

IMPLEMENTATION OF THE BEST INTERESTS PRINCIPLE FOR CHILDREN WHO COMMIT VIOLENT CRIMES RESULTING IN THE DEATH OF CHILDREN (STUDY IN THE CENTRAL JAKARTA DISTRICT COURT)

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ABSTRACT

Children are the future generations of the nation and state, and it is essential that they receive protection to ensure their growth into fully developed human beings. However, in today's society, many children become entangled with the law, go through legal processes, and even face criminal sentences, where the principle of the best interests of the child is not yet the primary consideration for law enforcement authorities in handling cases involving children. This situation can have negative effects on a child's development. This study is a normative-empirical legal research with a legislative and case-based approach. The research findings indicate that the implementation of the best interests principle for children who commit violent crimes resulting in the death of children (a study conducted in the Central Jakarta District Court) is not yet optimally realized. During the legal proceedings, investigators and prosecutors still detain children, imprisonment remains the prosecutor's choice in the indictment, and during the trial, judges still opt for primary imprisonment as a punishment, even though there are alternative forms of sanctions such as rehabilitation, either within or outside institutions, which could be imposed on children, considering the conditions they are currently experiencing for their future well-being and development.

Keywords: best interest; child, criminal act; offender; protection.

INTRODUCTION

Children are a trust and a gift given by the Almighty, as individuals who will continue the civilization of humanity on Earth. They should rightfully be protected because within each child resides their intrinsic worth, dignity, and rights as human beings, which must be upheld. Children are an integral part of the continuity of human life and the survival of the nation and state because they play a strategic role as the future heirs in the relay of the struggle and development of the nation and state.

Children need to be guaranteed the fulfillment of their needs, both physically and mentally, in accordance with their development so that they can grow into fully developed individuals. This is because children are individuals who have not yet achieved physical and mental maturity and are unable to independently meet their needs without assistance from those around them. Therefore, they require attention and protection from their family, community, nation, and state as a manifestation of safeguarding their future.¹

The importance of providing protection to children has been a matter of international concern, as stated in the Preamble to the Declaration of the Rights of the Child, which reads: *"Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."*

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¹ Rahman Amin, *Hukum Perlindungan Anak dan Perempuan di Indonesia*, Deepublish, Sleman: 2021, p. 13.

In recent times, criminal activities involving children have become increasingly prevalent in daily life within society. Currently, crimes committed by adults are also being committed by children due to various factors, including economic circumstances, as well as internal family factors such as lack of attention, care, and supervision from parents, guardians, or caregivers, which can lead to a lack of control over children and their susceptibility to negative influences in society.²

The rise in criminal activities involving children is evident in the data of child complaints received by the Indonesian Child Protection Commission from 2018 to 2020. In 2018, there were 661 recorded cases of children involved in criminal activities, in 2019, there were 605 cases, and in 2020, there were 188 cases. These cases included children being involved in physical violence, psychological violence, sexual violence, murder, theft, traffic accidents, the use of sharp weapons, kidnapping, abortion, and terrorism-related offenses.³

To ensure and protect the growth and development of children in their lives, the Indonesian government has enacted Law Number 23 of 2002 on Child Protection, which was subsequently amended by Law Number 35 of 2014 ("**Child Protection Law**"). Specifically, the government has also passed Law Number 11 of 2012 on the Juvenile Justice System ("**Juvenile Justice System Law**") which mandates law enforcement agencies handling cases of children in conflict with the law to promote diversion, restorative justice, and special protection efforts.

In practice, according to data released by the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia for the years 2017-2018, the number of children subjected to criminal imprisonment and detention during criminal proceedings remains high. In 2017, there were 2,469 child inmates, and in 2018, there were 2,154 child inmates, while the number of detained children in 2017 was 1,010, and in 2018, it was 894.⁴

An example of a case involving a child in conflict with the law that drew widespread public attention and received media coverage is the case of a violent crime resulting in the death of a child, committed by a 15-year-old child with the initials "NF" against a 5-year-old victim with the initials "APA". This incident occurred on March 5, 2020, in the Sawah Besar area of Central Jakarta. In this case, the juvenile offender "NF" was only 15 years old when he committed the violent crime that led to the death of the 5-year-old victim "APA". The crime was attributed to behavioral issues stemming from past trauma.⁵

As a child offender, "NF" should rightfully receive special protection to ensure his survival and proper development. On the other hand, the act committed by "NF" resulting in the death of the victim "APA," who was also a child entitled to special protection under child protection laws, necessitates that law enforcement applies the best interests of the child principle. This should be done while still considering justice for the victim's family.

² Jefferson B. Pangemanan, "Pertanggungjawaban Pidana Anak dalam Sistem Peradilan Pidana Anak", *Jurnal Lex et Societatis*, Vol. III, No.1, January-March 2015, p. 103.

³ KPAI, "Data Kasus Perlindungan Anak 2016-2020", <<https://bankdata.kpai.go.id/tabulasi-data/data-kasus-pengaduan-anak-2016-2020>> [accessed on 29/10/2021].

⁴ Tri Windiarso, (*et.al.*), "Profil Anak Indonesia 2019, Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia", Jakarta, 2019, p. 131.

⁵ Summary of the Central Jakarta District Court Decision Number: 12/Pid.Sus-Anak/2020/PN Jkt. Pst.

Based on these considerations, the author is interested in examining how the implementation of the best interests of the child principle is carried out in the case of a child who has committed a violent crime resulting in the death of another child, in this specific case involving "NF". This study aims to analyze how the principle is applied throughout the criminal justice process, from the time "NF" enters the legal system to the final judgment by the judge, with the goal of ensuring the growth and development of the child as a future generation of the nation and state.

RESEARCH METHOD

This type of research is normative-empirical legal research. Normative legal research involves the examination of written regulations and relies on existing secondary data available in libraries.⁶ Empirical legal research is conducted by studying the application of law in society.⁷ Data is collected through library research, and the data analysis method is qualitative, which involves systematically and consistently examining research data to attain clarity regarding the issues being investigated.⁸

DISCUSSION

An Overview of Children, Child Protection, and the Juvenile Criminal Justice System

According to the Convention on the Rights of the Child, approved by the United Nations General Assembly on November 20, 1989, the term "child" serves as a guideline for determining a child's age by nations worldwide. Article 1 essentially defines a child as a human being under 18 unless otherwise stipulated by law.

From a legal perspective, a child is defined as someone who is not yet an adult, typically referred to as a minor or someone under legal age. When viewed in terms of age, the concept of a child can vary depending on the specific legal requirements outlined in existing regulations and legislation.⁹

Under Law Number 4 of 1979 on Child Welfare, a child is defined as an individual who has not yet reached 21 years of age and has not been married. In Law Number 39 of 1999 on Human Rights, Article 1 number 5 states that a child is a human being below 18 (eighteen) years of age and not married, including an unborn child if it is in the child's *Tinjauan tentang Anak, Perlindungan Anak, dan Sistem Peradilan Pidana Anak*

From the perspective of marriage, as stipulated in Article 47(1) of Law Number 1 of 1974 on Marriage, amended by Law Number 16 of 2019, children who have not reached the age of 18 or have not been married remain under the authority of their parents unless this authority is revoked.

⁶ Bambang Waluyo, *Penelitian Hukum dalam Praktek*, Sinar Grafika, Jakarta: 2008, p. 13-14.

⁷ H. Ishaq, *Metode Penelitian Hukum dan Penulisan Skripsi, Tesis, Serta Disertasi*, Alfabeta, Bandung: 2017, p. 70.

⁸ Burhan Ashshofa, *Metode Penelitian Hukum*, PT.Rineka Cipta, Jakarta: 2004, p. 20.

⁹ Guntarto Widodo, "Sistem Pemidanaan Anak Sebagai Pelaku Tindak Pidana Perspektif Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak", *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan*, Vol. 6, No. 1, March 2016, p. 64.

In terms of child protection, according to Article 1 number 1 of the Child Protection Law, a child is defined as someone who is under 18 (eighteen) years of age, including children who are still in the womb. In juvenile criminal justice, as outlined in the Juvenile Justice System Law, a child in conflict with the law is a child who is at least 12 (twelve) years old but has not yet reached 18 (eighteen) years old and is suspected of committing a criminal offense.

Furthermore, regarding child protection, constitutionally, it is implied in the fourth paragraph of the preamble of the 1945 Constitution, which states, "to establish a government of the State of Indonesia that shall protect all the people and the entire homeland of Indonesia." Additionally, Article 28, letter g of the 1945 Constitution mandates protection for Indonesian citizens, including children.

Specifically, child protection is regulated by the Child Protection Law, Article 1 number 2, which defines protection as all activities aimed at ensuring and safeguarding the child and their rights to live, grow, develop, and participate optimally in accordance with their human dignity, free from violence and discrimination.

Child protection is an effort to create a condition or situation in which a child who cannot yet exercise their rights and fulfill their life responsibilities is cared for and safeguarded. Based on the concept of *parens patriae*, which means the state provides care and protection to children, much like parents do for their own children, handling children who come into contact with the law must be done in the best interests of the child.¹⁰

The reasons why children need protection include the high recovery cost due to the failure to provide adequate protection, which is far greater than the cost incurred when children receive protection. In many situations, children cannot access protection and realize their rights, and they are more vulnerable to exploitation and abuse.¹¹

Legal protection for children is implemented as an effort to safeguard various freedoms and fundamental rights of children, as well as various interests related to the well-being of children. Legal protection for children has a broad scope, covering the protection of children's freedom, the protection of children's human rights, and legal protection for all interests related to the welfare of children.¹²

Child protection encompasses efforts made to support the realization and fulfillment of the rights and obligations of children themselves. Consequently, children should rightfully receive their rights to grow and develop in their lives. Children have the right to fair treatment without discrimination and should be shielded from various threats and actions that could harm them in their daily lives.¹³

Furthermore, concerning the juvenile criminal justice system, in general, the judiciary is a judicial authority comprising courts, as well as other bodies or institutions such as the police, the

¹⁰ Rochaeti dalam Rosmi Darmi, "Implementasi Konvensi Hak Anak Terkait Dengan Perlindungan Anak Yang Berhadapan Dengan Proses Hukum", *Jurnal Penelitian Hukum De Jure*, Vol. 16, No. 4, December 2016, p. 439.

¹¹ Peter Newel dalam Hadi Supeno, *Kriminalisasi Anak*, Gramedia Pustaka Utama, Jakarta: 2010, p. 30-31.

¹² Barda Nawawi Arief dalam Habib Shulton Asnawi, "Status Hukum dan HAM dalam Sistem Peradilan Pidana Anak di Indonesia", *Jurnal Hukum Istibath*, Vol. 12, No. 2, November 2015, p. 168.

¹³ Arif Gosita dalam Azwad Rachmat Hambali, "Penerapan Diversi Terhadap Anak yang Berhadapan dengan Hukum dalam Sistem Peradilan Pidana", *Jurnal Ilmiah Kebijakan Hukum*, Vol. 13, No. 1, March 2019, p. 18.

prosecution, correctional institutions, and legal assistance. Philosophically, the judiciary is closely related to the concept of justice, which is the highest value in the relationship between individuals and society.¹⁴

The administration of justice in Indonesia falls within the scope of the judicial authority, as regulated by Law Number 48 of 2009 on the Judicial Authority, Article 1 number 1, which defines judicial authority as the independent state power to conduct judicial proceedings to uphold the law and justice based on Pancasila and the 1945 Constitution to ensure the legal system of the Republic of Indonesia.

The juvenile justice system operates within the framework of the general judiciary but follows specific procedural laws, as outlined in the Juvenile Justice System Law (UU SPPA), Article 1 number 1, which defines the juvenile criminal justice system as the entire process of handling cases involving children in conflict with the law, from the investigation stage to the guidance stage following the completion of their sentence.

Implementation of the Best Interests of Child Principles for Juvenile Offenders in Violent Crimes Resulting in Death

To examine the implementation of the best interests of child principles for juvenile offenders in violent crimes resulting in death, the author has chosen one of the cases that garnered significant public attention within the jurisdiction of the Central Jakarta District Court. This case is detailed in Central Jakarta District Court Judgment Number: 12/Pid.Sus-Anak/2020/PN Jkt. Pst, dated August 18, 2020, which was upheld by the Jakarta High Court Judgment Number: 9/Pid.Sus-Anak/2020/PT DKI, dated September 21, 2020, and has attained legal finality. The case is as follows:

Analysis of the Investigation and Prosecution Stages

During the investigation and prosecution stages, "NF's" case could not be eligible for diversion because the criminal charges against "NF" carry penalties of more than 7 (seven) years, namely, the alleged violations of Article 76C in conjunction with Article 80(3) of the Child Protection Law, Article 340 of the Criminal Code, and Article 338 of the Criminal Code, all of which carry penalties exceeding 7 (seven) years. Therefore, it does not meet the criteria for diversion as outlined in Article 7 of the Juvenile Justice System Law (UU SPPA), which generally requires diversion for crimes punishable by imprisonment of less than 7 (seven) years and not involving repeat offenses.

From the perspective of the best interests of the child, which mandates that all decision-making must always consider the child's well-being and development¹⁵, it can be argued that despite "NF's" actions not meeting the criteria for diversion as stipulated in Article 7 of the UU SPPA, the investigator

¹⁴ Maidin Gultom, *Perlindungan Hukum Terhadap Anak dan Perempuan*, Refika Aditama, Bandung: 2018, p. 189.

¹⁵ Fransisca Novita Eleanor (et.al.), *Buku Ajar Hukum Perlindungan Anak dan Perempuan*, Madza Media, Malang: 2021, p. 156.

could facilitate reconciliation efforts between "NF's" family and the victim "APA's" family. This reconciliation could help restore the situation or condition that was shaken by the criminal act, which can significantly impact "NF's" well-being.

In terms of formal legality, the actions of the investigator and the prosecutor in proceeding with "NF's" case are in accordance with applicable regulations. However, from a perspective of progressive law, law enforcement efforts against any legal violations should strive to go beyond rigid and formalistic legal positivism, which solely pursues procedural justice. Instead, they should aim to achieve substantive justice, which is the essence of law enforcement.¹⁶

According to progressive law, law enforcement against crimes committed by children should aim to achieve justice, meaning a balance between justice for the victim and the offender. With a progressive legal approach, law enforcement, particularly judges, can and even should bypass statutory provisions to resolve cases outside of the courtroom through restorative justice. This approach allows justice, the ultimate goal of the law, to be felt by all parties involved in juvenile cases.¹⁷

This aligns with the paradigm of juvenile criminal justice according to the Beijing Rules (SMRJJ), which is not solely punitive but more oriented towards the best interests of the child. It emphasizes diversion, which means resolving cases without going through the formal legal process. It involves stopping, not pursuing, releasing from legal proceedings, returning, redirecting child offenders to the community, or providing other forms of social services. The primary essence is to avoid the negative impacts of legal proceedings on the child.¹⁸

Resolving juvenile cases through restorative justice means restoring relationships or making amends for the offenses committed by the offender or their family towards the victim or their family through out-of-court reconciliation. This approach aims to address legal issues arising from the offender's actions by reaching agreements between the parties involved.¹⁹ Through diversion and restorative justice, efforts are made to keep children from the criminal justice process, including criminal penalties, which should be a last resort (*ultimum remedium*).²⁰

Another approach related to implementing the best interests of the child principle is the family model, which differs from the due process model that focuses more on criminal sanctions.²¹ In the family model, the approach is depicted in a familial atmosphere. If a child makes a mistake, even if the child is sanctioned, they are still treated with love and not considered evil. This approach

¹⁶ Satjipto Rahardjo, *Penegakan Hukum; Suatu Tinjauan Sosiologis*, Genta Publishing, Yogyakarta: 2009, p. 12.

¹⁷ Ulung Mangun Sosiawan, "Perspektif Restorative Justice Sebagai Wujud Perlindungan Anak Yang Berhadapan Dengan Hukum", *Jurnal Penelitian Hukum De Jure*, Vol. 16, No. 4, Desember 2016, p. 427.

¹⁸ Haris Dwi Saputro dan Muhammad Miswarik, "Implementasi Diversi Dalam Sistem Peradilan Pidana Anak Yang Berhadapan Dengan Hukum", *Jurnal Inicio Legis*, Vol. 2, No. 1, June 2021, p. 40.

¹⁹ Joko Sriwidodo, *Perkembangan Sistem Peradilan Pidana di Indonesia*, Kepel Press, Yogyakarta: 2020, p. 140.

²⁰ Diah Ratna Sari Hariyanto dan Gde Made Swardhana, "Optimalisasi Pelaksanaan Diversi Dalam Sistem Peradilan Pidana Anak Yang Berorientasi Pada Restorative Justice di Kota Denpasar", *Jurnal Legislasi Indonesia*, Vol. 18, No. 3, September 2021, p. 395.

²¹ Romli Atmasasmita, *Sistem Peradilan Pidana Kontemporer*, Kencana, Jakarta: 2011, p. 11.

maintains an atmosphere of love and family values to help the child recover before the criminal act occurs.²²

Moving forward with analyzing the detention of "NF" during the investigation and prosecution phases, according to Article 2 letter i of the Juvenile Justice System Law, deprivation of liberty and imprisonment are considered a last resort. Then, under Article 3 letter g of the Juvenile Justice System Law, every child in the criminal justice process has the right not to be arrested, detained, or imprisoned unless it is a last resort and for the shortest possible time. It means that the detention of "NF" is a last resort when there are no other alternatives available to law enforcement in handling the case.

From the perspective of Article 32 paragraphs (1) and (2) of the Juvenile Justice System Law, the detention of a child should not occur if the child can provide assurances from their parents/guardians and/or institutions that they will not flee, tamper with evidence, and/or re-offend. Detaining a child can only be done under certain conditions: the child is 14 years or older and is suspected of committing a crime with a penalty of 7 years or more in prison.

Based on Article 32 paragraph (2) of the UU SPPA, "NF" was 14 years old or older when committing the alleged crimes, which include violations of Article 76C Jo Article 80 paragraph (3) of the Child Protection Law, carrying a maximum penalty of 15 (fifteen) years in prison, Article 340 of the Indonesian Criminal Code with the death penalty, life imprisonment, and a maximum prison sentence of 20 (twenty) years, as well as Article 338 of the Indonesian Criminal Code with a maximum penalty of 15 (fifteen) years in prison. Therefore, "NF," who was 14 years old or older, and allegedly committed crimes with penalties exceeding 7 (seven) years in prison, meets the criteria for detention.

Regarding Article 30 paragraph (1) of the UU SPPA, "NF" has living biological parents while going through the legal process. Hence, detention should not have been carried out if there was a guarantee from the parents that "NF" would not flee, tamper with evidence, or reoffend. However, the detention was ordered by the investigators and the public prosecutor to prevent any threats to "NF's" safety and security.

In general, the purpose of detaining a child suspect during the investigative process is to ensure that the case can proceed smoothly until the case file is completed and sent to the public prosecutor. This allows the investigators to easily present the child suspect and conduct further interrogations to complete the investigative case file.²³

Similarly, during the prosecution phase, the general consideration for the prosecutor to detain a child is to facilitate their appearance in court for trial. Additionally, the prosecutor's

²²Rusli Muhammad, *Sistem Peradilan Pidana di Indonesia*, Ull Press, Yogyakarta: 2011, p. 45.

²³Derived from an interview with the Head of the Women and Children Protection Unit (Kanit PPA) at the Criminal Investigation Unit (Satreskrim) of the Central Jakarta Metropolitan Police on May 23, 2022.

detention aims to continue the custody that was previously imposed by the investigators, preventing any negative perception from the victim's family if the defendant is not detained.²⁴

From the perspective of the best interests of the child, even if formal legality criteria for detention have been met, detention may not be the action that should be taken against "NF." Instead, other approaches that align with the specific situation and "NF's" best interests should be explored. The investigators and the prosecutor should consider "NF's" psychological condition, their need as a school-going child, their need for love and attention from their parents, and other needs that are essential for "NF" as a child.

Based on the best interests of the child, it should be considered a top priority (paramount importance) in decision-making concerning the child. What adults perceive as good may not necessarily be in the child's best interests or may potentially harm the child's future. Therefore, decision-making involving a child should not be based on the standards and interests of adults but should be tailored to the child's specific circumstances.²⁵

Therefore, if the investigators and the prosecutor do not have any other alternative actions in handling the case of "NF", they can consider, as a last resort, a form of detention that does not fully deprive "NF" of their liberty, such as city arrest, as stipulated in Article 22 paragraph (1) letter c of the Indonesian Criminal Procedure Code. This approach ensures that "NF's" needs can still be met. It means that there should be a shift in the paradigm of handling cases involving children in conflict with the law to enhance the child's well-being and provide specific protection for the child.²⁶

Analysis of the Trial Stage

During the trial stage at the District Court of Central Jakarta, "NF" was represented by Legal Counsel, namely M. Ihsan, S.H, M.H, M.Si, from the Mitra KPP-PA Advocacy Team, based on a Special Power of Attorney from NF's parents dated May 10, 2020, and Legal Counsel Dr. Hotma P. D Sitompoel, S.H., M.Hum, from the Mawar Saron Legal Aid Office, based on a Special Power of Attorney dated June 22, 2020.

From the perspective of the best interests of the child, providing legal assistance to "NF" aims to ensure the rights of "NF" during the legal process, which is one form of special protection for children as stipulated in Article 59 letter of the Child Protection Law (UU SPPA). Legal representation and assistance during the legal proceedings are imperative to achieve a fair legal process (due process of law). With legal assistance, unfair treatment can be prevented from the initial stages of case handling to the issuance of a judgment by the judge.²⁷

Further analysis pertains to the criminal charges made by the Public Prosecutor from the Central Jakarta District Prosecutor's Office, which is a 6-year prison sentence at the Special Child Rehabilitation Center ("LPKA") Class I Tangerang. In accordance with Article 71 of the UU SPPA, the

²⁴ Derived from an interview with the Head of the Subsection of Pre-Prosecution at the Central Jakarta District Attorney's Office on April 14, 2022.

²⁵ Nursariani Simatupang dan Faisal, *Hukum Perlindungan Anak*, Pustaka Prima, Medan: 2018, p. 45.

²⁶ Rika Saraswati, *Hukum Perlindungan Anak di Indonesia*, PT. Citra Aditya Bakti, Bandung: 2015, p. 113.

²⁷ Frans Hendra Winarta, *Bantuan Hukum di Indonesia; Hak Untuk Didampingi Penasihat Hukum Bagi Semua Warga Negara*, Elex Media Komputindo, Jakarta: 2011, p. 30.

penalties that can be imposed on a child proven to have committed a criminal offense consist of the principal penalty and additional penalties. The principal penalties include warnings, conditional sentences, vocational training, institutional care, and imprisonment. Additional penalties can include the confiscation of gains obtained from the criminal offense or fulfilling customary obligations.

Regarding the charge against "NF" for suspected violence resulting in the death of the victim "APA", the Public Prosecutor has chosen to demand a principal penalty of 6 (six) years of imprisonment at the LPKA Class I Tangerang. The maximum penalty stipulated in the First Charge, Article 76C Jo Article 80 paragraph (3) of the Child Protection Law, is imprisonment for a maximum of 15 (fifteen) years and/or a fine of up to IDR 3,000,000,000 (three billion Indonesian Rupiah).

With regard to the request for a 6-year prison sentence in LPKA for "NF", according to Article 81 paragraph (1), (2), and (5) of the Juvenile Justice System Law, children are sentenced to prison in LPKA if their actions and behavior pose a danger to society. The maximum prison sentence that can be imposed on a child is $\frac{1}{2}$ (one-half) of the maximum imprisonment penalty for adults, and prison sentences for children should only be used as a last resort.

In connection with "NF's" actions involving violence resulting in death, the Public Prosecutor's demand for a prison sentence appears to comply with the provisions of Article 81 paragraph (1), as "NF's" actions could pose a threat to the community's well-being. Regarding the duration of the 6-year prison sentence for "NF", this timeframe remains below $\frac{1}{2}$ (one-half) of 15 (fifteen) years, which is the maximum penalty under Article 76C *jo*. Article 80 paragraph (3) of the Child Protection Law.

Considering Article 80 paragraph (3) of the Juvenile Justice System Law, which states that imprisonment for children should only be employed as a last resort, the Public Prosecutor, in its demand, appears to have explored other options that could be applied to "NF", who was involved in an act of violence resulting in the death of the victim "APA". This decision appears to be based on considerations of "NF's" growth and survival as the primary factors, while still taking into account the sense of justice for the victim's family and society.

Reviewed in the context of Article 80 paragraph (3) of the Juvenile Justice System Law, which states that imprisonment for children should only be used as a last resort, the Public Prosecutor, in its demand, appears to have explored other options that could be applied to "NF", who was involved in an act of violence resulting in the death of the victim "APA". This decision seems to reflect the concept that imprisonment should be a last resort, considering "NF's" growth and survival as the primary factors while still considering the sense of justice for the victim's family and society.

Regarding the criminal demand, considering the best interests of the child, even though "NF's" actions meet the formal legal criteria for imprisonment, the Public Prosecutor should take into account factors that led "NF" to commit this crime based on the facts presented during the trial. The trial indicated that "NF" has a behavioral disorder (Post Traumatic Stress Disorder) stemming from past trauma resulting from sexual violence and a lack of affection and attention from divorced parents.

Given these considerations of “NF’s” condition, the Public Prosecutor should consider, in its demand, choosing another type of principal penalty as outlined in Article 71 paragraph (1) of the Juvenile Justice System Law, such as conditional sentences, rehabilitation outside of an institution, or institutional rehabilitation. These penalties may be more appropriate for “NF” to address the psychological trauma (Post Traumatic Stress Disorder) and her current situation, which includes pregnancy due to the sexual violence she endured.

In the analysis of the judgment issued by the Judge of the Central Jakarta District Court Number: 12/Pid.Sus-Anak/2020/PN Jkt. Pst on August 18, 2020, it is stated that “NF” has been proven to be legally and convincingly guilty of committing violent acts against a child resulting in death, as per the first alternative indictment. The verdict imposes a two-year prison sentence on “NF” at the Handayani Jakarta Juvenile Rehabilitation Center under the supervision of the Central Jakarta Class 1 Penitentiary.²⁸

In this decision, the Judge considered the provisions related to the rights of the child as stipulated in the 1945 Constitution and the rights of the child guaranteed by the Convention on the Rights of the Child. Children, in general, have rights that fall into four categories, namely the right to survival, protection rights, development rights, and participation rights.²⁹

Furthermore, as per Article 60 paragraph (3) of the Juvenile Justice System Law, the Judge is obligated to consider the social research report from the Probation Officer before issuing a verdict in a case. In the verdict, the Judge took into consideration the Social Research Report prepared by a social worker from BRSAMPK Handayani Jakarta. The report concluded that “NF” requires social rehabilitation, assistance from social workers, forensic psychologists, caregivers, and religious counselors, regular health check-ups, especially regarding her pregnancy, to continue her education, and to ensure that her parents allocate more time to her as their child.³⁰

Based on Article 70 of the SPPA Law, the lightness of the act, personal circumstances, or circumstances at the time the act was committed and which occurred later can be used as a basis for the judge's consideration not to impose a crime or action by taking into account aspects of justice and humanity, where in his decision, the judge has considered the conditions that is being experienced by “NF” who lives with his continued mother, where due to the lack of attention from his parents and family, this has caused “NF” to become a victim of sexual crimes and become pregnant. This condition caused “NF” to commit criminal acts of violence against children which resulted in death, so that “NF” was not only the perpetrator, but also the victim in the crime.³¹

In his decision, the Judge agreed with the Public Prosecutor in imposing a prison sentence on “NF”, but not at the LPKA, but at LPKS Handayani Jakarta which has more complete facilities and is suitable for the conditions of “NF” under the supervision of Balai Class I Correctional Center in Central Jakarta for 2 (two) years, with the consideration that “NF” had committed violence against the child victim “APA” which resulted in his death, so that the sentence was to accommodate the interests of

²⁸ The Central Jakarta District Court Decision Number: 12/Pid.Sus-Anak/2020/PN Jkt. Pst, p. 80-81.

²⁹ *Ibid*, p. 72-73.

³⁰ *Ibid*, p. 76.

³¹ *Ibid*, p. 73-74.

the victim's family, but still fulfill the best interests of the child "NF" and the baby she was carrying to receive more complete care at LPKS Handayani as requested by Legal Advisor "NF".³²

Regarding the length of the prison sentence of 2 (two) years imposed on "NF", if you look at the criminal threat in the First Indictment of the Public Prosecutor, namely Article 76C in conjunction with Article 80 paragraph (3) CHILD PROTECTION LAW, it is a maximum prison sentence of 15 (fifteen) year, and/or a maximum fine of IDR 3,000,000,000 (three billion rupiah). Thus, the imposition of a prison sentence of 2 (two) years is still below $\frac{1}{2}$ of the 15 (fifteen) years, namely $7\frac{1}{2}$ (seven and a half years) which can be imposed on children who commit serious crimes or crimes which are accompanied by violence and violence. endangering society as stipulated in Article 79 paragraphs (1) and (2), as well as Article 81 paragraphs (1), (2) and (5) of the Juvenile Justice System Law.

The imposition of a prison sentence on "NF", who is a minor and has not fully reached a level of understanding for their actions due to a lack of cognitive maturity, cannot be equated with that of an adult.³³ When imposing a criminal sanction, it should be considered as mature as possible, as Herbert L. Packer pointed out, that the indiscriminate or coercive use of criminal sanctions will turn the criminal justice system into a primary threat rather than a tool for achieving justice.³⁴

Furthermore, applying a corrective or rehabilitation measure, either within or outside an institution, for "NF" is a more suitable approach compared to a prison sentence that would deprive "NF" of their freedom. This consideration takes into account the well-being and growth of "NF", who still requires love and attention from their parents, the need to continue their education as preparation for their future, and the fulfillment of other needs, such as socializing with peers in line with their developmental stage.

This means that the juvenile justice system should not merely focus on imposing sanctions on a young offender but should primarily aim to protect the child's future. As such, the juvenile justice system differs from the criminal justice system for adults, which primarily seeks to establish guilt and impose punitive measures.³⁵

Additionally, according to utilitarian theory, the imposition of a punishment on an offender serves specific purposes different from the absolute theory where punishment is seen as retribution.³⁶ In line with the utilitarian theory, the imposition of a penalty should aim to benefit both the offender and society. The punishment imposed on the offender is expected to contribute to their

³²*Ibid*, p. 78.

³³Guntarto Widodo, "Sistem Pemidanaan Anak Sebagai Pelaku Tindak Pidana Perspektif Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak", *Jurnal Surya Kencana Dua; Dinamika Masalah Hukum dan Keadilan*, Vol. 6, No. 1, March 2016, p. 62.

³⁴Lilik Mulyadi, "Pergeseran Perspektif dan Praktik Dari Mahkamah Agung Republik Indonesia Mengenai Putusan Pemidanaan", Article, No Date.

³⁵ Nandang Sambas, "Kebijakan Legislasi Sistem Pemidanaan Sebagai Upaya Perlindungan Hukum Terhadap Anak di Indonesia", *Jurnal Hukum Ius Quia Iustum*, Vol. 19, No. 3, July 2012, p. 385.

³⁶Leden Marpaung, *Asas-Teori-Praktek Hukum Pidana*, Sinar Grafika, Jakarta: 2009, p. 105.

improvement for a more positive future, emphasizing a prospective approach over mere retribution, and it also serves as a means to achieve societal well-being.³⁷

CLOSING

From the discussion above, it can be concluded that the implementation of the best interests principle for child offenders involved in violent crimes resulting in the death of a child (A Study at the Central Jakarta District Court) in the case Decision Number: 12/Pid.Sus-Anak/2020/PN Jkt. Pst on August 18, 2020, has not been fully optimized. Throughout the legal process, investigators and public prosecutors continue to use detention measures based on security and the smooth progress of legal proceedings, even though alternative types of detention exist that could meet the needs of the child "NF". During the trial phase, the public prosecutor still chooses a 6-year prison sentence in a correctional facility, even though there are other alternative penalties, such as rehabilitation within or outside an institution. In the sentencing phase, the judge still selects a prison sentence to be served at LPKS Handayani, despite other potential options like rehabilitation within or outside an institution, considering the best interests of "NF" while also paying attention to the sense of justice for the victim's family and the community.

Recommendations for the Central Jakarta Metro Police include enhancing their capacity in child investigation by expanding the presence of female police officers (Polwan) and incorporating psychologists to offer counseling services to children. It is suggested that the Central Jakarta District Prosecutor's Office establish a dedicated unit or division for handling juvenile cases, staffed with public prosecutors well-versed in the nuances of juvenile criminal justice. Additionally, the judge presiding over cases at the Central Jakarta District Court might take into account the child's best interests by considering alternative punitive measures rather than imprisonment, with a focus on the child's well-being and overall development.

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