

## AN ANALYSIS OF THE CHILD PENALTY SYSTEM FROM THE PERSPECTIVE OF JEREMY BENTHAM'S THEORY

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### ***Abstract***

*Children are the next generation of the nation who will continue the leadership relay so that they deserve the right to always learn and socialize and develop their ideas. But in reality the situation is reversed, children are expected to become superior and quality human resources instead now committing criminal acts. Therefore, the government pays special attention to children who commit criminal acts by changing the penal system in Indonesia. The prosecution system, which initially every criminal act committed by children must be accounted for in accordance with what was done or commonly referred to as the theory of retaliation, is now replaced with a restorative approach. If the child commits a criminal act, the responsibility given must be prioritized to ensure the interests of the child, in the restorative approach provides alternative solutions in the form of recovery and deliberation between the perpetrator, victim, and community. So that with the restorative approach, the realization of criminal goals is to realize what is useful or in accordance with the usefulness (effective) resulting from criminal imposition.*

*Keywords : Juvenile criminal justice system, juvenile penal system, Jeremy Betham theory.*

### **A. INTRODUCTION**

Children are a gift from God Almighty, endowed at birth with inherent rights and dignity that must be safeguarded and protected by law. They represent the future generation of the nation and serve as the foundation for the continuity of national and state affairs. As R.A. Koesnan states, in Criminal Justice System, "Children are young individuals, still in the early stages of life and personal development, and therefore, they are easily influenced by their environment." Hence, their growth and development must be fostered from an early age, guiding them towards positive pursuits. Unfortunately, many children today, especially those seeking to form their identities without adequate supervision from parents, often engage in harmful behaviors. Some even commit crimes that would not normally be considered by adults. Experts argue that criminal behavior is often the result of an expectation gap or a lack of conformity between one's aspirations and the means available to achieve them.<sup>1</sup> Adolescence is widely recognized as a period of identity exploration, during which young individuals are inclined to experiment with new experiences. Moreover, criminal acts committed by juveniles are often regarded as a social phenomenon. Numerous factors contribute to juvenile delinquency. According to Ramli Atmassmita, as cited in the Journal of Legal Sovereignty, the

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<sup>1</sup> Nandang Sambas. *Pembaharuan Sistem Pemidanaan Anak di Indonesia*. (Yogyakarta: Graha Ilmu, 2010), 119

causes of delinquency or criminal behavior in juveniles can be attributed to two primary factors: internal and external factors.<sup>2</sup>

The internal factors are those that originate from within an individual, serving as the underlying causes for a child committing a crime. One such factor is intelligence, which plays a role in decision-making processes. It is commonly observed that children who engage in criminal behavior often possess lower intelligence levels, demonstrate poor academic performance, and have limited social insight, rendering them more susceptible to external influences and criminal activities. Another significant factor is age. As noted by Stephen Hunxitz, "age is a crucial factor in the causation of crime." Court records reveal that the majority of juvenile offenders are between the ages of 16 and 18, with 116 out of 134 juvenile inmates falling within this age range. During this period, individuals are often in the process of identity formation, and without proper guidance toward positive activities, they are more likely to become involved in criminal behavior. Gender also plays a role, with boys more prone to offenses such as theft, assault, and rape, while girls tend to commit infractions related to public order violations. Nevertheless, the percentage of male juvenile offenders remains significantly higher. Finally, the child's position within the family is another factor. Research into delinquency and crime in Indonesia indicates that many offenses are committed by first-born children or only children, particularly when they are the sole hope or support for their family. The added pressure and expectations placed upon these children often contribute to their involvement in criminal acts.

The second factor involves external circumstances, which are influences from outside the individual that contribute to a child committing a crime. One significant external factor is the family environment, including situations such as broken homes or unfavorable family conditions. Dysfunctional family circumstances extend beyond mere domestic conflict, and these disruptions can have a profound impact on a child's behavior.<sup>3</sup> The phenomenon of a broken home serves as a significant contributing factor to the lack of parental attention, which subsequently affects the educational guidance of children. In families where parents are preoccupied, children may experience frustration and psychological conflicts, conditions that can easily lead them towards engaging in criminal or deviant activities.

The role of education and school factors is pivotal, as schools serve as the second educational environment after the family. Therefore, schools bear responsibility for a child's education, encompassing both academic knowledge and moral or behavioral guidance. The rising incidents of juvenile delinquency often reflect deficiencies within the education system. A

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<sup>2</sup> I Dewa Putu Gede Anom Danujaya, "Formulasi Model Sistem Pemidanaan Anak Di Indonesia," *Jurnal Daulat Hukum* 1, no. 1 (2018), <https://doi.org/10.52166/mimbar.v2i2.1307>. Hlm. 110

<sup>3</sup> Danujaya.

substandard educational process can detrimentally affect children's educational development and, in many cases, become a contributing factor to juvenile delinquency. Similarly, social factors have a significant influence on juvenile misconduct. The social environment plays a crucial role, where increasingly liberal and unregulated societal norms impact children's development. Without proper control and enforcement of clear disciplinary boundaries, children are more susceptible to exposure to criminal behavior within their social interactions. The influence of mass media also serves as a critical factor. Media plays an essential role in disseminating knowledge and information. However, the propensity to engage in criminal behavior can arise from exposure to inappropriate content such as violent films, crime-related materials, and explicit imagery. The rapid advancement of information technology, coupled with easy access to such harmful content, can severely affect the psychological development of children and adolescents.

The issue of children has become increasingly important to examine in greater depth. The urgency of addressing children who commit criminal acts, or as referred to in the Law on the Juvenile Criminal Justice System as children in conflict with the law, necessitates thorough analysis. Therefore, in this paper, the author will discuss the juvenile criminal justice system in Indonesia, Jeremy Bentham's theory of punishment, and analyze the Indonesian juvenile justice system from the perspective of Bentham's theory of punishment.

## **B. RESEARCH METHODS**

This study employs a normative legal research method, primarily utilizing literature as its basis. The focus of this research is to examine and analyze relevant norms and theories. The sources of information utilized include books, statutes, regulations, journals, articles, and other pertinent materials. Upon thorough analysis of the issues at hand, conclusions will be drawn regarding the identified problems.

## **C. DISCUSSION**

### **1. Jeremy Bentham's Theory**

Punishment refers to the imposition of a penalty or the infliction of suffering on an individual who has violated the law, carried out by an authorized official in accordance with applicable legal provisions. This practice aims to fulfill the objectives of criminal law, specifically the intentional infliction of suffering upon individuals who have committed offenses. However, it is important to recognize that the act of punishing, or inflicting suffering, is fundamentally viewed as unjust or morally questionable, often perceived as a violation of human rights, even when executed under the authority of the state. Consequently, a justification

for such suffering is sought, which can be understood through the philosophical foundations of punishment.

According to Barda Nawawi Arief, the criminal justice system encompasses the legal regulations pertaining to criminal sanctions and penalties.<sup>4</sup> The criminal justice system, when analyzed from a functional perspective, can be interpreted as the comprehensive framework (legislation) that governs the enforcement and operationalization of criminal law in a concrete manner, thereby subjecting individuals to criminal (legal) sanctions.<sup>5</sup> The reform of criminal law should be pursued through a policy-oriented approach, as well as a value-oriented approach that considers the principles and values to be achieved.<sup>6</sup>

In the context of national law in Indonesia, Barda Nawawi articulated the objectives of law enforcement and criminalization, asserting that when a criminal case arises within a community, there is an inherent need for protection to mitigate potential losses and dangers. Consequently, the purposes of criminalization are defined as follows:

1. The primary objective of criminal law is to prevent and address criminal activities effectively.
2. Criminal law seeks to rehabilitate offenders and to modify and influence their conduct, thereby fostering compliance with legal standards and promoting their transformation into responsible and contributing members of society.
3. The criminal law serves as a preventive mechanism to avert vigilantism and arbitrary actions that occur outside the framework of established legal norms within society.
4. The criminal law must effectively address conflicts arising from criminal acts, restore social harmony, and provide a sense of peace within the community.

The concept of the purpose of punishment has led to the development of various philosophical foundations, resulting in the emergence of several theories regarding the objectives of punishment, namely the Theory of Retribution (retributive/absolute), the Theory of Purpose (utilitarian/relative), and the Combined Theory.

In this discussion, the author will concentrate on the purpose of punishment within the framework of utilitarian theory. Utilitarian theory, commonly referred to as relative theory, posits that the primary aim of punishment is to achieve public order and prevent criminal behavior. When an individual commits a crime, it is essential that they are held accountable

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<sup>4</sup> Barda Nawawi Arief, *Perkembangan Sistem Pemidanaan di Indonesia*, (Semarang: Penerbit Pustaka Magister 2011), 1.

<sup>5</sup> Syamsul Fatoni, *Pembaharuan Sistem Pemidanaan Perspektif Teoritis dan Pragmatis untuk Keadilan*, (Malang: Setara Press, 2016), 14.

<sup>6</sup> *Ibid* hal 16

for their actions and subjected to punishment in accordance with established legal provisions.

Within this theoretical framework, the punishment imposed upon the offender serves the dual purpose of protecting public order and imparting a clear message to the offender regarding the necessity of refraining from future criminal conduct. From this perspective, the author concludes that the punishment meted out to the offender has both internal and external impacts.

The internal impact is directly experienced by the offender, as the imposition of punishment is intended to foster a realization of their wrongdoing and to encourage reform concerning the violation or criminal act committed. It is anticipated that upon completion of their sentence, the offender will refrain from reoffending. Conversely, the external impact is felt by the community at large. By enforcing punishment upon the offender, the legal system instills a sense of security within the community, offering protection against future offenses. Additionally, such punitive measures serve as a cautionary lesson to the public, deterring them from engaging in similar conduct as that exhibited by the offender.

Jeremy Bentham, a prominent British legal scholar, asserted that the primary objective of law is to achieve what is deemed useful or aligned with the principle of utility, which emphasizes the effectiveness of imposing criminal penalties. The overarching aim of the law is to enhance societal welfare; consequently, all forms of suffering resulting from legal transgressions must be effectively mitigated and prevented.<sup>7</sup> Jeremy Bentham posited that the imposition of criminal penalties must adhere to certain principles.

1. When the imposition of a penalty is deemed unjustified, particularly in circumstances where no harm or suffering exists that could be mitigated or prevented.
2. Punishment may be deemed categorically ineffective in instances where it fails to prevent the damage or suffering resulting from criminal acts. Such ineffectiveness is particularly evident in cases involving cognitive impairments, insanity, or intoxication.
3. When the imposition of punishment yields negligible benefits or incurs excessive costs, resulting in harm that surpasses the preventive value of such punishment.
4. Punishment may be deemed unnecessary in circumstances where harm can be prevented or alleviated through means other than punitive measures.

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<sup>7</sup> Marli Candra and M. Jazil Rifqi, "Sanksi Kebiri Perspektif Penologi," *Al-Jinayah: Jurnal Hukum Pidana Islam* 7, no. 2 (2021).

## 2. The juvenile criminalization system in Indonesia.

Juvenile delinquency, as defined by Kartini Kartono, refers to the immoral conduct or criminal behavior exhibited by minors, which is indicative of a social pathology affecting children and adolescents due to social neglect. This neglect fosters the development of deviant behavioral patterns among the youth.<sup>8</sup>

The Convention on the Rights of the Child defines a "child" as any human being who has not yet attained the age of eighteen years, unless national law stipulates an earlier age of majority.<sup>9</sup> A person who has not yet attained the age of 18 years is considered a minor. Consequently, all behavior and actions undertaken by such individuals must be supervised by their parents or guardians. Article 298 of the Civil Code (KUHP) stipulates that parents have an obligation to care for and educate their children who are still minors.

According to Law Number 39 of 1999, human rights encompass the rights of children. The effective implementation of the obligations and responsibilities of parents, families, communities, governments, and the state to safeguard the welfare of children necessitates the establishment of a dedicated law on child protection as a legal foundation for fulfilling these duties. It is imperative that not only parents but also society and the state uphold and protect human rights in accordance with their respective obligations. Furthermore, the government is obligated to provide legal certainty through the enactment of regulations governing such protection. Therefore, the existence of a legal framework is essential for the state to optimally ensure the effective implementation of child protection measures.<sup>10</sup>

The statement is aligned with Law Number 23 of 2002 concerning Child Protection. Article 1, Number 2 defines a child as an individual who has not yet reached the age of 18 (eighteen) years, which includes an unborn child. This definition indicates that the protective measures referred to in the Law are to be implemented from the prenatal stage until the individual attains the age of 18 years.<sup>11</sup> The establishment of Law Number 23 of 2002 is closely linked to the influence of the Convention on the Rights of the Child and Law Number 39 of 1999 concerning Human Rights.

The Juvenile Justice System in Indonesia has undergone several modifications regarding its implementation. Initially, when a child committed a violation or crime, they were considered merely a "naughty child." According to Article 1, number 1, of Law Number 3 of 1997 concerning Juvenile Courts, a child is defined as an individual who, in the context of being a naughty child, has reached the age of eight (8) years but has not yet attained the age of eighteen

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<sup>8</sup> Kartini Kartono, *Patologi Sosial (2), Kenakalan Remaja*, (Jakarta: Rajawali Pers, 1992), 7

<sup>9</sup> Nikmah Rosidah, *Sistem Peradilan Pidana Anak, Pertama, Pustaka Yustisia* (Bandar Lampung, 2019). 4

<sup>10</sup> Undang-Undang Nomor 39 Tahun 1999

<sup>11</sup> "Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak," 2002.

(18) years and has never been married. In number 2 of the Law, a child is further defined as follows: :

- a. Juveniles who engage in criminal conduct.
- b. Children who engage in conduct deemed unlawful for minors shall be subject to the statutory provisions and other applicable legal regulations that are in effect within the relevant jurisdiction.

According to Law Number 3 of 1997, the age limit for juvenile delinquents is set between 8 to 12 years. When a child within this age range commits an offense or criminal act, he or she shall be regarded as an adult who has perpetrated a criminal act. The criminal penalties that may be imposed on the child shall not exceed one-half (1/2) of the maximum sentence applicable to adults. Furthermore, the judicial actions that may be taken against juvenile delinquents include:

- a. Return to the care of parents, guardians, or foster parents.
- b. Submit to the state in order to engage in education, training, and vocational development programs; or
- c. Transfer to the Department of Social Affairs or to social organizations engaged in educational development and vocational training.

Nonetheless, the objective of criminalization under Law Number 3 of 1997 remains aligned with the retributive concept, commonly referred to as the theory of retribution. Every individual who commits an offense, regardless of age, whether an adult or a minor, is subject to punishment commensurate with the crime committed.

Following the reform of the child criminal justice system in Indonesia, there has been a significant departure from the retributive theory. Law Number 11 of 2012 concerning the Child Criminal Justice System no longer categorizes children who commit offenses as 'naughty children.' Instead, it adopts the terminology 'children in conflict with the law.' Article 1, paragraph 2, defines 'Children in Conflict with the Law' as those who are involved in legal disputes, victims of criminal acts, or witnesses to such acts. Furthermore, Article 1, paragraph 3, establishes the age threshold for individuals in conflict with the law, specifying that such individuals must be between 12 (twelve) and 18 (eighteen) years old at the time of the alleged offense. Consequently, it can be asserted that the criteria for subjecting children who commit offenses to criminal penalties is contingent upon them reaching the age of 12 to 18 years; individuals under 12 years of age are exempt from criminal liability.<sup>12</sup>

The protection and fulfillment of children's rights are more assured under Law Number 11 of 2012. Article 2 stipulates that the juvenile criminal justice system must be founded upon:

- a. protection;

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<sup>12</sup> "Undang-Undang Nomor 11 Tahun 2012," .

- b. justice;
- c. nondiscrimination;
- d. best interests of the child;
- e. respect for the child's opinion;
- f. survival and development of the child;
- g. guidance and development of the child;
- h. proportionality;
- i. deprivation of liberty and criminalization as a last resort; and
- j. avoidance of retaliation.

The existence of the law signifies that the government is committed to addressing child criminal acts with due diligence. When a child is in conflict with the law, they are still recognized as a minor and are entitled to their rights. Furthermore, there is a clear distinction made between adult offenders and juvenile offenders, prohibiting the application of the death penalty or life imprisonment for children.

The imposition of criminal sanctions serves not only as a means to deter individuals from violating the law but also as a mechanism to ensure compliance with societal norms and the adherence to established legal standards.<sup>13</sup> The philosophy of sentencing and the criminalization of children under Law Number 3 of 1997 is rooted in a retributive paradigm, which emphasizes the predominance of criminal sanctions in the form of restrictions or deprivation of liberty. However, following the enactment of the Child Criminal Justice System Law, this paradigm has transitioned to a restorative philosophy that prioritizes the restoration of conditions resulting from the violations that occur.

The juvenile criminalization system as outlined in Law Number 11 of 2012 emphasizes a restorative approach. This approach aims to address conflicts involving victims, offenders, third parties, law enforcement, and the community, with the goal of enhancing the welfare of the offenders, victims, and the community at large. Article 5, paragraph 3 stipulates that the system implemented in Indonesia must prioritize diversion at the stages of investigation, prosecution, and examination of juvenile cases in the district court. However, for diversion to be pursued, certain criteria must be met: specifically, the imposed criminal sentence must be less than seven (7) years, and the offense must not involve recidivism.

The penalties applicable to minors may encompass both criminal sanctions and corrective measures. Article 71 of Law Number 11 of 2012 stipulates that the penalties that may be imposed on minors comprise principal and additional penalties. The principal penalties for minors include reprimands; Islamic punishments (in the form of rehabilitative measures outside

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<sup>13</sup> Nandang Sambas, *Pembaharuan Sistem pemidanaan Anak di Indonesia*., hal. 211



of institutional settings; community service; or supervision); vocational training; rehabilitation within an institution; and incarceration. The incarceration specified in this Law that may be imposed on minors shall not exceed one-half ( $\frac{1}{2}$ ) of the maximum penalty applicable to adults. However, in instances where the offense committed is punishable by the death penalty or life imprisonment, the maximum penalty that may be imposed shall be a term of imprisonment not exceeding ten (10) years. Additional penalties consist of the confiscation of profits derived from the criminal activity or the fulfillment of customary obligations.

In addition to criminal sanctions, minors may also be subjected to sanctions in the form of corrective actions. Such corrective action sanctions may be imposed if the offense committed is punishable by a minimum of seven years' imprisonment. Moreover, if a minor commits an offense and is under the age of fourteen, they shall automatically be subjected to corrective action sanctions. According to the Child Criminal Justice System Law, corrective action sanctions may include: return to parents or guardians; transfer of custody to another individual; treatment in a mental health facility; rehabilitation at a Social Welfare Institution (LPKS); mandatory attendance in formal education and/or training programs provided by governmental or private entities; revocation of driving privileges; and measures for rehabilitation resulting from criminal behavior.<sup>14</sup>

### **3. Application of Jeremy Bentham's Theory within the Child Criminal Justice System in Indonesia.**

According to Mulyadi, the Juvenile Criminal Justice System is defined as a judicial process or framework that utilizes the criminal justice system as its primary instrument, encompassing material criminal law, formal criminal law, and the law governing criminal enforcement.<sup>15</sup> Romli Atmasaamita delineates the concept of the juvenile criminal justice system into two distinct categories: the 'criminal justice process' and the 'criminal justice system.' The term 'criminal justice process' refers to the entire sequence of decisions encountered by a suspect within a framework that ultimately leads to the adjudication of his sentence. Conversely, the 'criminal justice system' encompasses the interconnectedness of decisions made by each agency participating in the criminal justice process.<sup>16</sup>

Article 71 of Law Number 11 of 2012 delineates the criminal penalties applicable to children who are in conflict with the law. Furthermore, the law stipulates that prior to the issuance of a verdict by the judge, all stages of the examination must endeavor to pursue a diversionary resolution. This approach aims to mitigate the adverse effects experienced by

<sup>14</sup> M Nasir Djami, *Anak Bukan untuk Dihukum Catatan Pembahasan UU Sistem Peradilan Pidana Anak (UU SPPA)*, (Jakarta Timur: Sinar Grafika, 2013), 142

<sup>15</sup> Muladi, *Kapita Selekta Sistem Peradilan Pidana*, (Semarang: Badan Penerbitan Universitas Diponegoro, 2002), 4

<sup>16</sup> Romli Atmasaamita, *Sistem Peradilan Pidana, Perspektif Eksistensialisme dan Abolisitionisme*, (Bandung: Bina Cipta, 1996), 14

children in conflict with the law and to decrease recidivism rates. The negative consequences often inflicted upon these children by society include stigmatization, violations of their rights (such as the right to education, the right to health, the right to engage in creative activities, among others), as well as the potential emergence of criminal groups during their time in prison or detention centers.

In the Indonesian juvenile justice system, the imposition of a prison sentence is regarded as a measure of last resort and only applicable in cases of necessity (*ultimum remedium*). However, research conducted by the Institute for Criminal Justice Reform (ICRJ) up to June 2017 indicates that the number of children registered at the UPT managed by the Directorate General of Corrections (Ditjen PAS) stood at 910, an increase from 907 in 2016. This figure excludes children under the management of the police. Additionally, the total number of juvenile inmates is 2,559, distributed across 33 regions in Indonesia, reflecting an increase from approximately 2,320 children in 2016.

The 2016 research conducted by the Indonesian Child Rights Joint Committee (ICRJ) indicates a concerning prevalence of imprisonment among children. The findings reveal that a significant majority of children involved in legal proceedings are subjected to detention, with only 7% not facing incarceration. This practice contravenes the principles outlined in the Law on the Criminal Justice System for Children (SPPA), which stipulates that detention should be considered a last resort. Furthermore, the ICRJ study highlights that most judges continue to impose criminal penalties on minors, despite their discretion to consider alternative measures, including rehabilitative actions. In fact, only 155 children received decisions involving rehabilitative actions, of which 13% were subsequently reunited with their parents, while merely 1% underwent rehabilitation programs.

The utilitarian theory proposed by Jeremy Bentham elucidates that punishment is imposed on individuals with the objective of achieving outcomes deemed useful or effective, thereby enhancing the welfare of the community through the administration of such penalties. This approach aligns with the intent of Law Number 11 of 2012, which aims to collaboratively seek equitable solutions that prioritize restoration to the original state rather than retribution. Furthermore, when rendering a decision, judges are required to first consider the social research report prepared by the Community Guidance Officer. This report serves to provide insights into the child's personal circumstances, as well as their familial and environmental relationships. By taking these factors into account, judges can determine what form of punishment would be most effective and beneficial for all parties involved..

Nevertheless, the implementation of the child criminal justice system in Indonesia, when examined through the lens of Jeremy Bentham's theory, can still be deemed inappropriate. The

objectives of the child criminal justice system in Indonesia, as delineated in the Juvenile Justice System Law, are ostensibly aligned with Bentham's principles. Legally, the framework for addressing juvenile offenders under the Juvenile Criminal Justice System Law is systematic. At every stage of the process, from investigation to pre-verdict hearings, law enforcement officials are mandated to pursue diversionary measures. In instances where law enforcement officers fail to seek diversion, the Juvenile Justice System Law stipulates that they may face administrative sanctions and, in more severe cases, criminal penalties. However, empirical evidence suggests a contrary reality, as there continues to be an increase in the number of criminal offenses committed by minors each year.

The objectives of the anticipated sanctions outlined in the SPPA Law have not been realized in practice. Consequently, the penalties imposed fail to produce a significant impact or effect that is perceptible. Empirical evidence indicates that the norms embedded within the Law are appropriately formulated; however, the necessary facilities and infrastructure, along with law enforcement personnel, are inadequately prepared to facilitate a shift from a retributive paradigm to a restorative one. Furthermore, various elements, including the findings of the ICRJ survey conducted in 2014 titled 'Prospects for the Implementation of the Juvenile Criminal Justice System in Indonesia,' reveal several discrepancies between the legal provisions and the realities observed on the ground.<sup>17</sup>

1. The protracted formulation of the ancillary regulations during the initial implementation phase of the Child Criminal Justice System Law.
2. Community research (litmas) continues to rely on the subjective judgment of the presiding judge.
3. Essential Provisions for Assistance, Access to Legal Counsel, and Legal Aid Services
4. The preparation of judges and the judiciary, particularly regarding the establishment of specialized judges for children, remains a rare occurrence.
5. A facility designated for the detention and rehabilitation of children in need of care and protection.
6. Oversight and Grievance Mechanism for Involuntary Detention.

#### **D. CONCLUSION**

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<sup>17</sup> Genoveva Alicia K.S. Maya & Erasmus A.T. Napitupulu, "Anak dalam Ancaman Penjara: Potret Pelaksanaan UU SPPA 2018 (Riset putusan peradilan Anak se-DKI Jakarta 2018)", (Jakarta: Institute for Criminal Justice Reform, 2019), 12-25.

The juvenile punishment system in Indonesia, as established by Law Number 11 of 2012, has undergone a significant conceptual transformation. Initially, the system adopted a retributive approach, whereby every child who committed an offense was subjected to punishment commensurate with their actions, treating juvenile offenders similarly to adult criminals. However, recent amendments have shifted the paradigm towards a restorative approach. This framework emphasizes the restoration of children in conflict with the law, facilitating their reintegration into society upon completion of their sentences. Furthermore, it aims to eliminate the stigma of being labeled as 'troublesome children' by society for those who have encountered legal issues.

In theory, this approach aligns with the utilitarian principles articulated by Jeremy Bentham. Nevertheless, empirical evidence indicates that the objectives of the juvenile punishment system remain largely unfulfilled. This is exemplified by the persistently high incidence of criminal behavior among minors each year. Consequently, the existing juvenile punishment framework has yet to effectively mitigate the prevalence of juvenile delinquency. It is imperative to recognize that children should not merely be subjected to punitive measures; rather, they require guidance and support to foster their growth and development into normal, healthy, and intelligent individuals

## E. BIBLIOGRAPHY

- Alicia, Genoveva K.S. Maya & Erasmus A.T. Napitupulu, "Anak dalam Ancaman Penjara: Potret Pelaksanaan UU SPPA 2018 (Riset putusan peradilan Anak se-DKI Jakarta 2018)", Jakarta: Institute for Criminal Justice Reform, 2019
- Arief, Barda Nawawi, *Perkembangan Sistem Pemidanaan di Indonesia*, Semarang: Penerbit Pustaka Magister, 2011
- Atmasasmita, Romli, *Sistem Peradilan Pidana, Perspektif Eksistensialisme dan Abolisilisionisme*, (Bandung: Bina Cipta, 1996
- Candra, Marli and M. Jazil Rifqi, "Sanksi Kebiri Perspektif Penologi," *Al-Jinayah: Jurnal Hukum Pidana Islam* 7, no. 2 (2021).
- Danujaya , I Dewa Putu Gede Anom, "Formulasi Model Sistem Pemidanaan Anak Di Indonesia," *Jurnal Daulat Hukum* 1, no. 1 (2018), <https://doi.org/10.52166/mimbar.v2i2.1307>.
- Djami, M Nasir, *Anak Bukan untuk Dihukum Catatan Pembahasan UU Sistem Peradilan Pidana Anak (UU SPPA)*, Jakarta Timur: Sinar Grafika, 2013
- Fatoni, Syamsul, *Pembaharuan Sistem Pemidanaan Perspektif Teoritis dan Pragmatis untuk Keadilan*, Malang: Setara Press, 2016
- Kartono, Kartini, *Patologi Sosial (2), Kenakalan Remaja*, Jakarta: Rajawali Pers, 1992
- Sambas, Nandang. *Pembaharuan Sistem Pemidanaan Anak di Indonesia*. Yogyakarta: Graha Ilmu, 2010

Muladi, *Kapita Selekta Ssistem Peradilan Pidana*, Semarang: Badan Penerbitan Universitas Diponegoro, 2002

Rosidah, Nikmah, *Sistem Peradilan Pidana Anak, Pertama, Pustaka Yustisiaa*, Bandar Lampung, 2019).

Undang-Undang Nomor 39 Tahun 1999

“Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak,” 2002.

“Undang-Undang Nomor 11 Tahun 2012,” .