

# Criminology and Victimology Perspectives of Children Facing the Law: The Implementation of Therapeutics Treatment to Realize the Goals of Punishment

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**Abstract**— This study examines the implementation of therapeutic treatment in the juvenile criminal justice system in Indonesia from the perspective of criminology and victimology. The phenomenon of children facing the law (ABH) shows a significant gap between the ideal norm (*das sollen*) that requires a rehabilitative approach and the reality of the field (*das sein*) which is still dominated by retributive punishment. By using normative legal research methods through legislative, case, theoretical, and philosophical approaches, this study found that Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) and Article 51 of the National Criminal Code have laid a strong normative foundation for the application of therapeutic treatment. However, its implementation is hampered by limited infrastructure, human resource capacity, and policy inconsistencies between institutions. This research proposes conceptual and operational reconstruction in the form of integrating the Therapeutic Jurisprudence approach into each stage of juvenile justice, strengthening the Special Children's Development Institution (LPKA), as well as multidisciplinary synergy between law enforcement officials and psychosocial experts to realize the goal of punishment oriented in the best interests of children.

**Keywords**— Children face the law; Therapeutics Treatment; Criminology; Victimology; Juvenile Criminal Justice System.

## I. INTRODUCTION

Children are a mandate and gift of God Almighty in whom is inherent the dignity and dignity as a whole human being. The state constitutionally guarantees the protection of children through Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which affirms that every child has the right to survival, growth and development, and protection from violence and discrimination. Nevertheless, empirical reality paints a portrait that is far from ideal: thousands of children each year are entangled in the vortex of a child-friendly criminal justice system. Data from the Directorate General of Corrections of the Ministry of Law and Human Rights notes that until 2023, there are more than 2,700 children with the status of prisoners and prisoners throughout Indonesia. This figure does not include children undergoing investigation and prosecution. More worryingly, research by the National Commission for Child Protection revealed that about 65 percent of children who have served prison sentences experience recidivism within two years of release, a strong indication that

conventional penal approaches are failing to perform their rehabilitative functions.

In the normative dimension, Indonesia has a progressive legal apparatus through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law). This law expressly mandates a restorative justice and diversion approach as the main mechanism for handling ABH. Furthermore, Article 51 of Law Number 1 of 2023 concerning the National Criminal Code (KUHP Nasional) explicitly emphasizes that criminalization is not intended to degrade human dignity, but aims to socialize convicts through coaching and guidance to become good and useful people. However, the gap between *das sollen* (the law that should be) and *das sein* (the law that occurs) is still very wide. Various empirical studies show that the practice of juvenile justice in Indonesia still often ignores the psychosocial aspects of children, the lack of involvement of psychologists and social workers in the trial, and the condition of the Special Children's Development Institution (LPKA) which has not fully carried out its rehabilitative function optimally. Stigmatization and re-victimization of children in formal legal processes are often structural obstacles that perpetuate the cycle of crime (recidivism).

This is where therapeutic treatment as a concept that integrates medical, psychological, and social dimensions in the criminal process becomes relevant and urgent to be developed. This concept is in line with the spirit of Therapeutic Jurisprudence introduced by David Wexler and Bruce Winick, which affirms that law and legal procedure can and should be used as therapeutic instruments for the psychological well-being of the individuals involved. The success of the purpose of criminalization through this therapeutic approach is highly dependent on the synergy between law enforcement officials and experts such as psychologists or social workers, as implied in the spirit of Article 51 of the National Criminal Code. Based on this background, there are two main problems studied: first, how to implement therapeutics treatment in the juvenile criminal justice system based on the SPPA Law from a normative and practical perspective; and second, how to conceptually and operationally reconstruct the implementation of therapeutics treatment to realize the goals of punishment oriented to the best interests of children.

The Indonesian legal system has formulated a comprehensive normative foundation for the protection of children facing the law. Law Number 11 of 2012 concerning SPPA is a *lex specialis* that specifically regulates the handling of ABH by prioritizing the restorative justice paradigm. Article 1 number 6 of the SPPA Law defines restorative justice as the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state. The diversion mechanism as stipulated in Articles 6 to 15 of the SPPA Law is designed as an alternative route that avoids children from the formal judicial process. Article 7 requires diversion to be carried out at each level of examination for criminal acts that are threatened with imprisonment for less than seven years and do not constitute a repetition of criminal acts.<sup>7</sup> Furthermore, Article 71 of the SPPA Law regulates the types of principal crimes for children which include warning crimes, criminal penalties with conditions (coaching outside the institution, community service, or supervision), job training, coaching in the institution, and prison as the ultimate *remedium*.

On a philosophical level, Article 51 of the National Criminal Code strengthens this normative framework by affirming the humanistic purpose of punishment: to socialize convicts through coaching and guidance, prevent the commission of criminal acts, restore the balance of society, and free the convict from guilt. This paradigm is in line with the theory of the purpose of punishment from the utilitarian school pioneered by Jeremy Bentham, in which crime is only justified if it produces more good than evil. The ideal normative construction clashes violently with the reality of implementation in the field. Research by the National Commission for Child Protection (Komnas PA) in 2022 revealed that the rate of implementation of diversion in Indonesia has only reached around 40% of all child cases that enter the judicial system, far from the expectations of the law. This means that the majority of children are still undergoing formal judicial proceedings with all their negative consequences.

From a criminology perspective, the approach that is still dominant in practice is the retributive paradigm that views crime as retribution for wrong acts. Child judges who are supposed to have special specialties and sensitivities often do not receive adequate training on child psychological development, adolescent neurobiology, and the impact of trauma. This condition is exacerbated by the limited budget of LPKA which causes rehabilitation and therapy programs that are actually mandated by law to not run optimally. From the perspective of victimology, there is a phenomenon of "re-victimization" that is actually carried out by the justice system itself. Children who are initially victims of bad social situations, when dealing with the law, instead experience secondary trauma due to the child-insensitive legal process. Research by the Witness and Victim Protection Institute (LPSK) in 2021 found that interrogations that do not meet child protection standards, lack of psychologist assistance, and detention house conditions that mix children with adults even though prohibited by law still often occur in various regions.<sup>9</sup> Other structural

obstacles include: first, the uneven availability of Correctional Centers (BAPAS) throughout Indonesia so that the community research process (Litmas) which is a mandatory requirement for handling ABH cannot be carried out on time; second, the absence of national standards regarding therapeutic treatment procedures for ABH; and third, weak cross-sector coordination between the ministries of law and human rights, the ministry of social affairs, the ministry of health, and the education office in the integrated handling of ABH.

The tension between ideal norms and practical realities requires a thorough conceptual and operational reconstruction. The synthesis offered is the transformation of Indonesia's juvenile criminal justice system towards a model that consistently integrates therapeutic jurisprudence into every stage of the legal process, from investigation to post-conviction guidance. This reconstruction does not mean removing aspects of retributive justice entirely, but rather placing it as a subordinate to rehabilitative and restorative justice. Within the framework of this synthesis, therapeutic treatment is not just an additional program at LPKA, but a philosophy that runs through the entire system: a child police who are trained in a trauma-informed approach, a child prosecutor who prioritizes recovery-based settlement, a child judge with developmental psychology competencies, and LPKA as a science-based self-transformation center.

## II. RESEARCH METHODS

This research uses the normative legal research method, which focuses on primary and secondary legal materials to find principles, principles, and legal rules that are relevant to the problem being studied. Four approaches are used in a complementary manner: First, the statute approach, which examines all laws and regulations related to the juvenile criminal justice system and the purpose of punishment. Second, the theoretical approach, which uses relevant legal theories such as Therapeutic Jurisprudence (Wexler-Winick), the theory of criminal objectives (utilitarian and rehabilitative), the theory of child protection (best interest of the child), and the theory of developmental criminology to build a solid argument. Third, the philosophical approach, which explores the fundamental values that underlie the juvenile criminal justice system, especially human values, substantive justice, and the dignity of children as a complete and sovereign legal subject over their own future.

## III. RESULTS AND DISCUSSION

### 1. *Criminological Perspectives on Children in Conflict with the Law*

Criminology as a science that studies crimes, perpetrators, and people's reactions to them provides an essential analytical framework to understand the phenomenon of children facing the law. Epistemologically, modern criminology has shifted from a classical approach that views the perpetrator as a rational actor who freely chooses crime, to a multifactorial approach that recognizes the complexity of the biological, psychological, and sociological determinants behind delinquent behavior. Merton's strain theory, which Agnew later developed into the General Strain Theory, explains that juvenile delinquency is

often an adaptive response to tension (strain) that arises when culturally desired goals cannot be achieved through legally available means. In the Indonesian context, inequality in access to education, structural poverty, and social marginalization create a "dead end" for some children who eventually find an outlet through deviant behavior. BPS data in 2023 shows that about 40 percent of children facing the law come from families below the poverty line, an empirical confirmation of the strain thesis.

Hirschi's theory of social control offers a complementary perspective: children commit delinquency when their social bonds are weakened when attachments to family and school are eroded, when commitment to conventional paths fades, when involvement in pro-social activities is minimal, and when beliefs in social norms fade. These findings have immediate practical implications for therapeutic treatment design: interventions must re-strengthen these severed social bonds. The most relevant to the discourse on child criminalization is the labeling theory of Edwin Lemert and Howard Becker. This theory argues that the formal criminalization process of arrest, detention, trial, and punishment actually strengthens the criminal identity of children through stigmatization mechanisms. Children who are labeled "criminals" by the justice system will experience a "secondary deviation" internalizing the label into part of their identity which in turn increases the likelihood of recidivism. The implications are obvious: any legal intervention against children that has the potential to cause stigma must be minimized, and if criminalization is unavoidable, then the content must be designed in such a way as to compensate for the effects of such negative labeling.

From the perspective of environmental criminology and developmental criminology, Moffitt distinguishes between "adolescence-limited offenders" offenders who are only active in adolescence and will stop with adulthood and "life-course persistent offenders" who start delinquency early and continue into adulthood. The majority of children who are in legal contact fall into the first category, meaning they have enormous natural desistance potential if the justice system does not worsen their developmental trajectory. Targeted therapeutic treatment can accelerate this desistance while preventing the transition to the second category.

## 2. *Victimology Perspective: Children As Victims Before Becoming Perpetrators*

Victimology, as a branch of criminology that studies victims of crime, provides an analytic dimension that is often overlooked in the juvenile criminal justice system: the perspective that the child who breaks the law is almost always the child who has first been a victim. Mendelsohn and Von Hentig, as pioneers of modern victimology, emphasize that the relationship between perpetrator and victim is not always dichotomous, often one can be in both positions simultaneously or sequentially. Empirical research consistently confirms this thesis. A meta-analysis published in *Child Abuse & Neglect* found that children who have experienced physical or sexual abuse are 2 to 3 times more likely to engage in criminal behavior later in life than children who have not. In Indonesia,

research by the Pulih Foundation found that more than 70 percent of children in LPKA residents have a significant history of trauma of domestic violence, neglect, or abuse that has never been treated therapeutically.<sup>18</sup>

The concept of the "victimization-to-criminalization pipeline" describes the mechanism by which unaddressed experiences of victimization convert into delinquent behavior. Trauma that is not therapeutically processed leads to emotional dysregulation, cognitive deficits in decision-making, and a tendency toward risky behaviors. A justice system that lacks the capacity to identify and respond to this history of trauma is essentially punishing the symptoms of deeper trauma in an approach that is not only ineffective but also morally unjust. The relevant principle of victimology here is the "secondary victimization" experience of being a second victim experienced by children when confronted with a justice system that is insensitive to their trauma. Intimidating investigative procedures, detention in cells with adults, and the social stigma inherent after trial are secondary forms of victimization that must be prevented through the design of therapeutic systems from the upstream. Victimology also highlights the victim dimension in the sense of children as parties affected by other people's crimes, both as children of perpetrators, and as children living in an environment marked by violence and criminality. A penal approach that focuses on therapeutic treatment allows the system to respond to the needs of children as victims as well as perpetrators in one coherent intervention framework.

## 3. *Implementation of Therapeutics Treatment to Realize the Goal of Criminalization*

The normative basis for the implementation of therapeutic treatment in the Indonesian juvenile criminal justice system is actually implicitly available in various existing legal instruments. Article 69 of Law Number 11 of 2012 concerning SPPA stipulates that children can only be sentenced to a crime or be subject to action based on the provisions of this law. Article 82 of the SPPA Law regulates actions that can be imposed on children, including return to parents/guardians, handover to someone, treatment in a mental hospital, treatment at LPKS, obligation to attend formal education, revocation of driver's licenses, and correction due to criminal acts. Particularly relevant are the clauses "treatment in a mental hospital" and "obligation to attend formal education" are both components of a more comprehensive therapeutic treatment. However, this provision has not been operationalized in a nationally standardized therapeutic treatment protocol. Internationally, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules 1985) in Rule 18 affirm the importance of the availability of a variety of treatment options that have a community orientation and family involvement. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules 1990) more specifically mandate the availability of educational, vocational, recreational, and health services, including mental health, for children deprived of their liberty.

The Constitutional Court through the Constitutional Court Decision Number 1/PUU-VIII/2010 has emphasized that the punishment of children must consider the best interest of the

child as a paramount principle. This ruling provides constitutional legitimacy for the therapeutic treatment approach as a manifestation of the "best interests" themselves. Furthermore, Government Regulation Number 9 of 2017 concerning Guidelines for the Register of Child and Child Victim Cases places the obligation to record children's psychosocial conditions as a prerequisite for the identification of therapeutic needs. Therapeutic treatment in the context of child punishment is not just "therapy" in a narrow clinical sense. It is a holistic intervention paradigm that makes the legal process itself from investigation to reintegration as a therapeutic means that supports the development of children in a positive way. This concept is rooted in the therapeutic jurisprudence developed by Wexler and Winick, which defines law as "a social force that produces therapeutic or anti-therapeutic consequences." That is why

In the framework of child punishment, therapeutic treatment can be operationalized in five main components that interact with each other: First, Comprehensive Trauma Assessment. Every child facing the law should undergo a thorough psychological and trauma assessment at the earliest stages of the justice process, ideally before a sentencing verdict is rendered. This assessment is not just an examination of mental capacity (as is already known in procedural law), but an in-depth mapping of the history of trauma, family dynamics, socio-economic conditions, and specific needs of the child. The results of this assessment should be integrated into the judge's consideration and become the basis for the preparation of an individual intervention plan. Second, trauma-based psychotherapy (Trauma-Informed Psychotherapy). This component is at the heart of therapeutic treatment, which includes a variety of psychological intervention modalities that have been scientifically proven to be effective for children with a history of trauma including Trauma-Focused Cognitive Behavioral Therapy (TF-CBT), Eye Movement Desensitization and Reprocessing (EMDR), and peer support-based group therapy. These interventions should be carried out by trained professionals and take place on an ongoing basis, not as a single session of a ceremonial nature.

Third, Integrated Formal and Vocational Education. Education is not only a child's right that must be guaranteed even within the LPKA, but it is also an essential therapeutic component. An educational program that is adaptive and responsive to children's conditions provides a positive structure, develops self-competence, and opens a viable reintegration path after punishment. Cooperation between LPKA, the Education Office, and vocational institutions needs to be institutionalized in the form of a binding Memorandum of Understanding. Fourth, Family-Based Intervention. Social control theory and developmental criminology research consistently show that the quality of family relationships is the strongest predictor of desistance. Therapeutic treatment should include interventions that actively involve the child's family including family counseling, parent training, and mediation of interpersonal conflicts. In the Indonesian context where family and community bonds are still relatively strong, this approach has significant therapeutic potential.

Fifth, the Community Reintegration Program. The transition from LPKA or diversion programs back to the community is the most vulnerable stage in the trajectory of a child who has ever faced the law. A structured reintegration program that includes mentoring, social stigma management, job search or further education support, and post-release monitoring mechanisms are components that determine the long-term success of the entire therapeutic treatment process. An analysis of several District Court decisions that apply a rehabilitative approach provides an overview of the potential and challenges of implementation. The main obstacles to the systematic implementation of therapeutic treatment can be identified in three domains. First, structural-institutional barriers: the lack of professionals (psychologists, counselors, social workers) who are trained in handling traumatized children in the LPKA and juvenile courts; the unclear responsibility of inter-agency coordination (LPKA, Bapas, Social Service, Education Office, Ministry of Health); and limited budgets allocated for child rehabilitation programs. Second, normative-regulatory barriers: the absence of detailed national standards on therapeutic treatment protocols for ABH; the absence of accreditation mechanisms and quality monitoring of rehabilitation programs; and the absence of an explicit legal obligation for judges to consider trauma assessment reports in juvenile criminal convictions. Third, cultural barriers: the dominance of a retributive perspective among law enforcement officials and the public who still view child delinquency as a "crime to be punished" rather than a "symptom to be treated"; and social stigma against children who have faced laws that hinder reintegration.

The recommended reform strategy includes several layers. At the legislative level, it is necessary to amend or revise the SPPA Law to include explicit provisions on the obligation of trauma assessment and therapeutic treatment plan in each child case, as well as the obligation of the court to consider the assessment report. At the regulatory level, the Supreme Court needs to issue a PERMA (Supreme Court Regulation) that provides technical guidance to child judges on how to integrate therapeutic recommendations into decisions. At the implementation level, a massive training program is needed for all components of the child justice system in a trauma-informed and therapeutic jurisprudence approach. At the budget level, there needs to be a special budget allocation from the State Budget for evidence-based child rehabilitation programs. The debate about the purpose of punishment in the philosophy of criminal law generally recognizes three main streams: the absolute/retributive theory that views punishment as a proper retribution for a crime; relative/utilitarian theory that views criminalization as a means of deterrence and rehabilitation; and a combined theory that combines the two. In the context of juvenile delinquency, the argument for rehabilitative orientation is overwhelming. First, neurobiologically, the adolescent brain, specifically the prefrontal cortex responsible for impulse control and rational decision-making, is not fully developed until about 25 years of age. This means that the moral culpability of children is physiologically different from that of adults, so equivalent retributive punishment cannot be justified. The United States Supreme Court in the landmark

case of *Roper v. Simmons* (2005) has acknowledged this neurological argument as the basis for not applying the death penalty to underage offenders.

Second, empirically, therapeutic treatment-based rehabilitation programs consistently show a greater deterrence effect than conventional prison sentences, at least in the sense of special deterrence (preventing recidivism by the same individual). Low recidivism after therapeutic treatment is not only an indicator of individual rehabilitation success, but also a contribution to the safety of the wider community, a utilitarian goal of punishment. Third, from the perspective of restorative justice that has been adopted by the SPPA Law, the purpose of punishment is not solely to "punish" the perpetrator but to "restore" the balance of social relations that are disturbed by criminal acts. Therapeutic treatment that successfully rehabilitates the child and allows for full social reintegration is the most authentic embodiment of the goal of the restoration.

#### IV. CONCLUSION

Based on the criminology, victimology, and normative analysis that has been carried out, this study produces three main conclusions as follows:

1. The criminological perspective proves that juvenile delinquency behavior is a product of the complexity of structural, social, and psychological factors and not merely a free moral choice. Strain, social control, and labeling theories collectively suggest that conventional retributive-oriented punishment is not only empirically ineffective, but also counter-productive because it exacerbates the criminogenic factors underlying children's behavior. The normative implementation of therapeutic treatment in the Indonesian juvenile criminal justice system has a strong foundation in Law Number 11 of 2012 concerning SPPA and Article 51 of the National Criminal Code. But practically, the implementation is still far from ideal. The gap between *das sollen* and *das sein* is manifested in the low level of implementation of diversion, limited capacity of BAPAS and LPKA, lack of involvement of psychosocial personnel in the judicial process, and the absence of measurable national standards for therapeutics treatment programs. Structural barriers that are multidimensional in nature, including aspects of regulation, human resources, infrastructure, and cross-sector coordination require comprehensive and systemic handling.
2. The victimology perspective reveals a dimension that has been hidden in Indonesia's juvenile criminal justice system: children who are confronted by the law are also children who are in large proportion victims of violence, neglect, and trauma that go unaddressed. A system that is incapable of identifying and responding to this dimension of victimization is essentially punishing the victim with an irony that is fundamentally contrary to the principle of justice.
3. The implementation of comprehensive therapeutic treatment including trauma assessment, evidence-based psychotherapy, integrated education, family relationship restoration, and community reintegration programs is a legal, moral, and empirical imperative that cannot be

delayed. This approach is not only most in line with the goals of rehabilitative-restorative punishment mandated by the SPPA Law, but also scientifically proven to be the most effective in reducing recidivism and restoring children as dignified subjects of law. Legislative, regulatory, institutional, and cultural reforms are needed simultaneously to realize this paradigmatic transformation from the normative level to the real implementation level. The conceptual and operational reconstruction required is a transformation towards the Integrated Therapeutic Juvenile Justice (ITJJ) model that prioritizes three pillars: therapeutic screening and comprehensive assessment, therapeutic court procedures, and comprehensive rehabilitation and reintegration program. Operationally, this reconstruction requires the issuance of more specific regulations, a competency certification system for child law enforcement officials, the strengthening of BAPAS and LPKA, a multisectoral case conference mechanism, and a data-based evaluation system.

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