research is located at the Banda Aceh Special Child Development Institution. This research uses data analysis that will be conducted qualitatively, which means analyzing by understanding and organizing the collected data, aiming to develop a theory based on secondary data.

### Results and Discussions

Children grow and develop in their lives and cannot be separated from the social influences or the environment where they live, grow, and develop. The aforementioned influences can range from positive to negative, as children naturally have a higher tendency toward curiosity during their developmental process. A bad environment has a high potential to make children bad as well, which often leads us to find many children involved in legal issues or facing the

law, whether as victims of crime or as perpetrators of crime.<sup>[5]</sup>

Crime is a normal phenomenon in every society characterized by heterogeneity and social development, and therefore it cannot be completely eradicated.<sup>[6]</sup> Crime in life is a social phenomenon that will always be faced by every individual, society, and nation. Reality has proven that crime can only be prevented or reduced, but it is difficult to eradicate completely. Anticipation of such crimes can be carried out by effectively utilizing legal (criminal) instruments thru law enforcement.<sup>[7]</sup>

Handling children as prisoners is different from handling adult prisoners because children's level of maturity is not yet complete. The role of the family is fundamental in the educational process; the failure of family education increases the risk of delinquency and children's involvement in criminal acts.<sup>[8]</sup> Conceptually, children in conflict with the law according to Law No. 11 of 2012 on the Juvenile Criminal Justice System (later called as the SPPA Law) in Article 1, paragraph 3, are defined as "children who are 12 (twelve) years old but not yet 18 (eighteen) years old who are suspected of committing a crime".<sup>[9]</sup>

Globally, the United Nations has a very clear and comprehensive view regarding the juvenile justice system. This view is outlined in various international documents that emphasize the need for special treatment of children within the justice system, in order to ensure their rights are protected and their well-being guaranteed. One of the main documents governing this matter is the Convention on the Rights of the Child (CRC), which was adopted by the UN General Assembly in 1989. This convention emphasizes that children in conflict with the law must be treated in a manner that is appropriate to their needs and rights as children.

In addition to the CRC, the UN also issued the UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines, 1990) and the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules, 1985). These two documents provide more detailed guidance on the measures that countries should take in dealing with children in conflict with the law. Overall, the UN's view on the juvenile justice system emphasizes a humanistic, rehabilitative approach that is oriented toward the best interests of the child. The UN encourages countries to adopt and implement these international standards to ensure that children in conflict with the law continue to receive protection and opportunities for positive development.

Child protection encompasses all efforts to create conditions so that every child can exercise their rights and fulfill their obligations for healthy physical, mental, and social development. As a manifestation of social justice, these efforts are carried out in various aspects of national and community life. Protection of children is not limited to the government but must also be carried out by parents, families, and society to be responsible for safeguarding and preserving children's rights.<sup>[10]</sup> Child protection activities also have legal implications, both in relation to written law and unwritten law. Children have rights that are different from those of adults, and this is regulated in various legal instruments at both the national and international levels.<sup>[11]</sup>

Based on the provisions of Article 32 paragraph (2) of the SPPA Law, it is stated that: "A child who commits a criminal act will undergo detention for Investigation, Prosecution, and Examination in court if the child is 14

(fourteen) years old or older and is suspected of committing a criminal act with a prison sentence of 7 (seven) years or more." During the child's detention, their physical, mental, and social needs must continue to be met. Detention of children is carried out at the Temporary Child Placement Institution (LPAS).

Addressing crimes committed by children, under the law, children in conflict with the law can be sentenced to imprisonment as mentioned in Article 71 paragraph (1) of the SPPA Law, which includes: Warning sentence; Conditional sentence (Supervision outside the institution, Community service, and Monitoring); Vocational training; Institutional rehabilitation; and Imprisonment. This article stipulates that children in conflict with the law can be sentenced to imprisonment. Imprisonment for children is not the main goal but rather a last resort taken if the crime committed is very serious, making it impossible to choose non-imprisonment alternatives that are deemed insufficient to ensure justice.

Soejono Dirdjosisworo stated that the rehabilitation of prisoners is an effort to improve the behavior of inmates or prisoners with the aim of directly and minimally preventing the repetition of the behavior that led to the judge's decision. Prisons have the task of social reintegration and function in the rehabilitation of inmates or students, providing guidance, preparing facilities and managing work results, maintaining security and order, as well as handling the administrative affairs of the prison. The Correctional System is identical to social reintegration; convicts are not only objects but also subjects in rehabilitation.<sup>[12]</sup>

Criminal sentencing is a system that encompasses all substantive criminal laws, formal criminal laws, and the execution of penalties, which together realize the imposition of concrete criminal sanctions.<sup>[13]</sup> Imprisonment is the last resort for children in conflict with the law. Essentially, the imposition of freedom-restricting penalties can hinder a child's growth and development, but if the child has committed a crime and engaged in acts that endanger society, then the child can be sentenced to imprisonment. Nevertheless, the imprisonment imposed on children must be carried out in accordance with the SPPA Law and Law No. 35 of 2014 concerning amendments to Law No. 23 of 2002 on child protection.

The placement and treatment of juvenile offenders must be distinguished from those of adult offenders. The prison sentences imposed on children lead to an educational criminal justice system, where the programs implemented aim to provide education to the children. This educational rehabilitation policy is the responsibility of the government, private sector, and society. The better goal of sentencing is restorative justice. In this goal, the main focus is to repair the damage caused by the crime. Punishment is no longer the main focus, but rather healing the victim. This goal is also applied in the concept of child protection for children in conflict with the law.

Generally, children do not receive support, either from lawyers or social services, so the fulfillment of children's rights is neglected. Children are considered criminals who deserve to have their freedom taken away, whereas children are human beings who deserve protection and education. The following presents data on children who committed criminal acts in the Jurisdiction of the Banda Aceh District Court (2024-2025).

**Table 1:** Juveniles Committing Crimes in the Jurisdiction of the Banda Aceh District Court between 2024 and 2025

No	Year	Age of Child	Case Number	Indicment Articles	Punishment
1	2024	15 and 17 Years Old	4/Pid.Sus-Anak/PN Bna	Article 170 paragraph (2) subparagraph 2 of the Criminal Code	Imprisonment of 1 Year 4 Months and of 9 Months
2	2024	16 Years Old	5/Pid.Sus-Anak/PN Bna	Article 363 paragraph (1) subparagraph 3 and subparagraph 5 of the Criminal Code	5-Month Imprisonment
3	2025	17 Years Old	1/Pid.Sus-Anak/PN Bna	Article 363 paragraph (1) subparagraphs 3, 4, and 5 of the Criminal Code	8-Month Imprisonment
5	2025	16 Years Old	7/Pid.Sus-Anak/PN Bna	Article 114 paragraph (2) Law Number 35 of 2009 on Narcotics	6-Month Imprisonment
6	2025	16 Years Old	8/Pid.Sus-Anak/PN Bna	Article 114 paragraph (1) Law Number 35 of 2009 on Narcotics	1 and half-year Imprisonment
7	2025	18 and 17 Years Old	9/Pid.Sus-Anak/PN Bna	Article 365 paragraph (2) subparagraph 2 of the Criminal Code	Imprisonment of 2 Years and Imprisonment of 1 Year 6 Months

Source: Directory of Supreme Court Decisions of the Republic of Indonesia

Based on the data in the table, the most dominant crimes committed by children in the jurisdiction of the Banda Aceh District Court in 2024 and 2025 are aggravated theft and the distribution of Class I narcotics. Additionally, there are also cases of violence against individuals that are of significant concern. This data shows a variety of types of crimes involving children as perpetrators, with a primary focus on property crimes and narcotics. Based on the empirical data above, children must receive maximum legal protection, in accordance with Article 1 paragraph (2) of the Child Protection Law, and also require the use of imprisonment only when necessary, namely when diversion cannot be carried out or the child commits a serious crime.<sup>[14]</sup>

Child protection aims to ensure the accessibility of children's rights and to take action when those rights are violated. Children's rights are regulated in various laws and regulations, such as Law No. 39 of 1999 on Human Rights (every child has the right to protection by parents, family, society, and the state), and Law No. 23 of 2002 on Child Protection (protection from all forms of violence and discrimination). Children serving sentences in the Child Special Guidance Institution (LPKA) remain legal subjects with rights that must be protected and fulfilled by the state.

The provisions regarding the rights of children in custody can be found in Article 4, paragraph (1) of the SPPA Law, namely: reduction of the prison term; obtaining assimilation; obtaining family visit leave; obtaining conditional release; obtaining pre-release leave; obtaining conditional leave; and obtaining other rights in accordance with the provisions of the legislation.<sup>[15]</sup> Therefore, children undergoing punishment still have rights that must be fulfilled and protected by the state during their rehabilitation period at LPKA. The granting of these rights is a form of legal protection for children in conflict with the law and demonstrates that the juvenile justice system emphasizes guidance, rehabilitation, and social reintegration rather than mere punishment. Thus, the implementation of punishment for children must continue to consider the best interests of the child and ensure the fulfillment of their human rights and future. Child inmates have more special rights than general inmates. There are additional rights for children, such as guidance and education, compared to adult inmates, including relatively lighter sentences administered more humanely.<sup>[16]</sup>

## Conclusion

In conclusion, the implementation of imprisonment for juvenile offenders from the perspective of child protection shows that sentencing children cannot be equated with

sentencing adults. Imprisonment for children is a last resort (*ultimum remedium*) that can only be imposed if the crime committed is classified as very serious and diversion is not possible, as stipulated in Law No. 11 of 2012 on the Juvenile Criminal Justice System. The implementation of imprisonment for juvenile offenders must be oriented toward guidance, rehabilitation, and social reintegration, rather than mere punishment. This is reflected in the placement of children in Child Special Development Institutions that prioritize educational programs and the fulfillment of children's rights during their rehabilitation period, including sentence reduction, assimilation, family visit leave, parole, and other rights in accordance with legal regulations. From the perspective of child protection, the state is obliged to ensure that children undergoing punishment are still recognized as legal subjects with fundamental rights that must be protected and fulfilled. The restorative justice approach serves as the main foundation in the juvenile justice system, where its primary goals are to restore the situation, provide guidance and education, and ensure the child's future. Thus, the implementation of imprisonment for juvenile offenders must always consider the best interest of the child as a fundamental principle in child protection, both nationally and according to international standards set by the UN.

## References

- Mulyono YB. Pendekatan Analisis Kenakalan Remaja dan Penanggulangannya. Kanisius, Yogyakarta, 2004, 26.
- Djamil MN. Anak Bukan untuk Dihukum. Sinar Grafika, Jakarta, 2015, 25.
- Muhaimin. Metode Penelitian Hukum. Mataram University Press, Mataram, 2020, 55.
- Qamar N, et al. Metode Penelitian Hukum (Legal Research Methods). CV. Social Politic Genius (SIGn), Makassar, 2017, 89.
- Balla H. "Diversi : Anak yang Berhadapan Dengan Hukum". Jurnal Ligitasi Amsir, 2022;10(3):202.
- Widianti N, Anogara P. Perkembangan Kejahatan dan Masalahnya Ditinjau dari Segi Kriminologi dan Sosial. Pradya Paramita, Bandung, 2007, 2.
- Waluyo B. Pidana dan Pemidanaan. Sinar Grafika, Jakarta, 2004, 2.
- Mulyono YB. Pendekatan Analisis Kenakalan Remaja dan Penanggulangannya. Kanisius, Yogyakarta, 2004, 26.
- Sasmita T, et al. "Pelaksanaan Pembinaan Narapidana Anak yang dijatuhi Pidana Penjara Jangka Pendek di

- Lembaga Pembinaan Khusus Anak (LPKA)”. *Jurnal Of Criminal*,2021:2(1):74.
10. Pramukti AS, Primaharsya F. *Sistem Peradilan Pidana Anak*. Pustaka Yustisia, Yogyakarta, 2015, 5.
  11. Gultom M. *Perlindungan hukum terhadap anak dalam sistem peradilan pidana anak di Indonesia*. Refika Aditama, Bandung, 2010, 40.
  12. Soejono D. *Sosio Kriminologi Ilmu-ilmu Sosial dalam Studi Kejahatan*. Sinar Baru, Bandung, 2005, 235.
  13. Dewi E. *Sistem Pemidanaan Indonesia yang Berkearifan Lokal*. Justice Publisher, Lampung, 2014, 16.
  14. Yusnaidi. *Head of the Banda Aceh Special Child Development Institution, Interview*, 2026.
  15. Yusnaidi. *Head of the Banda Aceh Special Child Development Institution, Interview*, 2026.
  16. Adipradipito E, et al. “Pelaksanaan Pemenuhan Hak Narapidana Anak dilembaga Pembinaan Khusus Anak Kelas IA Tangerang”. *Jurnal Perkotaan*,2024:11(1):85.