

## Child Crime As Perpetrators Of Immoral Crimes

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### Abstract

This research delves into the criminal responsibility of children engaged in moral crimes, specifically focusing on decency crimes like rape within the framework of Indonesia's legal system, as outlined in "Law Number 11 of 2012 concerning the Juvenile Criminal Justice System." Employing a normative juridical approach, the study analyzes legal statutes and cases related to such crimes, revealing a discrepancy between existing laws and their implementation. Instances of lenient sentencing, such as a six-month term for a severe crime, underscore the need for a closer examination of the diversion approach to reduce decency crimes by children. The research explores the concept of effective punishment within the unique context of juvenile offenders, advocating for the Juvenile Criminal Justice System's role in social rehabilitation through institutions like the Special Child Development Institute. Despite legislative efforts, inconsistencies persist, highlighting the necessity for a more stringent application of legal rules and a commitment to children's rights during the criminal justice process. Ultimately, the study emphasizes the importance of aligning punishment with juvenile characteristics, urging a shift towards comprehensive measures that promote personal growth and responsibility. It underscores the significance of upholding children's rights while addressing societal concerns related to reducing moral crimes committed by children through rigorous legal implementation.

**Keywords:** *Accountability; Restorative Justice; Criminal*

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## INTRODUCTION

Since Indonesia has experienced a transition period from an authoritarian system of government to a democratic government through a system called reformasi, changes and developments have

also occurred in people's lives. One such change is the problem of crimes committed by children (Primasari, 2012). Child crimes and criminal policy are closely related. The community strives to tackle crime through criminal policy, "which in its operational

movement is directed on two paths" (Azahrah, Disemadi, & Jaya, 2020). namely "penal policy and non-penalty policy" (Rochmah & Nuqul, 2015).

Today, children are often involved in non-criminal offenses, including sexual crimes. They are involved both as victims and as perpetrators (Salamor, Mahmud, Corputty, & Salamor, 2020). Environmental factors, both family factors and social friends, that trigger the emergence of criminal acts by children are (Hilman & Indrawati, 2018). Based on data from KPAI, it can be seen that in Indonesia from 2022 there were 4,683 cases recorded while in 2023 there was an increase in cases of children committing criminal acts. One of these crimes is a criminal act of decency, especially rape.

The case that attracted the most public attention in 2016, the rape case against Yuyun a 14 (fourteen) year-old girl, she was raped in turns by 14 young men in Katie Village, Kasuban, Bengkulu until she died. This case is an example of many cases of moral crimes where the perpetrator is a child. Efforts made by the government to pay extra attention to problematic children are establishing and enacting Law Number 11 of 2012 concerning the Juvenile Criminal Justice System as a formal rule to protect children's rights" (Rahmasari, 2017).

However, the enactment of the law does not necessarily eliminate cases of moral crimes in which children are the perpetrators. Therefore, cases of moral crimes where children are the perpetrators, should be our collective responsibility, both by law enforcement officials in particular and law enforcement officials in general. One of the efforts that can be made to overcome legal problems, especially children who commit acts of decency, is to maximize the

application of legal rules that expressly give feelings of guilt to children, it may be that the more widespread cases of children becoming perpetrators of moral crimes due to weak law implementation and the discrepancy between "applicable laws and law enforcement officials who handle these cases".

Based on the explanation of the above problems, the author draws several formulations of the problem, namely, how is the criminal responsibility of children who commit moral crimes based on "Law Number 11 of 2012 concerning the Juvenile Criminal Justice System"? The next problem is, what is the concept of effective punishment for children who commit moral crimes? This study was conducted with the aim of determining criminal responsibility, children who commit moral crimes, especially rape based on positive law and to find out effective ways to minimize cases of rape crimes committed by children.

## METHOD

The research method used in this study is "normative juridical with a legal approach (satute approach) and a case approach (case approach), the legal data used is secondary legal data" (Benuf & Azhar, 2020). This study focuses on primary legal materials, specifically laws and regulations pertaining to the "Juvenile Criminal Justice System." Additionally, primary legal data obtained from research informants is utilized. Complementing these primary sources are secondary materials, consisting of literature concerning criminal acts of decency committed by children. The legal materials are gathered through a comprehensive literature study. Subsequently, a descriptive analytical analysis is conducted, employing a method

that involves elucidating the characteristics of the studied object (Djulaeka & Devi Rahayu, 2020). The results of the analysis are then concluded to answer the problems that have been formulated.

## **RESULTS AND DISCUSSION**

### **Criminal responsibility of children who commit crimes of decency based on "Law Number 11 of 2012 concerning the Juvenile Criminal Justice system"**

The regulations pertaining to law enforcement mechanisms for Children Facing the Law (ABH) are stipulated in "Law Number 11 of 2012 concerning the Juvenile Criminal Justice System." This legislation serves as the cornerstone for judges when adjudicating cases involving ABH, acting as a guiding framework for their decisions (Eleanora & Sari, 2019). Article 32, paragraph (2) specifies that the confinement of a minor is allowable solely under particular conditions, specifically when the child is 14 years or older and is suspected of engaging in criminal activity that carries a potential imprisonment sentence of 7 years or more. Furthermore, as outlined in Article 69, paragraph (2), individuals below the age of 14 are exclusively subject to specific interventions, indicating that alternative measures can be implemented in addressing their participation in legal proceedings.

According to the article's description, it implies that the law mandates the punishment of children who commit severe crimes punishable by a term exceeding 7 years, particularly if the child is at least 14 years old (Arliman, 2015). Article 285 of the Criminal Code deals with the crime of rape, stating that individuals forcibly compelling a woman to engage in sexual intercourse outside of marriage, under the threat of rape,

may be sentenced to a maximum of 12 years in prison. In accordance with these regulations, an adult perpetrator of this crime is liable to a 12-year imprisonment. However, if the offender is a minor, the prescribed criminal penalty is halved, as outlined in Article 81, paragraph (2) of Law Number 11 of 2012 concerning the juvenile criminal justice system. This provision specifies that the maximum imprisonment for minors is restricted to half of the maximum penalty applicable to adults.

Undoubtedly, law enforcement encounters difficulties in harmonizing judgments in Acts of Child Abuse (ABH) cases with the stipulations set forth in "Law Number 11 of 2012 concerning the juvenile criminal justice system." A notable example is evident in "Decision Number 27/Pid.sus-anak/2016/PN.MTR," where the judge imposed a minimal 6-month sentence on the defendant, diverging from the provisions of the aforementioned law. The perpetrator of rape is a child against another child who causes the victim to suffer injuries to the victim's head and genitals. Juridically, the child perpetrator must receive guidance at the "Special Child Development Institute (LPKA) for 6 years".

The increase in cases of decency crimes committed by children should be a lesson for both the community and law enforcement officials in general to be more observant in choosing child cases that are appropriate for diversion (non-penal) and which ones should be taken with the penalty route. Legal instruments must continue to be optimized in order to minimize and even eliminate cases of crimes committed by children, especially moral crimes while still paying attention to and upholding children's rights during the criminal period.

### **The Concept of Effective Punishment for Children Who Commit Crimes of Decency**

In a broader context, the structure of punitive measures encompasses more than just sanctions and their varying degrees of severity; it constitutes a comprehensive system intricately linked with the formulation of penalties within criminal law (Eleanora, 2013). Law Number 11 of 2012 provides a new formulation of sanctions for children who commit criminal acts. Patterns of juvenile punishment include: a) "Juvenile criminal law; The death penalty is replaced by a maximum of 15 years, the crime of deprivation of liberty or a fine with a reduction of one third of the maximum, the crime of deprivation of certain rights and the announcement of the judge's decision are not applied to minors, and The place and manner of execution of the crime is regulated in the implementing regulations", b) "the criminal law for children does not regulate unequivocally, although the type of crime that applies to adults applies also to children, only the duration/amount is differentiated by a reduction of one-third, so that the death penalty is abolished".

The case of a child who gets immoral treatment involving the perpetrator is a child is no longer a new thing. "Commissioner of the Indonesian Child Protection Commission (KPAI) for ABH Putu Elvina said that the ABH case attracted the highest attention among the cases highlighted by the KPAI because the number continues to increase every year". All kinds of efforts have been made by the government and related institutions to minimize cases of crimes of decency by children, one of which is to take a diversion approach, which is trying to find alternatives to imprisonment for children who are perpetrators of criminal acts using a restorative justice approach (Pangemanan,

2015). The Diversion approach is mandated by Article 7, paragraph 2 of Law no. 11 of 2012 regarding the juvenile criminal justice system. According to this provision, the eligibility for diversion requires that the committed crime carries a potential imprisonment sentence of up to seven years and is not a repeated offense.

The application of the diversion concept to cases involving juvenile perpetrators of rape is highly relevant, considering that the criminal penalty for rape, as outlined in Article 285 of the Criminal Code, is 12 years. This aligns with the provisions of Article 81, paragraph (2) of Law Number 11 of 2012 concerning the juvenile criminal justice system, which stipulates that the imprisonment for a child should not exceed half of the maximum penalty for adults. Consequently, in instances where a child is involved in the most serious rape offenses, the maximum imprisonment would be capped at 6 years. This satisfies the initial requirement for implementing the diversion concept, provided that the child's crime does not indicate a pattern of recurrence. The imposition of penalties on children is intended as a last resort after exploring alternative interventions. However, there is a concerning upward trend in cases involving assault causing serious bodily harm, some of which are neither trivial nor justifiable and may even lead to loss of life (Pravitria, 2018).

Detention for ABH is not the same as for adults. Children against whom a court decision has been handed down as a criminal offender will be placed in the LPKA. Based on the explanation of LPA West Nusa Tenggara information, the coaching process at LPKA goes through 3 stages, namely, the initial stage, the knitting stage, and the final

stage. "Coaching, guidance, supervision, mentoring, education, and training and other rights according to law are the rights of every child in LPKA". In order to fulfill these rights, education and training must be organized by the LPKA and supervised by the Correctional Center (Bapas) (Djamil, 2013).

This means that LPKA is an effective social rehabilitation forum to shape and improve the character of ABH. LPKA West Nusa Tenggara itself conducts character building that prioritizes religious values. Meanwhile, LPKA Pare-Pare forms a "child friendly" cell that makes the cell look like a typical child's room. Formal education can be seen from the final report "Legal Review of Child Development Models Based on Child Decent Education in the Correctional System in 2014". The report said that children in LPKA also continue to have the opportunity to receive education and get dependents from the government in accordance with "Articles 4,5,6 of Law Number 20 of 2003 concerning the National Education System" (Sitohang, Suhatrizal, & Trisna, 2021). The presence of LPKA is not only a juridical consequence that must be received by children who are perpetrators of criminal acts, but also as a place that specifically shapes children to have a better personality than before so that if He returns to society, he can be accepted again well by society.

Seeing the importance of the role of LPKA for children who are perpetrators of criminal acts, there are still many judges' decisions that impose judgments against ABH by reducing from positive legal provisions and from public prosecutors' demands, such as in "Decision Number 27/Pid.sus-anak/2016/Pn.Mtr". The verdict was handed down to a child who raped

another child in turn, until the child victim suffered injuries to his head and genitals. The consequence for the perpetrator imposed by the judge is only 6 months imprisonment (Afifah, 2014). Although the criminal sentence by the judge is only 6 months, it does not fully reflect the ideal concept to address the problem of rape by children. An effective concept is that LPKA must be a forum for effective social rehabilitation to shape and improve the character of ABH, not merely imprisoning children who commit rape crimes.

According to the author, education to remain responsible for what has been done is very important for children. This must be done so that when children at any time want to do a deviant action, the child will take lessons from the consequences he faces if he does the action. The weak implementation of the law that ensnares ABH is actually feared to cause children not to think twice when going to commit a crime and does not rule out the possibility of recidivism (criminal repetition) because children feel easier to escape from legal bondage.

We must not forget, that the victim of the child's actions is a child who of course must put his rights first as a child. rehabilitating children in LPKA is better than children being returned to parents, so there is no learning that children get. Rehabilitating children in LPKA can be an effort to minimize the incidence of child victims who get violence from other children. Including children who are ABH in LPKA is a form of State attention in restoring the attitude, character, and personality of children to become much greater people in the future.

## CONCLUSION

The regulations pertaining to children eligible for criminal charges and those deemed incapable of being held accountable for their actions have been stipulated in "Law Number 11 of 2012 concerning the juvenile criminal justice system", expressly determining that for children over the age of 14 years and then commit crimes whose criminal threat is over 7 (seven) years, the child is subject to half of the adult crime. Writer argues that, the law also requires punishment of children if such punishment is deemed more appropriate.

The concept of child punishment is certainly different from the concept for adults. Children who have been proven guilty must be detained in the LPKA, where in the LPKA coaching and skills training, spiritual guidance and formal education will be obtained by the child. Coaching and training as well as spiritual guidance are carried out so that children have a better personality when they return to society. Based on this, efforts to protect children who commit moral crimes are not by reducing or freeing children from legal bondage, but rather providing a Coaching Institute that pays attention to and fosters specifically problematic children while still paying attention to their rights as children.

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