



Excusing Child Offenders: A Victim Justice Perspective

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Article	Abstract
<p>Keywords: Child; Children Rights; Exculpatory Reason; Juvenile Justice System</p> <p>Article History Received: May 30, 2024; Reviewed: Jul 7, 2024; Accepted: Sep 24, 2024; Published: Sep 24, 2024.</p>	<p><i>This paper aims to explore the essence of the excuse defense for child offenders and justice for victims. In uncovering its meaning, doctrinal research is conducted with a legislative and conceptual approach, accompanied by a teleological interpretation of legal materials. The research findings indicate that the excuse defense is granted to children under the age of 12 who commit criminal offenses not because their actions are forgiven, but due to their inability to form intent or comprehend the consequences of their actions. On the other hand, victims, as the injured party, must also receive justice. The author believes that the government should reconsider the application of the excuse defense for children. The government must also be more selective in determining appropriate sanctions for children, based on the nature of the crime committed. If the child's actions result in significant material or immaterial harm, restorative justice may serve as a viable option to balance the interests of both parties, restore the victim's situation, and divert the child from judicial proceedings, thereby achieving a win-win solution.</i></p>



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INTRODUCTION

Criminal responsibility for children, as governed by Law Number 11 of 2012 concerning the Judicial System of Juvenile Crime (henceforth referred to as UU SPPA), is determined based on the age at which the child commits the criminal act. Children have characteristics significantly different from adults, necessitating special attention due to their physical and mental conditions not being fully mature (Satya Prema et al., 2020).

If a criminal act is committed by a child before reaching the age of 18 and is brought to court after the child exceeds the age of 18 but has not yet reached the age of 21, the child will still be brought to a juvenile court (Article 20 UU SPPA). If a child under the age of 12 commits or is suspected of committing a criminal act, the investigator or community supervisor decides to either hand them over to the parents/guardians or include them in an educational and developmental program at a government agency or social welfare organisation handling social welfare matters (Article 21 UU SPPA in conjunction with Article 67 of Government Regulation Number 65 of 2015 concerning the Implementation of Diversion and Handling of Children Under the Age of 12). In adult cases (ages 18 and over), there is no requirement for parental/guardian accompaniment at every level of investigation.

Article 21 of the UU SPPA is reinforced by Law Number 1 of 2023 concerning the National Penal Code (henceforth referred to as the Criminal Code) in Article 40 asserting that "Criminal responsibility cannot be imposed on a child who at the time of committing the Crime is under the age of 12 (twelve years)." Criminal responsibility leads to the sentencing of a person if they have committed a crime and meets its aspects (Kanter & Sianturi, 2018). Criminal responsibility plays a crucial role in determining whether a person can be prosecuted, so the imposition of a sentence does not necessarily follow the existence of a criminal act by a person. Eddy O.S Hiariej argues that a crime has several specific elements, including (Hiariej, 2022).

1. Suffering intentionally inflicted by the state on a person;
2. As a reaction to someone's act that violates criminal law;
3. Criminal sanctions given by the state regulated and specified in detail.

Criminal responsibility is a mechanism created to react to the violation of a specific act that has been agreed upon (Chairul Huda, 2015). Liability is closely and inseparably linked to fault. The principle of "no penalty without fault" implies that punishment can only be given to someone who has a fault, either in the form of intent (*dolus*) or negligence (*culpa*). A person is said to be responsible if they are able to know that their action is contrary to the law and its consequences are also prohibited by law and able to determine their will over that action (Santoso, 2023). In other words, a child's maturity of thought can be one factor causing them to commit a crime (Maharani, 2023). If a perpetrator of a crime is unable to know that their act is forbidden and unable to determine their will, then the law automatically considers them incapable of being responsible, so a criminal sanction cannot be imposed on them. Under the Criminal Code, the following are several specific circumstances that render a person incapable of being liable:

1. Mental and/or intellectual disabilities (Articles 38 and 39 of the Criminal Code);
2. A child as a perpetrator of a crime (Article 40 of the Criminal Code);

3. The existence of exculpatory reasons such as coercion, excessive self-defence, and orders given without authority (Articles 42, 43, and 44 of the Criminal Code).

For individuals who are deemed incapable of responsibility, the Dutch Criminal Code (WvS) uses the term "mental impairment in development or disturbance due to illness," as stated in Article 44(1), whereas the Criminal Code uses the terms "mental disability and/or intellectual disability" in Articles 38 and 39. Additionally, juveniles as perpetrators of criminal acts are also considered incapable of responsibility, as outlined in Article 40 of the Criminal Code. Excusing reasons such as duress, excessive self-defense, and unlawful official orders also serve as grounds for eliminating an individual's criminal liability. As science and technology advance, so too does criminal activity. Not only have the types of crimes evolved, but also the perpetrators. When the perpetrator of a crime is a child, it is crucial to recognise that the legal system treats children differently from adults (Citra & Hapsari, 2023). A child as a perpetrator of a crime must be dealt with according to specific provisions as set out in the UU SPPA, further reinforced by Article 40 of the Criminal Code, which grants special consideration to children in the criminal responsibility process.

In the juvenile justice process, in addition to a special juvenile judge, the child's rights, the principles of juvenile justice, and other specific differences from the adult justice process must also be considered (Purnamawati et al., 2024). Fulfilling the rights of children in the judicial process is an effort to protect children from discrimination, for their growth and the best interest of the child. Child protection has become a focal point of international attention since the end of World War II. International instruments play a crucial role in protecting a child's basic rights. This is reflected in regulations contained in the Universal Declaration of Human Rights (UDHR) established on December 10, 1948, which is subsequently commemorated as Human Rights Day annually. Since 1948, the Universal Declaration of Human Rights (UDHR) has included children's rights as part of human rights. As a country that upholds legal norms and human rights, the Indonesian government has a central role in ensuring that every citizen receives protection for their rights (Simatupang, 2010). In Indonesia, Law Number 39 of 1999 concerning Human Rights specifically includes provisions on the child's rights. Articles 52 through 66 outline various children's rights as follows:

1. The right to protection from parents;
2. The right to protection from family, community, and state;
3. The right to life and to sustain life;
4. The right to receive care, education, training, and special assistance at the state's expense to ensure their life is in accordance with dignity and self-respect;
5. The right to worship;
6. The right to guardianship by others;
7. The right to legal protection;

8. The right not to be separated from their parents.

Regarding the rights of children, particularly those who are criminal offenders, the age of the child is crucial in resolving juvenile cases, according to the UU SPPA (R Wiyono, 2022). Article 21(1) of the UU SPPA states:

In cases where a child under the age of 12 (twelve) commits or is suspected of committing a criminal act, the Investigator, Community Supervisor, and Professional Social Worker shall decide to:

1. Return the child to the parents/guardian; or
2. Involve the child in educational, developmental, and mentoring programs at government agencies or social welfare care institutions (LPKS) handling social welfare at the central and regional levels for a maximum of 6 (six) months.

Furthermore, Article 82 of the UU SPPA stipulates that for children who are 12 (twelve) years old but under 14 (fourteen) years old, the child offender can only be given sanctions in the form of the following measures:

1. Returning to the parents/Guardian;
2. Handing over to a person;
3. Care in a mental hospital;
4. Care in a Social Welfare Care Institution;
5. Obligation to attend formal education and/or training conducted by the government or private bodies;
6. Revocation of the driver's license; and/or
7. Reparation for the damage caused by the criminal act;

Based on the provisions mentioned above, it is evident that according to the UU SPPA, sanctions in the form of actions or penalties cannot be imposed on child offenders who are under the age of 12 (twelve) years. For children aged 12 to 14 years, only sanctions in the form of actions are permissible. The UU SPPA stipulates those criminal penalties can only be given to children over 14 (fourteen) years old and only as a last resort after the diversion process fails to reach an agreement.

The stipulations in the UU SPPA concerning the criminal responsibility of child offenders are underscored by the Criminal Code, particularly in Article 40, which states:

“Criminal responsibility cannot be imposed on a child who at the time of committing the crime is under 12 (twelve) years old.”

Additionally, Article 41 of the Criminal Code states:

“In cases where a child under the age of 12 (twelve) years commits or is suspected of committing a criminal act, the Investigator, Community Supervisor, and Professional Social Worker shall decide to:

1. Return the child to the parents/Guardian; or
2. Involve the child in educational, developmental, and mentoring programs at government agencies or Social Welfare Care Institutions (LPKS) in agencies

handling social welfare matters, both at the central and regional levels, for a maximum of 6 (six) months.”

In the Criminal Code, the criminal responsibility of child offenders under the age of 12 (twelve) is explicitly included in the category of Exculpatory Reasons. This differentiates it from the provisions regulated in the UU SPPA as a special regulation concerning the resolution of cases involving children in conflict with the law. The UU SPPA does not affirm this category, and thus, the consequence of this regulation in the Criminal Code is that exculpatory reasons eliminate the blameworthiness of the perpetrator.

In the Criminal Code, criminal liability for juvenile offenders under the age of 12 is explicitly categorized under Excusing Reasons, thereby eliminating any fault on the part of the child and precluding the imposition of any sanctions, whether in the form of measures or punishment. On the other hand, victims of crimes, whose fundamental rights have been violated by the child, also have the right to obtain justice. Based on the above explanation, the issue addressed in this paper is the provision of excusing reasons for juveniles from the perspective of victim justice.

METHOD

This research employs doctrinal methodology (Al-Fatih, 2023) with statutory and conceptual approaches, involving understanding and analysing the provisions within the legal regulations and the concept of children's rights and exculpatory reasons, referring to the principles of child and victim protection and The Provision of Excusing Reasons for Juveniles from the Perspective of Victim Justice. This approach is used to relate to the issue under study, which is the nature of exculpatory reasons for child offenders within the framework of child rights protection and victim justice. Legal materials in this study are interpreted teleologically to address the raised research questions.

RESULTS AND DISCUSSION

The Regulation Concerning Criminal Responsibility of Children in Indonesia from the Historical Perspective

Child protection represents a perspective on all issues that prioritise the position of the child as foremost and primary (Djamil, 2017). Children have rights that must be fulfilled to ensure their optimal development, including children who are offenders. Protection for child offenders is provided through a judicial system of juvenile crime that distinguishes the criminal process for children from that for adults. The judicial system of juvenile crime encompasses the entire process of resolving cases involving children facing legal issues, from the investigation stage to post-trial guidance, based on

principles of protection, justice, non-discrimination, the best interests of the child, respect for the child, the child's survival and development, proportionality, deprivation of liberty, and sentencing as a last resort, and the avoidance of retribution.

The development of the judicial system of juvenile crime in Indonesia has undergone several phases, from the introduction of Articles 45, 46, and 47 of the Penal Code, which were subsequently repealed by Law Number 3 of 1997 concerning Juvenile Courts, to the enactment of Law Number 11 of 2012 concerning the Judicial System of Juvenile Crime. These changes demonstrate a renewal in juvenile criminal law in the form of re-evaluation, reorientation, and reformulation of the substance appropriate for providing child protection, as mandated by law (Harun & Wati, 2021). Juvenile criminal law in Indonesia was initially regulated in the Penal Code, a legacy from the Dutch era (henceforth referred to as the Criminal Code). Article 45 of the Criminal Code specifies that in prosecuting minors (*minderjarig*) for acts committed before the age of 16, the judge may determine the following actions:

1. Ordering the offender to be returned to their parents, guardians, or caretakers without any punishment;
2. Ordering the offender to be handed over to the Government, without any punishment, if the act constitutes a crime or one of the offences under Articles 489, 490, 492, 496, 497, 503, 505, 514, 517-519, 526, 531, 532, 536, and 540, and it has not been more than two years since a conviction for committing any of the aforementioned crimes or offences, and the decision is final;
3. Imposing a penalty.

Article 45(1) of the Criminal Code contains provisions for measures, often referred to as "*Maatregel*." The general aim of *maatregel* is to protect society from actions carried out by children or individuals under the age of 16 (during the enforcement of Articles 45, 46, and 47 of the Criminal Code) or under the age of 18 (after the enforcement of UU SPPA) and actions to correct the child involved. Further, Article 46 of the Criminal Code states that the implementation of measures lasts until the minor reaches the age of 18 years. Provisions for the sentencing of children in the Criminal Code are still bound by the provisions of Article 10 of the Criminal Code. Specifically for minors, Article 47 of the Criminal Code regulates the provisions for their sentencing as follows:

1. The maximum principal punishment for their criminal acts is reduced by one-third;
2. If punishable by death or life imprisonment, the sentence imposed shall be no longer than 15 (fifteen) years;
3. Additional punishments, as stated in Article 10, items b, numbers 1 and 3, cannot be imposed on a child.

The Criminal Code does not use the term "child" in its regulations. The term used

to represent children is "Person who is not yet of age," meaning those under 16 (sixteen) years old. The legal consequences that can be applied to a "Person who is not yet of age" when committing a crime include measures and punishments. Over time, Articles 45, 46, and 47 of the Criminal Code were repealed with the enactment of Law Number 3 of 1997 concerning Juvenile Courts (henceforth referred to as the Juvenile Courts Law) through Article 67. Key changes with the repeal of Articles 45, 46, and 47 of the Criminal Code are:

1. The term "Person who is not yet of age" is replaced with "Delinquent Child";
2. The age range for criminal responsibility of children, initially from 0-16 years, is altered to 8-18 years;
3. Types of liability for children involving both criminal and corrective measures become more varied;
4. The maximum duration of the principal punishment for their criminal acts, initially reduced by one-third, is now reduced by half;
5. Special treatment for children in procedural law, initially based on the provisions of Law Number 8 of 1981 concerning Criminal Code Procedure (henceforth referred to as KUHAP), now applies the principle of *lex specialis derogat lex generalis* (referring to the provisions of the Juvenile Courts Law).

The age limits for criminal responsibility of children were altered from 0-16 years in the Criminal Code to 8-18 years in the Juvenile Courts Law. Setting these age boundaries for responsibility is crucial, encompassing the maximum and minimum age at which a child can be held accountable for their actions. Without a minimum age limit for criminal responsibility, as was the case before the enactment of the Juvenile Courts Law, even a child as young as four could potentially face criminal sanctions if they committed an act that violated someone else's legal rights. This could create a profound sense of injustice, given that a four-year-old cannot understand or comprehend the nature of their actions.

The Juvenile Courts Law stipulates that only sanctions in the form of criminal penalties or measures can be imposed on children aged 8-18 in accordance with its provisions. The penalties that can be imposed include primary and additional penalties, with primary penalties consisting of imprisonment, detention, fines, or probation. Additional penalties may include the confiscation of certain items or the payment of damages. Besides criminal penalties, measures such as returning the child to their parents/guardians, committing them to the state for education, training, and work programs, or handing them over to the social department or social organisations involved in education and training can also be imposed.

The imposition of penalties or measures on children according to the Juvenile Courts Law is based on the type of crime committed and the child's age. For children aged 12-18 who commit crimes punishable by death or life imprisonment, the maximum imprisonment imposed can be ten years. For children under the age of 12

who commit any crime, whether punishable by death or life imprisonment or not, only measures can be imposed.

Children aged 8-12 may receive measures according to the Juvenile Courts Law. This minimum age limit is considered too early and violates children's rights, given that children are still physically and psychologically immature, which may lead to wrongdoing. The importance of child protection was highlighted by the Constitutional Court in its decision number 1/PUU-VIII/2010 dated February 25, 2011, which upheld a petition to test Articles 1 number 1, Article 4 paragraph (1), and Article 5 paragraph (1) of the Juvenile Courts Law, thus setting the age of responsibility for children at 12 (Christianto, 2011). Subsequently, the Juvenile Courts Law was repealed with the enactment of UU SPPA Number 11 of 2012, setting the age of criminal responsibility for children at 12-18 years. Criminal responsibility for children must always consider the child's best interests, which can be achieved if the child's rights are well guaranteed and fulfilled. The UU SPPA ensures children's rights in the judicial process as regulated in Articles 3 and 4 of the UU SPPA, which include:

1. Being treated humanely with attention to age-appropriate needs,
2. Being separated from adults,
3. Receiving effective legal and other assistance,
4. Participating in recreational activities,
5. Freedom from torture, punishment, or other cruel, inhumane, or degrading treatment,
6. Not being subjected to the death penalty or life imprisonment,
7. Not being arrested, detained, or imprisoned except as a last resort and for the shortest appropriate period,
8. Receiving justice in a juvenile court that is objective and impartial in closed sessions,
9. Having their identity not disclosed,
10. Receiving support from parents/guardians and a trusted individual,
11. Receiving social advocacy,
12. Having a private life,
13. Accessing services, especially for disabled children,
14. Receiving education,
15. Receiving healthcare services,
16. Receiving other rights as per legislation,

Furthermore, Article 4 of the UU SPPA provides rights to children undergoing penal sentences, including:

1. Reduction of sentence duration,
2. Assimilation,
3. Leaves to visit family,
4. Conditional release,

5. Leave prior to release,
6. Conditional leave,
7. Other rights as specified by legal regulations

The penalties or sanctions that can be imposed on children who are in conflict with the law or who have committed criminal offences are specified in the UU SPPA as Criminal and Corrective Actions, as regulated in Chapter V of the UU SPPA. The imposition of sanctions on children must comply with the stipulations of the UU SPPA; if it fails to be in line with the law and if there are no other provisions in the UU SPPA regulating the matter, then the sanctions imposed on the children are considered invalid. This is explicitly stated in Article 69, paragraph (1) of the UU SPPA, which specifies that a child can only be subjected to criminal penalties or corrective actions in accordance with the provisions of this Law.

Furthermore, Article 69, paragraph (2) of the UU SPPA states that children under 14 can only be subjected to corrective actions. Given that the age range for criminal responsibility for children in the UU SPPA is 12-18 years, based on the aforementioned descriptions, crimes committed by children aged 0-12 years cannot receive any corrective or criminal sanctions. If a crime is committed by a child aged 12-14 years, only corrective actions may be imposed. If it is committed by a child aged 14-18 years, the child may receive criminal sanctions, always prioritising the child's rights and referring to the specific provisions set forth in the UU SPPA.

In the Academic Manuscript of the Draft Law on the Criminal Code (hereinafter referred to as the Academic Manuscript of the RUU Criminal Code), which was enacted into law on January 2, 2023, through Law No. 1 of 2023, it is stated that the penal system outlined in the RUU Criminal Code is based on the following principles:

1. The idea of a *monodualistic* balance between the interests of society (the public) and the interests of the individual;
2. The idea of a balance between social welfare and social defense;
3. The idea of a balance between penalties oriented toward the offender (individualization of punishment) and the victim;
4. The idea of employing a double-track system (combining punishment with treatment/measures);
5. The idea of enhancing the use of non-custodial measures (alternatives to imprisonment);
6. The idea of elasticity/flexibility in sentencing;
7. The idea of modification and adjustment of penalties (modification of sanctions; alteration/annulment/revocation of sanctions; redetermination of punishment);
8. The idea of subsidiarity in selecting the type of penalty;
9. The idea of judicial pardon ("*Rechterlijke pardon*" / "*judicial pardon*");
10. The idea of prioritizing justice over legal certainty.

Law Number 1 of 2023 concerning the Criminal Code also contains provisions related to the minimum age for criminal responsibility for children. Article 40 of the Criminal Code stipulates that criminal responsibility cannot be imposed on children who, when committing the offence, are under the age of 12 years. Therefore, if an offence is committed by a child under the age of 12 years, no sanctions, either corrective or criminal, can be imposed on such a child because they are considered incapable of bearing responsibility. In such cases, an exculpatory reason absolves the child of any fault for the committed offence.

The Essence of Exculpatory Reasons According to The Penal Code (Former and New Penal Code)

The nexus between criminalisation and pardon has existed since the Code of Hammurabi, which balanced the rigidity of legality with justice that emerged from society (Saputro, 2016). A pardon is a way to eliminate the criminal element by removing the fault of the perpetrator. If the fault is removed, a person cannot be held accountable and thus cannot be punished. A pardon does not change the act committed by the perpetrator; the act remains a criminal offence, but the perpetrator is forgiven due to particular circumstances. In both the WvS Penal Code (henceforth referred to Criminal Code WvS) and the Criminal Code, specific circumstances can eliminate a person's fault element so that they cannot be punished.

The Criminal Code WvS specifies certain conditions under which a perpetrator is not punished due to a pardon, including Article 44 paragraph (1), which states that the incapacity to be held responsible caused by a mental defect or illness is not punishable. A perpetrator of a crime who is mentally defective is considered incapable of being held responsible, and therefore, no punishment can be imposed. Another pardon is duress (*overmacht*), regulated in Article 48 of The Criminal Code WvS. Duress is divided into absolute and relative. Absolute duress occurs when the perpetrator has no other choice, while relative duress still allows a person under duress to choose which action to take. Another reason for pardon is excessive self-defence, as in Article 49 of The Criminal Code WvS, which states that a person who commits excessive self-defence is not punished due to severe emotional disturbance caused by an attack or threat of an attack. Lastly, executing an illegitimate official order in good faith, as regulated in Article 51 paragraph (2) of The Criminal Code WvS, occurs when the perpetrator believes the order was given legally within their authority and scope of work.

In the National Penal Code, these provisions are regulated in Chapter II concerning Criminal Acts and Criminal responsibility. Concerning the incapacity to be held responsible due to mental defect, the National Penal Code in Articles 38 and 39 uses the terms mental disability and/or intellectual disability. Mental disability refers to disruptions in thinking, emotional, and behavioural functions, including people with

mental disorders or mental health issues, while intellectual disability refers to impairments in cognitive function due to below-average intelligence levels. The factors that cause incapacity to be held liable are limited to mental defects in the body or illness, or also referred to as mental and/or intellectual disabilities.

1. The Criminal Code in Articles 40 – 44 explicitly states that there are certain circumstances under which an offender cannot be held criminally responsible and, therefore, not subject to criminal penalties:
2. The involvement of a child offender under 12;
3. The presence of duress;
4. Excessive self-defence; and
5. Execution of an unauthorised official command in good faith.

The difference between Criminal Code WvS and the Criminal Code regarding the regulation of exculpatory reasons is that the Criminal Code specifies these reasons more clearly, including a new provision not present in The Criminal Code WvS: the inclusion of children under the age of 12 as qualifying for a pardon. This provision is explicitly clarified in specific articles, Articles 40 and 41, thus eliminating the ambiguities found in the Criminal Code WvS. The Criminal Code WvS states that one particular circumstance that may grant a pardon is the incapacity of a person to be responsible due to a mental defect, as regulated in Article 44, paragraph (1). However, this article has led to various disagreements among legal experts. A person is considered to have a mental defect when they are unable to think correctly and are unaware of their actions and the consequences thereof.

Some opinions suggest that child offenders fall under the regulation of Article 44 paragraph (1) and receive a pardon because they are deemed incapable of responsibility given their incomplete cognitive development. However, other opinions argue that this article limits incapacity to responsibility caused by a mental defect in the body or by illness, so incapacity related to a very young age does not fall within the scope of this article's regulation (Santoso, 2023). The Criminal Code clarifies these issues through Articles 40 and 41:

Article 40

"Criminal responsibility shall not be imposed on a child who, at the time of committing the criminal act, is under the age of 12 (twelve) years."

Article 41:

"In the event a child under the age of 12 (twelve) years commits or is suspected of committing a criminal act, the investigator, correctional counsellor, and professional social worker shall decide to:

1. Return the child to their parent/guardian; or
2. Involve the child in educational, developmental, and mentoring programs at governmental institutions or social welfare organisational institutions that

handle social welfare matters, both at the central and regional levels, for a maximum period of 6 (six) months."

Article 40 of the Criminal Code specifies the minimum age limit for criminal responsibility for children who commit criminal acts, thereby exempting children under the age of 12 (twelve) years from criminal responsibility due to extenuating circumstances. The Academic Draft of the Bill concerning the Penal Code (henceforth referred to as the Academic Draft of the Penal Code Bill), which was enacted as a statute on January 2, 2023, through Law Number 1 of 2023 (Tongat, 2024) states that the penal system outlined in the Bill is based on various principles including:

1. The mono-dualistic balance idea between public interest and individual rights;
2. The balance between "social welfare" and "social defence";
3. The balance between penalties oriented towards the offender (individualisation of penalties) and the victim;
4. The use of the "double track system" (between punishment and treatment/measures);
5. The effectiveness of "non-custodial measures" (alternatives to imprisonment);
6. The elasticity/flexibility of sentencing;
7. The modification of sanctions (alteration/annulment/revocation of sanctions; redetermining of punishment);
8. The subsidiarity in choosing the type of penalty;
9. The concept of judicial pardon ("*Rechterlijke* pardon");
10. Prioritising justice over legal certainty.

One of the penal systems included in the Penal Code Bill involves the balance that includes the individualisation of penalties, where in imposing penalties, the characteristics and circumstances of the offender are always considered. Thus, in the reform of the Penal Code, there are provisions not present in the current Criminal Code WvS, including restrictions on the age of criminal responsibility for children, specific regulations on the prosecution of children, and the judge's authority to stop or not continue the process of examining criminal cases against children. Several characteristics of the principle of individualisation of punishment, according to Barda Nawawi Arief, include:

1. Personal/individual responsibility; the person who commits the crime is responsible for their actions, and this responsibility cannot be delegated to someone else.
2. Punishment only given to the guilty party (the principle of culpability); only those who commit a crime with a fault can be penalised.
3. Punishment that must be adjusted to the characteristics and circumstances of the offender; this implies that there must be flexibility for the judge in choosing the criminal sanctions and possible modification of the punishment during its implementation.

The principle of individualisation of punishment is based on the importance of protecting individuals (criminal offenders) within the criminal law system. This principle also characterises the modern stream of criminal law as a reaction to the classical stream, which demands a criminal law oriented towards the act (*daadstrafrecht*) (Widiastuti, 2010). Punishment must be oriented towards the "person" or the offender; hence, the idea of individualisation also underlies the general rules of punishment. This idea is included in the general regulations, among others, concerning the provisions for excusing criminal liability, mainly exculpatory reasons including "error," duress, excessive self-defence, incapacity, and issues concerning children under 12 years old (Widiastuti, 2010).

The Academic Draft of the Penal Code also mentions several factors that form the basis of criminal responsibility for children. It is necessary to regulate the types of punishment, the severity of the punishment, and the methods of execution. This is because both the physical and psychological development of children differ from that of adults. Moreover, specific regulations for children are related to the fact that Indonesia has ratified the International Convention on the Rights of the Child within the framework of advancing and protecting human rights. It is recognised that children are an integral part of human survival and the continuity of a nation and state. Children play a strategic role, as explicitly stated that the state guarantees every child the right to survival, growth, and development as well as protection from violence and discrimination. Children need protection from the negative impacts of rapid development, the flow of globalisation in technology, and changes in lifestyle and habits of some parents that have brought about fundamental social changes impacting the values and behaviours of children.

The Essence of Exculpatory Reasons for Children in the Judicial System of Juvenile Crime

Fundamentally, children are recognised as a vulnerable group because they have limited ability to understand and protect themselves from various environmental influences (Sitepu, 2022). Special treatment for children in conflict with the law has been established in legislation that governs processes from investigation to prosecution and adjudication. To uphold children's rights and formulate legal products concerning children, following its ratification of the Convention on the Rights of the Child and its protocols, Indonesia initially enacted Law Number 3 of 1997 concerning Juvenile Courts, which included procedures from international instruments regarding children, later updated and currently enforced through Law concerning Judicial System of Juvenile Crime (UU SPPA).

The law must evolve with the times to address constantly changing social phenomena (Kurniawan, 2022). Therefore, Indonesia now emphasises restorative justice as a concept to rehabilitate victims and eliminate criminal resolutions against

offenders (Andini et al., 2023), particularly juvenile offenders, through diversion efforts as a form of special treatment to uphold children's rights. In juvenile justice, protecting children's rights is a critical principle, ensuring that these rights are always fulfilled and respected. Criminal acts by children are essentially products of the societal attitudes surrounding them amidst all the social turmoil, reflecting a disregard for these children (Verkuyten, 2018). The UU SPPA mentions children in conflict with the law, specifically those aged 12-18. For children suspected of committing crimes but under the age of 12, no sanctions, either actions or criminal penalties, can be imposed, as per Article 21(1) of the UU SPPA. This law is expected to realise children's rights in all aspects of life (Mujiburrahman, 2018). As a guideline for handling children facing legal issues, the UU SPPA also mandates the implementation of diversion at every stage. This diversion effort can apply exculpatory reasons based on agreements between the victim and the perpetrator.

Restorative justice refers to a form of resolution aimed at achieving justice for both parties, ensuring fairness for both the offender and the victim of a crime. Its implementation is based on several key principles:

1. Fostering joint participation between the offender, the victim, and the community in resolving an incident or crime. It positions the offender, the victim, and the community as "stakeholders" who collaborate directly to find a resolution that is deemed fair to all parties involved (a win-win solution).
2. Encouraging the offender, particularly juveniles, to take responsibility for the harm caused to the victim as a result of the crime. Additionally, it aims to build accountability in the offender to prevent the recurrence of criminal behavior.
3. Framing the crime as an interpersonal violation, emphasizing that the offender should be held accountable to the victim rather than solely to the state.
4. Promoting the resolution of criminal incidents through more informal and personal methods, as opposed to rigid and impersonal formal court procedures.

Diversion is a component of restorative justice (Ernis, 2017), the process of shifting the resolution of certain juvenile delinquency cases from the formal criminal process to a peaceful resolution between the suspect/defendant/offender and the victim, facilitated by families and/or the community, Child Social Workers, Police, Prosecutors, or Judges (Djamil, 2017). Reconciliation as an effort to eliminate criminal penalties is a form of exculpatory reason (Sitorus, 2020). According to Roeslan Saleh, sentencing should accommodate the interests of the community, the offender, and the victim (Rivanie et al., 2022). The concept of diversion is also found in The Beijing Rules (United Nations Standard Minimum Rules for the Administration of Juvenile Justice), which authorises law enforcement officials to take discretionary actions in handling or resolving juvenile offences informally, including stopping or not continuing/releasing

from the criminal justice process or returning/handing over to the community and other forms of social service activities.

Article 7, paragraph (2) of the UU SPPA stipulates that diversion can only be implemented in cases of criminal offences punishable by imprisonment under seven (7) years and are not a repetition of criminal offences. If a criminal offence involving a child as an offender is punishable by more than seven (7) years under the provisions set out in the Penal Code, such as severe assault, then diversion efforts cannot be made for that child because it does not meet the conditions stipulated in the UU SPPA. Diversion aims to:

1. Achieve peace between the victim and the child;
2. Resolve juvenile cases outside of the judicial process;
3. Prevent the deprivation of the child's liberty;
4. Encourage community participation; and
5. Instil a sense of responsibility in the child.

When we analyse these five points, we can understand that diversion applies exculpatory reasons for juvenile offenders under certain conditions. Diversion also involves all parties participating in finding the best solution, thus emphasising restoration. The restoration referred to is the accountability of the child as a perpetrator of a criminal act towards the victim through a deliberative process, resulting in an agreement and peace, so that the victim is expected to regain their rights. On the other hand, the child as a perpetrator also receives forgiveness, thus being protected from deprivation of liberty for the welfare of the child. In essence, an exculpatory reason is one that negates fault. The act remains a criminal offence, but the perpetrator is forgiven because the act was driven by a particular external circumstance that constrained their will (involuntary). The fact that children under the age of 12 commit criminal acts and are not prosecuted is undoubtedly not a specific external circumstance constraining the child's free will, so with the inclusion of Article 40 of the Criminal Code as an exculpatory reason, the concept must be adjusted because it is no longer just the normal circumstances surrounding the criminal act that would lead someone to be said to have an exculpatory reason.

The state plays a vital role in ensuring the protection and fulfilment of children's rights to security, comfort, health, welfare, and education for children as the next generation of the nation, including children who are criminal offenders. Child protection aims to ensure the fulfilment of children's rights, which are part of human rights that must be guaranteed, protected, and fulfilled by parents, family, community, state, government, and local government so that children can live, grow, and develop optimally in accordance with human dignity and receive protection from violence and discrimination, to achieve the goal of the state with children who are of quality, virtuous, and prosperous (Makara, 2013). In normative juridical terms, the principles of child protection are regulated, among others, in the Convention on the Rights of the Child

(CRC), which was ratified by the Indonesian government through Presidential Decree Number 36 of 1990. These principles include the following (Ibrahim, 2018):

1. The principle of non-discrimination;
2. The best interests of the child;
3. The right to life, survival, and development;
4. Respect for the child's participation.

The Convention on the Rights of the Child aims to fulfil and protect children's rights (Nurusshobah, 2019). In addition to the CRC, the principles of child protection are also systematically regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (henceforth referred to as Child Protection Law), which states that the State guarantees the welfare of each of its citizens, including the protection of children's rights as Human Rights.

The principles of child protection in the Child Protection Law are as follows:

1. Non-discrimination;
2. The best interests of the child;
3. The right to life, survival, and development;
4. Respect for the child.

In the UU SPPA, the principles of child protection are also listed in Article 2, including:

1. Protection;
2. Justice;
3. Non-discrimination;
4. The best interests of the child;
5. Respect for the child's opinion;
6. The right to survival and development;
7. Guidance and mentoring of the child;
8. Proportionality;
9. Deprivation of liberty and criminal sanctions as a measure of last resort;
10. Avoidance of retribution.

These principles of child protection clearly emphasise that everything done in relation to children must prioritise the rights of the child for their best interests. The UU SPPA mentions one principle of child protection, namely deprivation of liberty and criminal sanctions as a measure of last resort, as evidenced by the obligation to implement diversion at every stage from investigation, prosecution, to trial. According to UU SPPA, diversion provides an opportunity for children to receive an exculpatory reason to avoid retribution because children have the right to protection for their survival and development.

The Fundamental of Excusing Reasons from the Perspective of Victim Justice

Children under the age of 12 are not held criminally responsible, not because their actions are forgiven, but because they are deemed incapable of forming intent or desire, and they are not yet able to foresee the consequences of their actions. Article 21(1) of the Juvenile Justice Law (UU SPPA) states that children suspected of committing a crime who are under the age of 12 cannot be subjected to any sanctions, either punitive or corrective. This undoubtedly raises concerns of injustice for the victims whose rights have been violated by the actions of the child offenders. While the child enjoys the right to be shielded from criminal justice processes, the victim, as the aggrieved party, has yet to receive special attention. A victim is a person who has suffered harm as a result of a crime or whose sense of justice has been directly disturbed by being the target of a crime. According to Article 1(3) of Law No. 31 of 2014, which amends Law No. 13 of 2006 on the Protection of Witnesses and Victims, a victim is defined as “A person who suffers physical, mental, and/or economic harm as a result of a crime.”

It is widely acknowledged that the Indonesian Criminal Procedure Code (KUHAP) prioritizes the rights of suspects/defendants. This can be seen in several explanations of the KUHAP, which predominantly emphasize the rights of suspects/defendants over the rights and interests of victims. KUHAP also creates the impression that the protection of offenders receives greater attention than the protection of victims, giving the sense that victims are not adequately safeguarded. This stems from the notion that justice is deemed to have been served once the offender is legally held accountable for their actions, without considering the interests and justice for the victim. The role of victims in the criminal justice system as seekers of justice has often been overlooked, as the focus has been more on the offender. This is a form of injustice for the victims, whose fundamental rights have been violated by the criminal acts of the offender, making it crucial to uphold justice for victims. In our criminal law, the state assumes the responsibility of representing victims in seeking their rights and justice by punishing the offender. Once the offender has been penalized for their actions, justice for the victim is considered fulfilled. However, the victim becomes merely a legal object, unable to determine what justice means to them personally, as they do not play a direct role in the process of obtaining justice. True justice must involve the parties in conflict, as legal justice alone may not necessarily equate to the victim's sense of justice.

As a nation that upholds legal norms and human rights, the Indonesian government has a central role in ensuring that every citizen's rights are protected. Victim protection is linked to one of the objectives of punishment, which is the resolution of conflict to create a safe, peaceful, and prosperous society. The primary purpose of legal rules is to foster a sense of justice, including justice for both offenders and victims of crime.

In the concept of legal protection for victims of crime, several legal principles warrant attention:

1. The principle of benefit;

2. The principle of justice;
3. The principle of balance;
4. The principle of legal certainty.

Additional arguments in favor of prioritizing legal protection for victims of crime include the social contract argument and the social solidarity argument. The social contract argument posits that the state monopolizes all social reactions to crime and must therefore also take responsibility for the needs and interests of victims when a crime occurs. The social solidarity argument states that the state has a duty to ensure the welfare of its citizens. The Law on the Protection of Witnesses and Victims outlines the rights of victims of crime. In addition to the rights mentioned in the law, based on various past criminal cases, other forms of protection for crime victims include:

1. The provision of restitution and compensation;
2. Counseling;
3. Medical services/assistance;
4. Legal assistance;
5. Information provision.

From the perspective of victim justice, the essence of excusing reasons for children does not reflect justice for both parties. The excuse given to children focuses solely on their best interests without considering the interests and justice of the victims of their criminal acts.

CONCLUSION

Essentially, children under the age of 12 are not held criminally responsible not because their actions are forgiven, but because they are considered incapable of forming intent or understanding the consequences of their actions. On the other hand, there are victims of criminal acts whose rights have been violated by these children, and they do not receive justice when the child under 12 is not held accountable for their actions. In light of this, the government must reassess the reasoning behind exempting children from responsibility and be more selective in determining appropriate sanctions for children under 12 based on the nature of the offense they committed.

When the handling of a child's case ends in reconciliation or a return to parental care without adequate guidance, education, and supervision, the problem remains unresolved. It merely shifts to the future, as the child may never fully comprehend that their actions were wrong and in conflict with legal norms. They are only asked to apologize without receiving the proper guidance to prevent repetition of the offense. To achieve justice for all parties, the interests of the victim must also be considered. Children under the age of 12 who commit criminal acts should still undergo a restorative justice process through diversion, aimed at restoring the victim's condition while

keeping the child out of the formal justice system. However, the victim's right to justice should not be overlooked, ensuring a win-win solution for all parties involved.

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