

Recidivism of Child Crime in Indonesia

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Abstract

This study began with children who commit deviant acts often showing a bad attitude in the eyes of society and the government. They are often stigmatized as naughty children or perpetrators of criminal acts. Children who commit crimes must also be punished, but the punishment given is different from the punishment given to adults. The purpose of this study is to find out, understand, and analyze both in terms of regulations, forms and sanctions for children who commit repeated crimes. The research method used is normative legal research with a statutory approach, namely Law Number 1 of 1946 concerning the Criminal Code and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and a conceptual approach. The technique of collecting legal materials in this study uses literature studies while the legal material analysis technique used in this study is the descriptive analysis method. The results of this study indicate that in the SPPA Law concerning the imposition of sanctions on children who commit repeat crimes, there is a legal vacuum so that when judges handle cases of children who commit repeat crimes, the sanctions are returned to the Criminal Code, which sanctions are in the form of imprisonment that is heavier than before, namely plus one third. Therefore, the legislators in this case failed to formulate a norm in the formulation of the crime.

Keywords

recidive; criminal act; child



I. Introduction

Indonesia is a country of law, meaning that everything is regulated by law, the 1945 Constitution of the Republic of Indonesia is the highest source of law. The 1945 Constitution of the Republic of Indonesia in the application of law in Indonesia requires that there be no discrimination based on ethnicity, religion, culture of society and others including age. As a country of law, Indonesia guarantees its citizens to obtain justice in accordance with applicable law through the judicial power through the courts. Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia emphasizes that the judicial power is an independent power to organize trials in order to uphold law and justice (Sulistiyono & Isharyanto, 2018).

Indonesia is one of the countries that has ratified the Convention on the Rights of the Child (CRC) in 1990 which was ratified by the UN General Assembly on November 20, 1989. Article 4 of the CRC states: "States Parties shall take all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention." In addition, Article 6 of the CRC states: "States Parties recognize that every child has the inherent right to life" (Djanggih, 2018).

Children are a mandate from God Almighty. According to some assumptions, a family will be said to be imperfect if it cannot produce offspring. Children are the successors of the nation's struggle ideals. Children have a strategic role and have

special characteristics and traits that are expected to guarantee the continued existence of the family, nation and state. Children are the successors of the nation's future. Therefore, legal protection for children in various aspects is very important and strategic, so that it becomes a shared responsibility for the state and all components of society (Munajat, 2022).

Children who commit deviant acts often show an unwise attitude towards society and the government. They are often labeled as naughty children or criminals. Even in the judicial process, they are often treated unfairly. As a result, children who commit crimes become structural victims of law enforcement. Considering that children are viewed as special subjects in law, laws and regulations contain various special provisions regarding children, namely special legal treatment of children both as victims and children as perpetrators, both in the judicial process up to the imposition of sanctions imposed and correctional institutions (Munajat, 2022).

The norms that protect children as perpetrators and victims are basically complete, namely Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, hereinafter referred to as the Child Protection Law, then the Law that applies to children who commit crimes is Law Number 11 of 2012 concerning the Child Criminal Justice System. The Child Criminal Justice System Law recognizes the settlement of cases carried out by children using the concept of diversion. Article 1 paragraph (7) diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system. In Article 7 paragraph (1) at the level of investigation, prosecution, and examination of children's cases in the district court, diversion must be attempted, while Article 7 paragraph (2) diversion as referred to in paragraph (1) is implemented in cases where the crime committed: a) Is threatened with imprisonment of less than 7 (seven) years; and b) Is not a repetition of the crime. Explanation of Article 7 letter b of the SPPA Law regarding the repetition of criminal acts (recidive) states that "repeat of criminal acts committed by children, whether similar or dissimilar crimes, including those resolved through diversion."

The legal regulation related to criminal sanctions for children who repeat criminal acts is indeed a legal vacuum (*leemten in het recht*) with the existence of diversion which regulates children who have committed a crime for the first time, diversion is attempted while children who repeat criminal acts can be given criminal sanctions or actions unwritten, even though cases of repeat criminal acts by children often occur in society. So that judges in handling cases of children who repeat criminal acts for the imposition of punishment are returned to the Criminal Code where the sanction is in the form of a heavier prison sentence than before, namely plus one third with the consideration that the criminal act committed by the child who repeats the criminal act more than one time and the child is considered to have received a court decision that has permanent legal force (*inkracht van gewijsde*) for the criminal act he has committed, so that the child has actually received a warning first. Therefore, the criminal punishment system in Law Number 1 of 1946 concerning the Criminal Code (KUHP) for child recidivists is not clearly regulated, and the SPPA Law does not recognize the imposition of criminal penalties for child recidivists.

As explained above, the legislators in this case failed to formulate a norm, so that the legal rules are unclear, incomplete or open to multiple interpretations, therefore efforts are needed to overcome the legal vacuum (*leemten in het recht*) related to the types of punishment imposed on children who commit repeated crimes. As an alternative to overcome the legal vacuum (*leemten in het recht*), we must adhere to the legal principle of *ius curia novit*. With this principle, it must be seen that there must be no legal vacuum,

therefore the law must be found through legal discovery (*rechtsvinding*). Efforts to overcome the above problems can be taken by means of legal discovery where legal discovery includes the following things: First, perfecting existing norms. Second, optimizing existing norms and Third, restructuring existing norms.

Based on the problems above, this study aims to find out, understand, and analyze the following: (1) Regulation of the settlement of cases of children who repeat criminal acts; (2) Forms of repeat criminal acts of children; (3) Imposition of criminal sanctions on children who repeat criminal acts. The first and second questions will explain the concept of regulation of several laws and regulations in Indonesia. Finally, the third question will ask about the impact of imposing sanctions on children who repeat criminal acts.

II. Research Methods

This study uses a normative legal research method with a statutory and conceptual approach by analyzing primary and secondary legal materials. Primary legal materials include the laws and regulations of the Republic of Indonesia and all official documents containing legal provisions. Secondary legal materials come from various sources, including: written works or opinions from leading legal scholars regarding recidivists of juvenile crimes in Indonesia and in criminal law in general, journal articles and websites that complement primary legal sources. The conceptual approach is carried out to understand the views and doctrines that develop in legal science. This approach is very important because by understanding the views/doctrines that develop in legal science, it can be a basis for building legal arguments when resolving the legal issues that the author is researching.

III. Results and Discussion

3.1 Arrangements for Resolving Cases of Children Who Repeat Criminal Acts

Regulations in legal science are written laws. These written laws are also known as written laws. Laws and regulations are regulations that contain generally binding legal norms, therefore these regulations are made by state institutions or authorized officials. If these regulations are associated with the occurrence of recidiv, then these regulations are contained in laws and regulations, namely in the Criminal Code and outside the Criminal Code.

Repetition is a term used to refer to perpetrators who commit a crime for the second time or more. Every person who commits a crime will be subject to criminal sanctions in accordance with the provisions of the criminal laws that are violated. On the other hand, when someone who commits a crime and has been sentenced to criminal sanctions based on a judge's decision that has obtained permanent legal force (*inkracht van gewijsde*), and the person commits another crime, then this can be said to be a repetition of the crime or recidive.

This is different from *concursum realis*, where *concursum realis* means that the perpetrator commits more than one crime. According to Simons based on *Memorie van Toelichting*, the legislators in the case of *concursum realis* adopt the *tussen stelsel* system or transitional system. This means that the legislators distinguish between crimes that are threatened with similar principal penalties and crimes that are threatened with different principal penalties (Hiariej, 2024).

In Book I of the Criminal Code (KUHP) which regulates General Provisions, the issue of repeating criminal acts (recidiving) is not regulated in a separate article or chapter.

In the Criminal Code, the issue of recidiving is placed in a special chapter in Book II of the Criminal Code, namely Chapter XXXI, entitled "Rules on Repeating Criminal Acts Relating to Various Chapters". Repeating criminal acts is regulated in Book II, Title 31 (Articles 486, 487, and 488 of the Criminal Code). Due to repetition, the maximum sentence is increased by one third. However, there are several conditions that are set. First, the defendant must have served all or part of the prison sentence imposed on him. Second, the term is five years (Saleh, 1987).

Only certain crimes or classes of crimes can result in a repeat offense. Therefore, this problem is not discussed in the general part of Book I, but in the last articles of the last title of Book II, which discuss the various crimes that can be subject to the repeat offense provision. Note the following articles.

The provisions of Article 486 of the Criminal Code state:

The imprisonment specified in Article 127, 204 first paragraph, 244-248, 253-260 bis, 263, 264, 266-268, 274, 362, 363, 365 first, second and third paragraphs, 368 first and second paragraphs as referred to in the second and third paragraphs of Article 365, Article 369, 372, 374, 375, 378, 380, 381-383 385-388, 397, 399, 400, 402, 415, 417, 425, 432 last paragraph, 452, 466, 480 and 481, as well as imprisonment for a certain period of time specified in Article 204 second paragraph, Article 365 paragraph 4th, and Article 368 paragraph two, as far as is meant in Article 365 paragraph four, may be increased by one third, if at the time of committing the crime five years have not yet passed since the execution of the sentence imposed on him in whole or in part because of one of the crimes based on the aforementioned articles, or because of one of the crimes based on one of the articles in Articles 140, 143, 145, and 149 of the Military Criminal Code, or since the sentence became completely void (*kwijtgescholde*), or if at the time of committing the crime, the authority to execute the sentence had not yet expired.

Article 487 of the Criminal Code states:

The imprisonment specified in Article 130 paragraph 1, 131, 133, 140 paragraph 1, 353-355, 438-443, 459, and 460, as well as the imprisonment for a certain period specified in Article 104, 105, 130 paragraph 2 and 3, 140 paragraph 2 and 3, 339, 340, and 444, may be increased by one third. If at the time of committing the crime five years have not yet passed since the completion of all or part of the prison sentence imposed on him for committing one of the crimes based on the articles mentioned above, or for committing one of the crimes based on Article 106 paragraphs 2 and 3, 107 paragraphs 2 and 3, 108 paragraph two, 109, as long as the crime committed or the accompanying act results in injury or death, Article 131 paragraphs two and three, 137 and 138 of the Military Criminal Code, or if the sentence imposed on him has been completely abolished, or if at the time of committing the crime, the authority to carry out the sentence has not yet expired.

Then in Article 488 of the Criminal Code it is stated:

The punishment stipulated in articles 134-138, 142-144, 207, 208, 310-321, 483, and 484 may be increased by one third, if at the time of committing the crime five years have not yet passed since the execution of all or part of the punishment imposed on him for one of the crimes described in these articles, or since the judge's decision which has permanent legal force, or if at the time of committing the crime the authority to execute the punishment has not yet expired.

It should be explained that in addition to the general provisions regarding the repetition of criminal acts regulated in Articles 486, 487, 488 of the Criminal Code, there are several Articles in the Criminal Code that regulate the aggravation or increase in punishment based on the repetition of criminal acts, such as those regulated in Article 137 paragraph (2), Article 216 paragraph (3), Article 489 paragraph (1), Article 492 paragraph

(2), Article 523 paragraph (2), Article 536 paragraph (2), Article 536 paragraph (2), Article 3 and Article 4 Ned. WvS, where the elapsed time period is shorter (Hamzah, 2019).

Recidive against certain crimes that fall into one “group of types” regulated in Articles 486, 487 and 488 of the Criminal Code as explained above. The group of types of crimes in Article 486 of the Criminal Code generally concerns crimes against property and forgery:

- Article 244-248 of the Criminal Code (counterfeiting of currency).
- Article 263-264 of the Criminal Code (forgery of documents).
- Articles 362, 363 and 365 of the Criminal Code (theft).
- Article 368 of the Criminal Code (extortion). - Article 369 of the Criminal Code (threats).
- Articles 372, 374 and 375 of the Criminal Code (embezzlement).
- Article 378 of the Criminal Code (fraud).
- Article 415, 417, 425 or 432 of the Criminal Code (crimes of office).
- Article 480 or 481 of the Criminal Code (receiving stolen goods).

The group of types of crimes in Article 487 of the Criminal Code, generally concerns crimes against people, namely:

- Article 131, 140 or 141 of the Criminal Code (attack and treason against the Head of State).
- Article 338, 339 or 340 of the Criminal Code (murder).
- Article 341 or 342 of the Criminal Code (child murder).
- Article 344 of the Criminal Code (euthanasia).
- Article 347-348 of the Criminal Code (abortion).
- Article 351, 353, 354 or 355 of the Criminal Code (assault).
- Article 459-460 of the Criminal Code (insubordination).

Meanwhile, the types of crimes in Article 488 generally concern crimes of insult and those related to publishing/printing, namely:

- Article 134 or 137 of the Criminal Code (insulting the President/Vice President).
- Article 142 or 144 of the Criminal Code (insulting the Head of a friendly State).
- Article 207 or 208 of the Criminal Code (insulting the authorities of a public body).
- Article 483 or 484 of the Criminal Code (publishing/printing crimes).

There are 14 types of violations in Book III of the Criminal Code which, if repeated, can be grounds for increased criminal penalties, namely violations of:

- Article 489 of the Criminal Code (mischief against persons or property).
- Article 492 of the Criminal Code (entering in public obstructing traffic/disturbing the order and safety of others).
- Article 495 of the Criminal Code (setting traps/tools to kill wild animals without permission).
- Article 501 of the Criminal Code (selling, etc., food/drinks that are counterfeit, rotten or come from sick or dead livestock).
- Article 512 of the Criminal Code (conducting a search without obligation/authority or exceeding the limits of authority).
- Article 516 of the Criminal Code (providing accommodation without a guest register/record or not showing the register to an official who requests it).
- Article 517 of the Criminal Code (purchasing military personnel's belongings and so on without permission).
- Article 530 of the Criminal Code (religious officials who perform a marriage ceremony before it has been stated to him that the ceremony has been carried out before a civil registry official).

- Article 536 of the Criminal Code (being drunk on a public road).
- Article 540 of the Criminal Code (using animals beyond their strength or hurting them).
- Article 541 of the Criminal Code (using a draft horse that has not changed gear).
- Article 544 of the Criminal Code (holding cock/cricket fights on public roads without permission).
- Article 545 of the Criminal Code (working as a fortune teller).
- Article 549 of the Criminal Code (allowing livestock to roam in prohibited gardens/land).

In addition to the provisions on repetition contained in the Criminal Code, there are also repetitions of criminal acts regulated outside the Criminal Code, namely in Law Number 35 of 2009 concerning Narcotics, Law Number 5 of 1997 concerning Psychotropics, and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The Narcotics Law regulates this in Article 144 paragraph (1) which in essence determines that anyone who within a period of three years commits a repeat narcotics crime, their sentence will be increased by one third.

The difference with the regulation of repeating criminal acts in the Psychotropic Law is regarding the time period. Article 72 of the Psychotropic Law stipulates that if a psychotropic crime is committed by a child who is under eighteen years old and unmarried or a person who has received a pardon or at the time of committing the crime has not passed 2 (two) years since completing all or part of the prison sentence imposed on him, the sentence is increased by one third of the maximum sentence threatened for the crime.

3.2 Forms of Repetition of Juvenile Criminal Acts

The perpetrator in this case is a human, as we have known that humans are legal subjects who can be held accountable for their actions. What is said to be responsible is that the perpetrator has the ability to be responsible for the crime he committed (Ma'aly, 2013). Handling criminal acts that occur in Indonesia is basically a long road. Most of these cases are carried out in society without involving law enforcement institutions or out-of-court settlements by members of the community themselves. Recurrence of criminal acts is divided into general recidivism and special recidivism. General recidivism is found in the French Penal Code of 1810 and special recidivism is found in the German Penal Code. According to the first system, any repetition of a crime after committing a crime results in an increased punishment; according to the second system, only the repetition of a similar crime results in an increased punishment. Our Penal Code follows the second system (Saleh, 1987).

Theoretically, there are three forms of repetition of acts, regarding provisions related to repetition, this is regulated in Articles 486-488 of the Criminal Code, where based on this, repetition of this criminal act is divided into several forms, namely:

First, General Recidive. Repetition of a crime committed by a person who has committed a crime and then for the crime has been sentenced by a judge and served a sentence in a correctional institution. After completing his sentence, he is released and returns to society, but within a certain period of time determined by law the person commits another crime that is not the same crime. Second, Special Recidive. This recidive occurs when a person commits a crime and a judge has sentenced him to a sentence. After being sentenced and serving his sentence, the person then returns to society, but within a certain period of time determined by law, the person again commits the same crime as the previous crime. Third, stelsel tussen, namely when a person commits a crime and for the crime he has been sentenced by a judge. However, after serving his sentence and then being released, the person within a certain period of time determined by law commits a

crime and the crime committed is included in a certain group determined by law (Wahyuni, 2017).

The provisions regarding recidivism in the Criminal Code are divided into two, namely (a) what is called the *tussen stelsel* or transitional system. This is regulated in Article 487, Article 488, and Article 489 of the Criminal Code; and (b) special recidivism contained in several articles in the Criminal Code. This means that it only applies to certain crimes, not to all crimes. Article 486, Article 487, and Article 488 of the Criminal Code are referred to as the transitional system because they are neither general recidivism nor special recidivism. For general recidivism, a person has committed a crime and has been sentenced by a judge, then repeats the crime. This repetition is any crime, not necessarily the same as the first crime he has committed (Santoso, 2023).

Meanwhile, special recidivists are criminal acts that are committed (repeated) again must be the same as the previous criminal act. The Criminal Code does not use general recidivists, but rather special recidivists for several criminal acts, and transitional recidivists as regulated in Article 486, Article 487, and Article 488 of the Criminal Code. In these three articles, it is stipulated that a person's sentence can be increased by one third if: (a) they commit another criminal act in the same group of criminal acts, as regulated in Article 486, or regulated in Article 487, or regulated in Article 488; and (b) the second criminal act (committed again) by the perpetrator has not passed five years since he has completed all or part of they previous sentence.

In relation to efforts to resolve diversion, there are other diversion requirements regulated in Article 7 paragraph (2) letter b of the SPPA Law, namely not repeating criminal acts. The explanation of the *a quo* article states that, "Repeat of criminal acts in this provision is a criminal act committed by a Child, either a similar or dissimilar criminal act, including criminal acts resolved through diversion". This means that the form of repeat of criminal acts adopted in the SPPA Law is a form of repeat of criminal acts in general (*generale recidive*). Repeat of criminal acts in the Criminal Code is not regulated generally in Book I, but is regulated specifically for a group of criminal acts in Book II and Book III. The system of repeating criminal acts subject to increased punishment is only applied to repeating certain types of criminal acts and carried out within a certain period of time.

There are differences regarding a type of criminal act that has been sentenced and has permanent legal force (*inkracht van gewijsde*) so that it is qualified as a repeat (*recidive*), especially regarding the type of criminal act that has been committed, both those regulated in the Criminal Code, and those regulated outside the Criminal Code, especially the SPPA Law, so that this gives rise to different interpretations among law enforcement officers regarding the repeat system for child criminals.

Thus, if we look at the articles related to the forms of criminal repetition contained in the SPPA Law, it adopts the "Algemene Recidive" system or general repetition, meaning that it no longer distinguishes between the types of criminal acts or groups of types of criminal acts that are repeated. This is different from the current Criminal Code which still adopts a special form of criminal repetition (*Speciale Recidive*).

3.3 Imposing Criminal Sanctions on Children Who Repeat Criminal Acts

In Black's Law Dictionary punishment is defined as "A sanction such as a fine, penalty, imprisonment, or loss of property, rights, or privileges imposed on a person who has violated the law". Fitzgerald as quoted by Muladi and Barda Nawawi Arief briefly defines punishment as "the imposition of suffering for an offense". A simple definition is also put forward by Sudarto who states that punishment is suffering that is deliberately imposed on a person who commits an act and meets certain requirements ((Hiariej, 2024).

According to Herbert L. Packer, criminal sanctions are the best means available to deal with serious crimes or dangers and to deal with threats (Daud & Sopoyono, 2019).

As explained above, a very interesting issue is what type of punishment can be imposed on children who commit crimes (Purnamawati et al, 2024). Law No. 11 of 2012 concerning the Juvenile Criminal Justice System divides criminal sanctions and actions. The formulation of these two types of sanctions shows that Law No. 11 of 2012 concerning the Juvenile Criminal Justice System has regulated what is called a double track system. In other words, this law has expressly regulated the types of criminal sanctions and action sanctions at the same time, including the following:

1. The main criminal penalties for children consist of:
 - a. criminal warning
 - b. criminal with conditions;
 - 1) coaching outside the institution;
 - 2) community service; or
 - 3) supervision;
 - c. job training;
 - d. coaching within the institution; And
 - e. imprisonment.
2. Additional penalties consist of:
 - a. confiscation of profits obtained from criminal acts; or
 - b. fulfillment of customary obligations.

The following are the types of actions regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System:

1. Actions that can be imposed on children include:
 - a. return to parents/guardians
 - b. surrender to someone;
 - c. treatment in a mental hospital;
 - d. treatment at LPKS;
 - e. obligation to attend formal education and/or training organized by the government or private sector;
 - f. revocation of driving license; and/or
 - g. corrections due to criminal acts.

Regulations regarding children as repeat offenders (recidive) in the Criminal Code are basically not regulated, that the aggravation of the criminal or punishment imposed is generally with an aggravation plus 1/3 of the sentence. Actually, the SPPA Law is known for its diversion and restorative justice efforts, but these provisions do not apply to children as repeat offenders or recidivists. This means that the law does not recognize the imposition of additional punishments for children as repeat offenders and there are only punishments in the form of criminal sanctions and actions for what is done which are referred to as the term (double track system).

The regulation related to criminal sanctions for children who repeat this crime is indeed a legal vacuum (*leemten in het recht*). The criminalization system in the Criminal Code for children as repeat offenders is not regulated more clearly, likewise in the SPPA Law there is no criminal sentence or punishment for children who repeat. According to Aristia, this is not a reason not to provide protection for children who are in conflict with the law. The concept of child protection in the justice system criminal law in Indonesia, can be seen and implemented during the legal process (Musa et al, 2024).

The birth of the SPPA law demands a reorientation of the objectives of criminal punishment which has an impact on the functioning of the juvenile criminal justice system.

Punishment is an effort to make the convict aware so that he regrets his actions, and returns to being a good citizen, obeying the law, upholding moral, social and religious values, so that a safe, orderly and peaceful community life is achieved. Considering the special characteristics of children, both in terms of spiritual and physical, as well as in terms of criminal responsibility for their behavior and actions, it must be attempted so that the punishment of children, especially the punishment of deprivation of liberty, is the last resort (*ultimum remedium*) when other legal institutions fail.

Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and Law Number 39 of 1999 concerning Human Rights have regulated this concept. Article 14 of the Child Protection Law states that every child has the right to be raised by his/her own parents, unless there are valid reasons and/or legal regulations indicating that the separation is in the best interests of the child and is the last consideration. Furthermore, confirmation of this is also regulated in Article 16 paragraph (3) of the Child Protection Law and Article 66 paragraph (4) of the Human Rights Law. These regulations state that the arrest, detention, or criminal act of imprisonment of a child is only carried out in accordance with applicable law and can only be carried out as a last resort, this is based on an adage *van rechtswege nieting*; null and void, which means that a judicial process that is not carried out according to the law is null and void by law.

The form of increased punishment for children in the SPPA Law is indeed different from the form of increased punishment for other crimes and is generally in the form of an increase of one third of the maximum criminal threat. However, this has also drawn criticism from observers of child criminal law, who feel that such an increase is not in accordance with the purpose of the enactment of the SPPA Law, namely to provide protection for children.

Therefore, the repetition of criminal acts committed by children at this time requires explanation and alignment, if this is not followed up further then the imposition of punishment or criminal penalties on children who are perpetrators of criminal acts considering the philosophical purpose of the SPPA Law is to provide protection for children but the substance of the article is not to provide protection but rather is more directed towards the imposition of aggravating criminal penalties on children who commit criminal acts.

In the author's opinion, the imposition of criminal sanctions for children who repeat criminal acts as explained above is as follows. First, when a repeat criminal act is committed by a child and the age factor of the child is an adult, the imposition of criminal sanctions for children who repeat criminal acts should be applied to the Criminal Code. Second, when a repeat criminal act is committed by a child and the age factor of the child is not an adult, the imposition of criminal sanctions for children who repeat criminal acts should be applied to the SPPA Law. Therefore, in order to provide legal certainty in the future, the legislative and executive institutions will review the imposition of sanctions for children who repeat criminal acts.

IV. Conclusion

The regulation of the settlement of cases of children who repeat criminal acts in Indonesian criminal law is stated in several laws and regulations. First, it is regulated in Law Number 1 of 1946 concerning the Criminal Code, Second, it is regulated outside Law Number 1 of 1946 concerning the Criminal Code. Firstly, in Law Number 1 of 1946 concerning the Criminal Code, it is regulated in Articles 486, 487, and 488. While secondly, outside of Law Number 1 of 1946 concerning the Criminal Code, it is regulated

in Article 144 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, Article 72 of Law Number 5 of 1997 concerning Psychotropics, and Article 7 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, meaning that this regulation regulates the repetition of crimes and the increase in sentences for perpetrators who commit crimes more than once.

The form of repetition of juvenile criminal acts regulated in Law Number 1 of 1946 concerning the Criminal Code currently in force regulates the form of special repetition of acts (*Speciale Recidive*), meaning that what is meant by special repetition is the perpetrator of a criminal act who repeats his actions in a certain type of criminal act that is similar or the same as the previous criminal act that they have committed. This is different from the form of repetition of juvenile criminal acts regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, namely the form of general repetition (*generale recidive*), meaning that the repetition of criminal acts committed by children, whether of the same type or different types, is categorized as a repetition of criminal acts.

The imposition of criminal sanctions on children who commit repeat crimes that can be imposed on children can be in the form of criminal sanctions and actions, meaning that Law Number 11 of 2012 concerning the Juvenile Criminal Justice System regulates criminal sanctions as well as actions so that judges can choose whether to impose criminal sanctions or actions, however regarding criminal sanctions against children who commit repeat crimes (recidivists) there are absolutely no norms that regulate criminal sanctions, both contained in Law Number 1 of 1946 concerning the Criminal Code and in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, meaning that both in Law Number 1 of 1946 concerning the Criminal Code and in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, there are no articles that regulate expressive verbis regarding sanctions for children who commit repeat crimes.

References

- Daud, B.S & Sopoyono, E. (2019). Penerapan Sanksi Pidana Terhadap Pelaku Perdagangan Manusia (Human Trafficking) di Indonesia. *Jurnal Pembangunan Hukum Indonesia* Vol 1, no. 3: 361. <https://doi.org/10.14710/jphi.v1i3.352-365>.
- Djanggih, H. (2018). Konsepsi Perlindungan Hukum Bagi Anak sebagai Korban Kejahatan Siber Melalui Pendekatan Penal dan Non Penal. *Jurnal Mimbar Hukum* 30, no. 2: 317. <https://doi.org/10.22146/jmh.32017>.
- Hamzah, A. (2019). *Hukum Pidana Indonesia*. Jakarta: Sinar Grafika.
- Hiariej, E.O.S. (2024) *Prinsip-Prinsip Hukum Pidana: Edisi Penyesuaian KUHP Nasional*. Depok: Rajawali Pers, 2024.
- Ma'aly, M.H., Hidayati, R. & Andriyansyah, M.F, (2023). 'Pertanggungjawaban Pidana Terhadap Pelaku Tindak Pidana Penebangan Pohon Tanpa Izin Dalam Kawasan Hutan Lindung (Studi Putusan Nomor 76/Pid.B/LH/2022/PN Mlg).' *Jurnal Dinamika* 29, no. 1: 6449. <https://jim.unisma.ac.id/index.php/jdh/article/view/19392>.
- Munajat, M. (2022). *Hukum Pidana Anak di Indonesia*. Jakarta: Sinar Grafika, 2022.
- Musa, S.N., Badu, L.W., & Kaluku, J.A. (2024). Anak sebagai Pelaku Residivis Tindak Pidana Pencurian dan Perlindungan Hukumnya. *Jurnal Kajian Ilmu Sosial, Politik and Hukum* 1, no. 3: 19. <https://doi.org/10.62383/terang.v1i3.353>.
- Purnamawati, S.A., et al. (2024). Child-friendly justice and children's rights from criminal cases; Islamic Law notes. *Legality Jurnal Ilmiah Hukum* 32, No. 1: 144. <https://doi.org/10.22219/ljih.v32i1.31681>.
- Saleh, R. (1987). *Stelsel Pidana Indonesia*. Jakarta: Aksara Baru.

- Santoso, T. (2023). *Asas-Asas Hukum Pidana*. (Depok: Rajawali Pers.
- Sulistiyono, A & Isharyanto. (2018). *Sistem Peradilan di Indonesia Dalam Teori dan Praktik*. Depok: Prenada Media Group.
- Wahyuni, F. (2017). *Dasar-Dasar Hukum Pidana di Indonesia*. Tangerang: Nusantara Persada Utama, 2017.