

## THE PROBLEMATICS OF THE MEANING OF A CHILD'S STATUS IN NATIONAL LAW: BETWEEN LEGAL CERTAINTY AND JUSTICE

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### Abstract

The article titled "THE PROBLEMATICS OF THE MEANING OF A CHILD'S STATUS IN NATIONAL LAW: BETWEEN LEGAL CERTAINTY AND JUSTICE" written by the Author raises the issue of analysis regarding the view of Judges who consider justice should be prioritized over legal certainty in delivering criminal verdicts, especially against Children who conflict with the law. The Author focuses on the limitations of the criminal sentence imposed on Children, then analyzes the provision against the verdict of the Penajam State Court No. 3/Pid.Sus-Child/2024/PN Pnj which exercised judicial activism by imposing a prison sentence exceeding the provisions in Law No. 11 of 2012 on the Juvenile Justice System. The result of the research conducted by the Author is that a criminal sentence of imprisonment can be imposed on the child. If threatened with a life imprisonment or death penalty provision, then the Child can only be sentenced to a maximum of ½, so the maximum imprisonment sentence allowed is 10 years. However, this is countered by the Presiding Judge of Case Number 3/Pid.Sus-Child/2024/PN Pnj by imposing a 20-year prison sentence on Child Junaedi, prioritizing justice over legal certainty.

**Keywords:** *Child, Judgment, Justice, Legal Certainty, Prison.*

### INTRODUCTION

The Supreme Court is one of the state institutions that has the authority to carry out the judicial process as a judicial power to achieve 3 (three) things, which are the main objectives of the law itself, namely certainty, justice, and benefit in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia. For criminal matters, the judicial authority that can exercise judicial power is the District Court. District Courts provide equitable services to the public in both criminal and civil cases. In criminal cases, the public faces state law enforcement officials in defending their rights and interests. Therefore, fundamental elements are needed to defend the public's rights and interests, one of which is the examination process for a child. The procedural law for examining a child is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is present as a special treatment for a child, because children need to receive protection from the negative impacts of all changes and rapid development, the flow of globalization in the field of communication and information, advances in science and technology, as well as fundamental social changes in the life of society that greatly influence the values and behavior of children.

Children's rights have also been regulated in the constitution of the Republic of Indonesia, namely in Article 28B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which explains that every child has the right to survive, grow, and develop, and has the right to protection from violence and discrimination. Indonesia has also ratified the Convention on the Rights of the Child regarding several principles of legal protection for children, which have been ratified through Presidential Decree Number 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child. This illustrates that Indonesia pays significant attention to the legal protection of children. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System contains the justice system for Children in Conflict with the Law, which includes the justice system for children in conflict with the law, children who are victims of crime, and children who are witnesses to crime. Junaedi is one of the children who committed the crime of murder and theft against 5 (five) people who are a family in the North Penajam Paser area.

Penajam District Court Decision Number 3/Pid.Sus-Anak/2024/PN Pnj in which Junaedi is a child in conflict with the law who has committed the crime of murder and theft is included in the category of children in conflict with the law, because Junaedi was not yet 18 (eighteen) years old when tried, so he must be tried with the juvenile justice system, not the regular justice system. This juvenile justice system, among other things, regulates the provisions for imposing criminal sanctions. The imposition of criminal sanctions on Junaedi's child was imposed by the examining panel of judges, namely a criminal sanction in the form of imprisonment for 20 (twenty) years. This deviates from the provisions of the applicable positive regulations, where in Article 81 of the Child Criminal Justice System Law, a maximum of  $\frac{1}{2}$  (a half) of the maximum prison sentence for adults should be imposed, where in the case of Junaedi's child in the threat of premeditated murder if a certain prison sentence is imposed, namely 20 (twenty) years, so that only 10 (ten) years should be imposed on Junaedi's child. This certainly deviates from the provisions of positive law in Indonesia, thus giving rise to friction between legal certainty and justice in making a decision. Based on the introduction that has been explained above, the author can draw a very important problem formulation for writing this article, namely 1) What are the provisions for imposing criminal sanctions in prison for children who conflict with the law?; and 2) How do judges view justice and legal certainty in making decisions for children in conflict with the law?

## LITERATURE REVIEW

The research conducted by the Author in compiling this article uses several laws and regulations that are very important in juvenile justice procedures, namely Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System was issued to regulate how criminal procedure law applies to children suspected of committing crimes in Indonesia, starting from the investigation stage in the police to guidance after the criminal judgment is handed down by the Judge. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System also has a special view of children in criminal procedure law, one of which is through the concept of diversion as part of restorative justice. The main purpose of diversion is to prevent children from entering the judicial process so as not to get a negative stigma from society. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System defines children undergoing the criminal justice process with several categories by categorizing children who commit criminal acts, namely:

- a. A child in conflict with the law is a child who is over 12 (twelve) years old, but has not yet reached the age of 18 (eighteen) years, who is suspected of having committed a criminal act;
- b. A child who is a victim of a crime is a child who is under 18 (eighteen) years of age who has become a victim of a criminal act and has suffered material, psychological, and/or physical losses; and
- c. Children as witnesses in criminal action, is a child who is under 18 (eighteen) years of age who is permitted and deemed capable of providing information that will be used for the benefit of the child criminal justice process regarding events that he/she heard, saw, and/or experienced himself/herself.

Article 71 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System explains that the sanctions in the form of criminal penalties that will be given by the Judge to Children suspected of committing criminal acts after going through the process of proof and being declared proven by being sentenced by a Judge can be in the form of principal penalties and additional penalties. The Judge can impose sanctions in the form of principal penalties the form of warnings, conditional penalties, job training for Children, guidance carried out in an institution, or prison sanctions. The Judge can also impose decisions in the form of additional sanctions the form as taking profits obtained by the Child from committing criminal acts, or according to custom, namely the fulfillment of customary obligations.

The above provisions cannot be applied to children under the age of 14 (fourteen). This is known based on the provisions of Article 69 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which explains that, using the principle of *a contrario*, sanctions cannot be imposed in the form of principal sanctions or additional sanctions, but can be imposed. Imprisonment is the most severe criminal sanction that can be imposed on a child who commits a crime. When sentencing a child, a judge must consider the child's best interests. The judicial activism carried out by the judge in case number 3/Pid.Sus-Anak/2024/PN Pnj constitutes a legal breakthrough in determining strafmacht. This judge's actions certainly disregard the current legal certainty. Through this article, the author hopes that readers will understand the judge's policy of prioritizing justice over legal certainty, through various concepts regarding legal certainty and justice.

## METHOD

The author uses the Doctrinal Research type of research in conducting normative research to provide solutions to answer the problem formulation that the author has provided above. Several experts, such as Terry Hutchinson, provide opinions on the meaning of Doctrinal Research, which, if interpreted freely, is a study that provides an overview in the form of an explanation regular basis to the rules containing legal categories, explaining the relationship between rules, explaining certain areas, perhaps in can take into account the development in the future.<sup>1</sup> The author uses a statutory approach, analyzing various regulations related to the above problem. A case study approach examines various theories and concepts within the legal system. A case study examines cases in the form of court decisions. The legal sources used by the author include primary legal materials, such as statutory regulations, and secondary legal materials, such as journal articles.

## RESULTS AND DISCUSSION

### 1. Regulations on the Imposition of Prison Sentences in the Juvenile Justice System

The provisions regarding the imposition of criminal sanctions on children are regulated in Article 71 of the Juvenile Criminal Justice System Law, which can consist of principal penalties in the form of: warning penalties; penalties with conditions; job training; institutional guidance; and imprisonment. The imposition of sanctions can also be in the form of additional penalties, namely: confiscation of profits obtained from criminal acts, or fulfillment of customary obligations. The above provisions can be imposed on children who are 14 (fourteen) years old, because this is *a contrario* to Article 69 of the Juvenile Criminal Justice System Law, which states that children who are not yet 14 (fourteen) years old can only be subject to action.

The type of punishment above that the author will focus on in this discussion concerns the criminal sanction of imprisonment. Imprisonment is a sanction imposed to restrict a convict's freedom of movement by placing the person in a closed building managed by a correctional institution, with the burden of obligations and compliance with all applicable rules and regulations within that institution.<sup>2</sup> The objectives of the prison sentence given include:

- a. So that society is aware that there are laws that must be obeyed;
- b. So that other people are not affected by the actions taken by the convict;
- c. So that the convict does not escape;
- d. So that the convict does not feel pampered;
- e. So that the convict is held responsible for his actions;
- f. So that convicts receive effective and efficient guidance;
- g. So that the sense of justice for the victim or victim's family is fulfilled/answered.<sup>3</sup>

Punishment in the form of a prison sentence is the last resort that must be given by the Judge, considering that the Defendant is a Child who is an asset to be able to advance the Republic of Indonesia, both in terms of law, religion, moral values, and social values, so that a safe and peaceful life can be achieved.

The effects that a child will feel if a criminal sanction in the form of imprisonment is imposed on them start from when a child becomes a prisoner, so that some of them will feel afraid and stressed when they first enter a correctional institution.<sup>4</sup> The things a child faces when serving a prison sentence are:

- a. Beating of Children as Newly Entered Prisoners;
- b. Blackmailing children because they are considered weak prisoners;
- c. Threats against other prisoners to cover up mistakes made against children; or
- d. Sexual harassment.<sup>5</sup>

In examining a child, a judge can impose a prison sentence if it is felt that the child's actions will endanger society. Regarding the time that a child will serve, the judge must pay attention to several provisions contained in Article 81 of the Child Criminal Justice System Law, namely that the judge can impose a maximum prison sentence of  $\frac{1}{2}$  (a half) of the maximum prison sentence for adults. The author will give an

<sup>1</sup>Terry Hutchinson, Researching and Writing Law, Lawbook Co, Sydney, 2002, p.8.

<sup>2</sup>Francisca Novita Eleanora, 2020, Imprisonment and Children's Rights, Yure Humano, 4 (1), p. 66, <https://mputantular.ac.id/ojs/hukum/index.php/yurehumano/article/view/80/77> (May 14, 2025).

<sup>3</sup>*Ibid.*

<sup>4</sup>Yoris Faqurais, 2021, The Negative Effects of Prison Sentences on Children (Case Study at the Class II Children's Correctional Institution in Bandar Lampung), Nusantara: Journal of Social Sciences, 8 (2), p. 216, <http://jurnal.um-tapsel.ac.id/index.php/nusantara/article/view/2920/1810> (May 14, 2025).

<sup>5</sup>*Ibid.*, p.217.

example of a child who commits premeditated murder, where in Article 340 of the Criminal Code the maximum threat is the death penalty or life imprisonment, then the judge can impose a maximum prison sentence of 10 (ten) years (based on the provisions of Article 81 Paragraph (6) of the Child Criminal Justice System Law), while for a certain period, a maximum of 20 (twenty) years, the judge can impose a prison sentence of  $\frac{1}{2}$  of 20 years, namely 10 (ten) years.

## **2. Judge's Perspective on Justice and Legal Certainty**

The judgment for Junaedi's child was handed down by the Panel of Judges at the Penajam District Court in sentencing Junaedi to prison for violating the provisions of the regulations in the Child Criminal Justice System Law, especially in the provisions of Article 81. The Panel of Judges, in handing down the judges, was based on the charges filed by the Public Prosecutor. Because the Public Prosecutor submitted charges in the form of a combination of alternative and cumulative subsidiarity, and which have been declared proven based on the legal facts present in the trial, namely Article 340 of the Criminal Code in conjunction with Article 65 paragraph (1) of the Criminal Code and Article 363 Paragraph (1) 3 of the Criminal Code in conjunction with Article 65 Paragraph (1) of the Criminal Code. The threat of the two articles is the death penalty or life imprisonment or for a certain period, a maximum of 20 (twenty) years and 7 (seven) years, so that if it is guided by Article 81 of the Child Criminal Justice System Law, it should be multiplied by  $\frac{1}{2}$  (a half) so that if it is for a certain period, the maximum is 10 (ten) years. However, the Panel of Judges examining Junaedi's child made a legal breakthrough by imposing a prison sentence of 20 (twenty) years.

The panel of judges examining Anak Junaedi in carrying out legal breakthroughs is certainly based on a fundamental reason. The reason is essentially on the actions carried out by Anak Junaedi and the consequences that have arisen, which have greatly injured the victim's family and disturbed the wider community. The actions carried out by Anak Junaedi are also considered as actions carried out by an adult, by looking at several provisions such as murder which is a type of crime that has the highest value in the most serious type of crime, then based on the impact caused in the form of breaking off a generation of the family, then based on the cruelty or sadism of Anak Junaedi towards the 5 (five) victims whom he killed very cruelly by stabbing them in the head and having intercourse with the victim's corpse, and finally based on the victims where the victims were 3 (three) children, a woman and an adult.

The reasons used by the Panel of Judges examining Anak Junaedi's case above certainly take into account moral values and societal values; in other words, they take into account moral justice and social justice. These reasons are inconsistent with the legal positivism of thought, which is not based on established statutory law, resulting in legal disorder. In this case, there is a gap between justice and uncertainty. The principle of legal certainty is closely linked to positivism. Positivism is a legal philosophy that holds that legal theory must be conceptualized as *ius*, which has been posited as *lege* or *lex*, to ensure certainty regarding what constitutes law and what is not. This legal positivism does not address whether positive law in society is good or bad, nor does it address the effectiveness of law within society.<sup>6</sup>

Philosopher Hart explains that 5 (five) principles can be included in the philosophy of legal positivism, namely:

- a. Law is a command to humans;
- b. Analysis of legal concepts is a worthwhile endeavor. This analysis should be separated from sociological, historical studies, and critical evaluation;
- c. Decisions can be logically deduced from pre-existing rules, without reference to social goals, policies, and morality;
- d. There is no relationship between law and morals, because morals are metajuridical; and
- e. Moral considerations cannot be established.

The principle of justice is closely linked to utilitarianism. The concept of justice in the modern era emerged with the development of ideas about freedom, namely with the emergence of liberalism, which was replaced by utilitarianism. Utilitarians view justice as a form of virtue whose primary characteristic is determined by its utility value, namely the extent to which the principle can achieve the greatest happiness or well-being for the greatest number of individuals in society.<sup>7</sup> This principle explains that justice will be

<sup>6</sup>Islamiyati, 2018, Critique of Positivism Legal Philosophy as an Effort to Realize Just Law, Law & Justice Journal, 1 (1), p. 84, <https://ejournal2.undip.ac.id/index.php/lj/article/view/3574/1988> (May 14, 2025).

<sup>7</sup>Bahder Johan Nasution, 2014, Philosophical Study of the Concept of Justice from Classical Thought to Modern Thought, Yustisia, 3 (2), p. 122, <https://jurnal.uns.ac.id/yustisia/article/download/11106/9938> (May 14, 2025).

obtained by considering the interests of the majority of a society in a region. The principle of legal certainty and the principle of justice are inseparably linked. The principle of justice and the principle of legal certainty are two fundamental pillars in an ideal legal system. Even though the two are often seen as principles that can conflict with each other, in fact, they are closely related and complement each other in order to create laws that function effectively and in a civilized manner. When passing a decision, a judge must pay attention to these two principles without overriding one principle over another.

Judges, in viewing legal certainty and justice, maintain continuity with the three pillars of criminal law: criminal acts, criminal responsibility, and punishment. The first pillar, namely criminal acts, determines the legal basis for criminalizing an act, which is closely related to the principle of legality used to determine whether an act is classified as a crime. Laws (written law or the principle of legality) are the primary source of law in this regard. Therefore, the principle of legality remains relevant and needs to be included in the new Criminal Code, namely Law Number 1 of 2023. However, unlike the provisions in the previous Criminal Code, the principle of legality in the new Criminal Code needs to be significantly expanded by considering the applicability of "living law" in society.<sup>8</sup>In the Penajam District Court decision Number 3/Pid.Sus-Anak/2024/PN Pnj, the Judge considered that the actions committed by Anak Junaedi were indeed a criminal act regulated by positive law in Indonesia.

The second pillar, criminal responsibility, explains that the concept of criminal responsibility is based on the element of fault, particularly in cases of deliberate acts (*dolus*). The application of criminal sanctions for crimes due to negligence (*culpa*) is only possible if explicitly regulated by law. Meanwhile, responsibility for certain consequences of a crime accompanied by the threat of aggravated criminal penalties by law can only be imposed on the defendant if he or she was at least negligent in failing to anticipate the possibility of such consequences. This emphasizes that there is no doctrine of absolute responsibility for consequences, because it still refers to the principle of fault.<sup>9</sup> In the decision of the Penajam District Court Number 3/Pid.Sus-Anak/2024/PN Pnj, Anak Junaedi planned the murder and planned it, so it can be said that Anak Junaedi committed the crime intentionally.

The third pillar, namely, criminalization, is the primary process in achieving specific objectives by imposing a decision in the form of a criminal sanction on the defendant. When handing down a decision, the judge must consider the classification of crimes in the new Criminal Code, which is relatively similar to the old Criminal Code. The question is whether this classification aims to indicate differences in the level of legal violation. In other words, is this classification intended to "express values" or "express the quality of those values?" Furthermore, it is important to clarify whether the division based on the severity of a crime will affect the maximum penalty that can be imposed on the perpetrator. This indicates that in determining criminal sanctions, not only the type of act is considered, but also its seriousness or severity from a qualitative perspective. Therefore, it is important to outline the differences from the old Criminal Code (WvS). In this context, if we understand that perceptions of a crime can vary depending on cultural values and societal views, then this concept can be used to formulate more measurable standards for assessing the severity of a crime. In this way, the concept of relativity in viewing crime can contribute to the formation of a more consistent and just legal system.<sup>10</sup>In the Penajam District Court decision No. 3/Pid.Sus-Anak/2024/PN Pnj, this pillar is problematic. When sentencing, the judge prioritized justice aspects, considering the social conditions, thus disregarding the provisions of the Child Protection Act.

## CONCLUSION

### 1. Conclusion

The Juvenile Criminal Justice System Law contains provisions for the justice system for children in conflict with the law, including the justice system for children in conflict with the law, children who are victims of crime, and children who are witnesses to crimes. Junaedi is one of the children who was under 18 (eighteen) years old when he committed the crimes of murder and theft.

The provisions regarding the juvenile criminal justice system are certainly different from those of the regular justice system. One difference lies in the provisions regarding sentencing, particularly regarding

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<sup>8</sup>Dhandy Parindo, et.al., 2024, Application of the Basic Concept of Human Rights and the Renewal of the Three Main Pillars of Criminal Law in the New Criminal Code Law No. 01 of 2023, Indonesian Law Journal, 3, p. 136, <https://jhi.rivierapublishing.id/index.php/rp/article/view/796/84> (May 14, 2025).

<sup>9</sup>*Ibid.*, p. 137.

<sup>10</sup>*Ibid.*, p. 139.

imprisonment, which is the heaviest criminal sanction in the juvenile criminal justice system. The provisions regarding imprisonment for juveniles, based on Article 81 of the Juvenile Criminal Justice System Law, stipulate that judges can impose a maximum prison sentence of 1/2 (a half) of the maximum prison sentence for adults. The principle of legal certainty is related to the legal positivism, which is one of the legal in legal theory that holds the opinion that law must be conceptualized as ius that has undergone positivism as lege or lex, to guarantee certainty between what is considered law or not law. The principle of justice is related to the legal utilitarian, which views justice as a form of virtue whose main characteristics are determined by its utility value, namely the extent to which the principle can realize the greatest happiness or welfare for as many individuals as possible in society. The judge's decision-making must consider the three main pillars of criminal law: the crime, criminal responsibility, and sentencing. Determining the criminal sanction against a defendant must consider the severity of the crime committed by the defendant, taking into account the defendant's fault, whether intentional or negligent, in committing the crime.

## 2. Suggestion

The relationship between the principle of legal certainty and the principle of justice lies in the fact that justice requires legal certainty as its operational framework, while legal certainty needs the dimension of justice to avoid becoming rigid and inhumane. In other words, a legal system that focuses solely on certainty without considering justice can produce decisions that are legal but unethical or lacking in humanity. Conversely, enforcing justice without a clear legal foundation risks creating uncertainty, subjectivity, and unequal treatment. Therefore, the author expresses the opinion that law should not necessarily be viewed solely as written law, but rather by considering the essence and values inherent in the criminal acts committed by the defendant. Judges are also obliged to consider the evolving conditions in society, measured against the three pillars of criminal law.

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### Judgment

Putusan Pengadilan Negeri Penajam Nomor 3/Pid.Sus-Anak/2024/PN Pnj.