
**JUVENILE JUSTICE: ALTERNATIVE COMMUNITY SERVICE WHEN
DIVERSION IS NOT ACHIEVED**

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Abstract

The effectiveness of basic punishments for children in conflict with the law when diversion is not achieved, particularly regarding community service as an alternative punishment, is the focus of this study. The purpose is to determine the most appropriate form of punishment for children when diversion fails and to assess whether community service is the best option. Using a normative juridical method, the study finds that each basic punishment in Article 71 Paragraph (1) of the Juvenile Criminal Justice System Law has its strengths and weaknesses. A warning is too lenient, guidance outside the institution emphasizes rehabilitation but lacks facilities, supervision allows normal activities but has no deterrent effect, job training is potentially beneficial but often noncompliant, and institutional guidance faces obstacles in fulfilling children's rights. Imprisonment is the least effective because it negatively affects children's psychological and social conditions and should be a last resort. Among all punishment, community service is deemed most ideal as it aligns with corrective, rehabilitative, and restorative principles, keeps children in their environment, and fosters social responsibility and empathy.

Keywords: Basic Punishment; Community Service; Juvenile Criminal Justice System Law

INTRODUCTION

Children are a gift from God and must always be protected. However, in reality, not all children have good and upright attitudes; some of them also engage in deviant behavior. Thus, they can be classified as Children in Conflict with the Law (CICL). Under Law Number 11 of 2012 concerning the Criminal Justice System for Children, Article 1 point 2 states that "*Children in Conflict with the Law are children who are in conflict with the law, children who are victims of crime, and children who are witnesses to crime.*" Furthermore, Article 1 point 3 states that "*Children in Conflict with the Law, hereinafter referred to as Children, are children who are 12 (twelve) years of age but not yet 18 (eighteen) years of age who are suspected of committing a criminal act.*"³ Therefore, children within this age range are subject to the criminal justice system according to the Juvenile Criminal Justice System Law.

Diversion is the practice of resolving children's cases outside of criminal court. Diversion is a restorative justice-based resolution that involves children, victims, community advisors, and professional social workers.⁴ Diversion also aims to protect children from the negative impacts of criminal justice, provide opportunities for rehabilitation, safeguard children's mental health, and protect children from the trauma that often accompanies

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³ Law Number 11 Of 2012 Cconcerning The Criminal Justice System For Children

⁴ Megawati Iskandar Putri, and Zahratul'ain Taufik. "THE IMPLEMENTATION OF CRIMINAL PUNISHMENT FOR CHILDREN." IURIS NOTITIA: JOURNAL OF LEGAL SCIENCE 2, no. 1 (2024), p.5.

conventional judicial processes.⁵ This is done because children are the future of the nation and the hope of the country in the years to come, so it is a shared responsibility to provide protection and uphold the best interests of children.

In addition, the Juvenile Criminal Justice System Law also stipulates basic penalties, additional penalties, and measures for children, so if diversion is unsuccessful or cannot be implemented, the case will be brought to court. The types of basic penalties are listed in Article 71 paragraph (1) of the Juvenile Criminal Justice System Law, which states, "*Basic penalties for children consist of: a. warning penalties; b. penalties with conditions: 1) guidance outside the institution; 2) community service; or 3) supervision. c. job training; d. guidance within the institution; and e. imprisonment.*"⁶

Community service is a punishment system that allows children to remain in the community while undergoing rehabilitation. The choice of this punishment reflects the application of the principles of humanistic, proportional, and contextual punishment in accordance with the national legal framework and reflects a deep understanding of the child's condition and future.⁷

Research conducted by Annisa Setyorini, Heni Siswanto, and Rini Fathonah in 2025⁸ examined the imposition of community service penalties on children as a form of non-custodial alternative punishment in line with the principles of child protection and restorative justice values. The study emphasized that community service is oriented towards the guidance and rehabilitation of children and avoids the negative impacts of imprisonment. However, the study did not comprehensively analyze other alternative punishments that could be applied if diversion efforts were unsuccessful, nor did it compare the advantages and disadvantages of all basic punishments for children as stipulated in Article 71 of the Juvenile Criminal Justice System Law. Therefore, this research is important because it focuses on formulating the most appropriate sentencing solutions for children when diversion fails to be implemented through a comprehensive analysis of each type of basic punishment available in the juvenile criminal justice system.

This issue raises the main question: what is the best form of basic punishment for children if diversion is not achieved? And is community service the best alternative?

This study aims to analyze and provide a more comprehensive solution if diversion is not achieved, so that we can determine which of the five basic punishments for children in Article 71 of the Juvenile Criminal Justice System Law is the best to apply to children.

⁵ Muhammad Arham, and Abdul Rahman. "DIVERSION IN THE JUVENILE CRIMINAL JUSTICE SYSTEM." *Jurnal Sibaliparriq* 1, no. 1 (2024), p.2.

⁶ Law Number 11 Of 2012 Cconcerning The Criminal Justice System For Children

⁷ Annisa Setyorini, Heni Siswanto, and Rini Fathonah. "Analysis of the Imposition of Community Service Punishment on Children in Conflict with the Law to Achieve the Objectives of Punishment." *Jurnal Mahasiswa Humanis* 5, no. 3 (2025), p.2.

⁸ Setyorini, p.1-9.

METHOD

This type of research uses normative legal research, which analyzes legal issues based on the norms contained in legislation. This method is relevant because the purpose of the research is to analyze the basic criminal justice system for children contained in the Juvenile Criminal Justice System Law. This research approach uses a legislative approach and a conceptual approach.

The legal materials used are primary legal materials in the form of legislation, namely Law Number 11 of 2012 concerning the Criminal Justice System for Children, and secondary legal materials in the form of previous research results, journals, papers, and books. The technique for collecting legal materials is through literature study, by reading, analyzing, and concluding information from various literature. A qualitative analysis method is used, namely by describing the collected legal materials, then interpreting, comparing, and drawing conclusions so that the research questions can be answered.

RESULTS AND DISCUSSION

Law Number 11 of 2012 on the Criminal Justice System for Children serves as the basis for the prosecution of minors in conflict with the law. Article 1 paragraph 3 of the Juvenile Criminal Justice System Law states that children in conflict with the law are children between the ages of 12 and 18 who are suspected of having committed a criminal offense.⁹ The handling of children is a policy that aims to combat crime, provide protection to children, and improve their welfare.¹⁰

In the process of handling criminal cases involving children, the term "diversion" is used. Article 1 point 7 of the Juvenile Criminal Justice System Law states that diversion is the process of resolving juvenile cases outside of the criminal justice system.¹¹ The objectives of diversion are stipulated in Article 6 of the Juvenile Criminal Justice System Law, namely Diversion is a mechanism for resolving cases involving children that aims to achieve peace between the child and the victim, resolve cases outside of the judicial process, prevent the deprivation of the child's liberty, encourage community participation, and instill a sense of responsibility in the child.¹² Diversion is the first step in the juvenile justice process. It aims to protect children from the criminal justice system and safeguard their future as the nation's next generation.

However, not all juvenile cases qualify for diversion. Article 7 paragraph (2) of the Juvenile Criminal Justice System Law states that diversion is intended for criminal offense with a prison sentence of less than 7 years and not for repeat offenses.¹³ This provision indicates that the lower the criminal penalty for the child, the higher the priority for diversion. Therefore, diversion is not available for cases of murder, rape, drug trafficking, and terrorism with penalties of more

⁹ Law Number 11 Of 2012 Cconcerning The Criminal Justice System For Children

¹⁰ Muhammad Ridwan Lubis and Panca Sarjana Putra. "PUNISHMENT OF CHILDREN IN CONFLICT WITH THE LAW." *USM Law Review Journal* 4, no. 1 (2021), p.12.

¹¹ Law Number 11 Of 2012 Cconcerning The Criminal Justice System For Children

¹² Sulis Setyowati. "Problems in the Application of Diversion in the Settlement of Juvenile Criminal Cases in Realizing Restorative Justice." *UNES LAW REVIEW* 6, no. 4 (2024), p.10. <https://doi.org/10.31933/unesrev.v6i4>.

¹³ Law Number 11 Of 2012 Cconcerning The Criminal Justice System For Children

than seven years, and for children who commit repeat offenses, especially those who have previously been handled through diversion, cannot be transferred.

The effectiveness of diversion implementation in the juvenile criminal justice system in Indonesia also faces various challenges. First, there is a lack of understanding among the public and law enforcement officials about the implementation of diversion. The paradigm in various circles is still driven by a criminal justice system that is heavily based on a retributive approach, where the main orientation of sentencing is retribution for criminal acts.¹⁴ Many believe that criminal acts must be punished with commensurate penalties, so the concept of restorative justice is not the best option.

Second, the lack of facilities and resources to support the implementation of diversion. One crucial aspect is the limited number and qualifications of competent restorative justice facilitators. The mediation and rehabilitation process requires facilitators who are trained, have mediation skills, and a deep understanding of child psychology.¹⁵ In reality, the availability of such experts is still very limited, especially in remote areas. As a result, the diversion process will be less effective and children who do not receive proper guidance will be at risk of reoffending.

Third, coordination between institutions is not yet optimal. The application of restorative justice in the diversion process involves many parties, ranging from the police, prosecutors, courts, correctional institutions, social services, to child protection agencies. Often, each institution has a different view on diversion and restorative justice. There are cases where the police have attempted to implement diversion, but when the case reaches the prosecutor's office or the court, the case is rejected for diversion.¹⁶ Therefore, the success of diversion depends heavily on cooperation, synergy, and good communication between these institutions.

The victim and/or the victim's family must agree to the diversion agreement, and the child and his or her family must be willing to participate. Misdemeanors, minor offenses, victimless crimes, and crimes that cause the victim less than the city's minimum wage are not included.¹⁷

Therefore, diversion cannot be used as a process for resolving all criminal cases involving children. There are several criminal acts that cannot be resolved through diversion, the diversion process also faces various challenges, and in some cases, the consent of the victim and/or the victim's family is also required

¹⁴ Yessi Kurnia Arjani Malik. "Challenges in Implementing Restorative Justice in the Juvenile Criminal Justice System in Indonesia." *IKRAITH-HUMANIORA* 9, no. 2 (2025), p.1. <https://doi.org/10.37817/ikraith-humaniora.v9i2>.

¹⁵ Harmelina Devy Lantika. "The Role of Legal Aid in the Implementation of Diversion and Restorative Justice for Children in Conflict with the Law." *Jurnal Pengabdian Masyarakat (JPM)* 2, no. 2 (2025), p.4. <https://jpm.terekamjekak.com/index.php/home/index>.

¹⁶ Malik, p.1.

¹⁷ Didik Endro P, *Criminal Law A Series of Thoughts* (Surabaya: UNIVERSITAS AIRLANGGA PRESS, 2019), p.84.

for diversion. The case will be brought to court if the diversion or agreement cannot be resolved.

In court, the judge will decide the case by imposing a sentence based on the types of crimes and actions contained in the Juvenile Criminal Justice System Law, based on the types of basic penalties in Article 71 Paragraph (1) of the Juvenile Criminal Justice System Law, each has its advantages and disadvantages. The following is a description of each of these basic punishments:

1. Warning Punishment

In the Big Indonesian Dictionary, "warning" means "advice (reprimand, etc. to warn)." Meanwhile, according to Article 72 of the Juvenile Criminal Justice System Law, "*A warning is a minor punishment that does not result in the restriction of a child's freedom.*"¹⁸ A warning can take the form of a reprimand, advice, guidance, appeal, or recommendation to the child offender not to commit another crime.¹⁹ Just as parents do when advising their children when they have done something wrong, they reprimand the child so that they do not repeat their mistake.

The imposition of a warning as the first type of basic punishment has a specific purpose, namely to protect children and provide an alternative for judges in imposing punishment other than imprisonment.²⁰ The imposition of a warning aims to provide an opportunity for children who have committed a crime to realize the mistakes they have made, as they may not yet be aware that their actions constitute a criminal offense.

Government Regulation Number 58 of 2022 concerning the Form and Procedures for Handling Criminal Acts and Acts Against Children regulates reprimands. Article 7 of this regulation states that:²¹

"(3) A criminal verdict containing a warning as referred to in paragraph (1) shall be pronounced by the judge in court.

(4) In the event that the warning sentence has obtained permanent legal force, the implementation of the sentence as referred to in paragraph (3) shall be carried out by the prosecutor by reading the warning from the court decision to the child, who shall be accompanied by a social worker, lawyer or other legal aid provider, and/or parent/guardian.

(5) The implementation of the decision as referred to in paragraph (4) shall be recorded in the minutes of the implementation of the court decision."

Based on the above procedure, after the judge has handed down a decision in court in the form of a warning penalty and it has been declared to have permanent legal force, the prosecutor will immediately implement the

¹⁸ Law Number 11 Of 2012 Concerning The Criminal Justice System For Children

¹⁹ Trian Yuli Diarsa. "Exploring the Nature and Meaning of Warning Punishment as a Primary Punishment in the Juvenile Criminal Justice System." *Media Iuris* 5, no. 3 (2022), p.2.

²⁰ Diarsa, p.2.

²¹ Goverment Regulation Of The Republic Of Indonesia Number 58 Of 2022 Concerning The Form And Prosedure For The Implementation Of Criminal Penalties And Actions

judge's decision. Then the prosecutor will read out a warning to the child offender.

However, this warning punishment still has shortcomings, because based on the above definition, a warning punishment is a minor punishment, so it can be concluded that a warning punishment is a punishment imposed on children who commit minor crimes. However, there are no specific details regarding which criminal acts are eligible for warning penalties. This makes it difficult for law enforcement officials to implement warning penalties. This is supported by a statement from a juvenile judge at the Jambi District Court. He stated that warning penalties are rarely used because there are no specific regulations regarding criminal acts, the level of crime in the area, and stigma from the community.²²

2. Guidance Outside the Institution

When a judge decides that a child should be guidance outside of an institution, the place of education and rehabilitation is determined in the decision. Furthermore, the correctional program outside the institution is regulated in Article 75 of the Juvenile Criminal Justice System Law, which states, "*Guidance punishment outside the institution may take the form of: a. mandatory participation in a guidance and counseling program conducted by a correctional officer; b. mandatory participation in therapy at a mental hospital; or c. mandatory participation in therapy for alcohol, narcotics, psychotropic drugs, and other addictive substances.*"²³

Indonesian legal sanctions for the guidance of children who commit crimes outside of educational institutions prioritize compassion and rehabilitation, which is in line with child protection. This aims to allow children to grow and develop without interference from the criminal justice system. To avoid stigma and the negative impact of involvement in criminal proceedings, cases involving children are handled outside of court.²⁴

Overall, these provisions demonstrate Indonesia's legal commitment to protecting children's rights by prioritizing rehabilitation and social reintegration, rather than simply punishment. This is in line with the relative nature of punishment, which emphasizes the benefits of punishment in correcting children's behavior so that they can be accepted back into society and not repeat their crimes.

However, the process of implementing punishment outside of institutions still faces various challenges. Based on interviews between Putri Yani Purnamasari, Davit Rahmadan, and Ferawati with Lifiana Tanjung and

²² Dheliya Trilestari. "Problems with Warning Penalties as Minor Penalties for Juvenile Offenders." PAMPAS: *Journal of Criminal Law* 6, no. 4 (2025), p.2.

²³ Law Number 11 Of 2012 Cconcerning The Criminal Justice System For Children

²⁴ Putri Yani Purnamasari, Davit Rahmadan, and Ferawati. "Implementation of Non-Institutional Sanctions for Juvenile Offenders in the Pekanbaru District Court." *MILTHREE LAW JOURNAL* 1, no.3 (2024), p.12. <https://doi.org/10.5281/ZENODO.8149032>.

Roni Susanta, juvenile judges at the Pekanbaru District Court in 2024.²⁵ The following are some of the challenges:

- 1) Budget
The implementation of out-of-institution guidance for children who have committed crimes faces serious obstacles in terms of funding. At the Pekanbaru District Court, neither the court, the prosecutor's office, nor the local government provides a special budget for guidance and rehabilitation programs, so the cost burden is shifted to parents, who often have limited financial resources. In fact, out-of-institution guidance requires financial support for facilities, training, assistants, and effective rehabilitation programs. Government Regulation No. 58 of 2022 regulates fines and measures for minors, including external tutoring, but does not discuss funding sources. As a result, the lack of budget poses a major challenge to the sustainability and effectiveness of guidance programs for children.
- 2) The willingness of families to facilitate their children
The implementation of non-institutional sanctions at the Pekanbaru District Court is hampered by the limited readiness of families to support children, both in terms of economics, knowledge, and social-emotional support. Many families are unable to provide for the costs of guidance, do not yet understand their role and the concrete steps in the rehabilitation process, and lack the capacity to provide good psychological support. As a result, some families return the responsibility for guidance to the court.
- 3) Lack of facilities or cooperating institutions
At the Pekanbaru District Court, the implementation of sanctions outside of institutions is supported by facilities such as mental hospitals and BNN rehabilitation centers, but budget constraints mean that the services provided are not optimal, both in terms of quality and quantity. The minimal allocation of funds from the local government and the absence of additional institutions that can be used free of charge further narrows the choices for rehabilitation, so that not all children can obtain rehabilitation services according to their needs.
- 4) Justice for victims
The implementation of non-institutional sanctions at the Pekanbaru District Court often causes tension between the rehabilitation needs of the child offenders and justice for the victims. Victims often feel aggrieved because their rights to restitution and recovery have not been adequately fulfilled, while for offenders, these sanctions are considered lighter and more conducive to reintegration. Therefore, a more fair and transparent mechanism is needed so that child rehabilitation can continue without neglecting the rights of victims.
- 5) Government commitment to the application of criminal sanctions for children
The obstacles in implementing non-institutional sanctions at the Pekanbaru District Court are not only related to limited funds and facilities, but also to weak coordination and commitment between government agencies, social institutions, and the community. In fact,

²⁵ Purnamasari, p.26-33.

the Juvenile Criminal Justice System Law emphasizes the importance of the involvement of various parties in the rehabilitation of children. The lack of regulations, supporting policies, and evaluation mechanisms often leads to inconsistent program implementation.

6) Public awareness and understanding

Socialization of non-custodial sanctions outside institutions is very important to support their successful implementation. The lack of understanding among the public and law enforcement officials regarding the objectives and benefits of non-custodial sanctions is often an obstacle. Therefore, increased education and socialization are needed so that all parties can provide optimal support.

7) Uncertainty in law enforcement

Unclear regulations and inconsistent law enforcement often hinder the application of non-custodial sanctions. This causes confusion and potential injustice, requiring stricter and more consistent rules accompanied by strict supervision to ensure that sanctions are carried out in accordance with legal objectives.

Therefore, the process of implementing non-custodial sanctions outside institutions is still not optimal. In the four-year period from 2021 to 2024, not a single case has been decided with non-custodial sanctions outside institutions in the Pekanbaru District Court. Therefore, efforts are needed to overcome the above obstacles.

3. Community Service Punishment

Community service punishment is a form of punishment imposed on children with the aim of educating and guiding them through social activities. Through this punishment, children are expected to develop a sense of concern for their surroundings while also training them to be more actively involved in positive and beneficial community activities. If, during the implementation of the sentence, the child fails to fulfill their obligations, either partially or in full, without a valid and acceptable reason, the supervising official has the authority to submit a proposal to the supervising judge. The purpose of this proposal is for the judge to order the child to repeat all or part of the community service sentence that has been imposed on them.

As for the time limit for implementation, community service for children is set at a duration of 7 to 120 hours. These activities must be appropriate and not interfere with the child's right to education, with a duration of no more than three hours per working day.

When imposing a community service sentence, the judge uses three reasons as considerations, namely:²⁶

1) Legal considerations

Community service sanctions are considered the most appropriate form of punishment for children, because within the framework of child law, protection and guidance are prioritized over retribution. This type of punishment falls under the category of non-custodial punishment, which aims to provide children with the opportunity to contribute

²⁶ Setyorini, p.5-6.

positively to their social environment without having to serve a prison sentence that could potentially have a negative impact on their psychological condition.

2) Philosophical considerations

From a philosophical perspective, judges argue that the punishment of children should be directed towards education and behavioral reform, rather than as a form of retribution for their actions. This view is in line with the principle of restorative justice as stated in the Juvenile Criminal Justice System Law and in international instruments such as the CRC and the Beijing Rules. Thus, punishment is used more as a means of guidance so that children do not repeat their mistakes, rather than as a tool that causes social stigma.

3) Sociological considerations

In handing down their verdict, the judges also took into account the social and psychological aspects of the children. The children involved in this case had never been in trouble with the law before, showed remorse, admitted their mistakes, and committed to not repeating them. In addition, they are still under the care of cooperative parents who are willing to provide further guidance. Another consideration that is taken into account is the condition of their living environment. This sociological factor is one of the important bases for judges in understanding the motives behind the children's actions.

Thus, it can be concluded that the selection of community service punishment is not only legally appropriate, but also takes into account the best interests of the child and prioritizes the guidance and protection of children.

4. Supervision Punishment

In a supervised sentence, the child offender is supervised by the Public Prosecutor and guided by a Community Supervisor. A supervised sentence is carried out for a minimum of three months and a maximum of two years. In principle, the child can still carry out daily activities such as going to school, playing, and other activities, but remains under supervision.²⁷

This punishment has several shortcomings, including its inability to deter children, as they are allowed to live freely as before and remain in their previous community environment, which increases the potential for recidivism. In addition, the quality and intensity of supervision also have a significant impact. Therefore, active participation from families, communities, and authorities is necessary.

5. Job Training

Vocational training institutions that are appropriate for the age of the child must implement these sanctions. The minimum sentence is 3 months, and the maximum sentence is 1 year. Judges generally impose vocational training sentences based on the prosecutor's demands, who acts as the executor in the juvenile justice process. In preparing the charges, the public prosecutor usually considers recommendations from the Correctional Center (Bapas). These recommendations are given so that the judge can impose vocational

²⁷ Alifia Rizqi Fajriani, and Muridah Isnawati. "SUPERVISORY PUNISHMENT FOR CHILDREN IN CONFLICT WITH THE LAW IN THE INDONESIAN CRIMINAL JUSTICE SYSTEM." *Bilancia* 16, no. 2 (2022), p.10.

training penalties, with the aim of not only deterring children, but also equipping them with useful skills. In this way, children are expected to gain positive skills that they can use after their sentence ends.²⁸

In addition, work training sentences also reflect a more humane and rehabilitative approach to punishment. Children in conflict with the law are not seen merely as offenders who must be punished, but also as individuals who still have the potential to be nurtured. Through work training, children can develop interests and practical skills that will support their future lives. This approach is in line with the principles of the Juvenile Criminal Justice System Law, which emphasizes protection, education, and guidance rather than mere retribution.

Although criminal training for children has good intentions, in reality its effectiveness is far from optimal. Some of the main obstacles that often arise include the limited number of training partners that meet proper coaching standards, a weak monitoring and evaluation system after the program ends, and several violations that occur during the criminal process.

For example, the implementation of work training at the Sleman Youth.²⁹ Protection and Rehabilitation Center (BPRSR) shows that the training activities are more routine in nature than focused on developing specific skills. The children are usually given tasks such as cleaning the office, toilets, and gardens or parks in the center's environment. In other words, the children are actually trained to work in order to become more disciplined and responsible individuals, not to acquire skills such as mechanics, hairdressing, or sewing.

In addition, in practice, children undergoing work training are divided into small groups of 3-5 people. Each group has a 6-hour work schedule per day, for example, from 8:00 a.m. to 1:00 p.m. for the first and second groups, and from 1:00 p.m. to 6:00 p.m. for the third and fourth groups. The work training program at BPRSR Sleman does not provide schooling for children. This shows the difference between the law and reality.

According to the provisions of Government Regulation Number 58 of 2022 concerning the Form and Procedures for the Implementation of Criminal Punishment and Actions Against Children, Article 19 Paragraph (5) states that "*The work training punishment as referred to in paragraph (4) shall be carried out for a maximum period of 3 (three) hours in 1 (one) working day and shall not interfere with the child's right to education in accordance with the court's decision, taking into account the child's needs, age, interests, and talents.*"³⁰ This condition proves that the effectiveness of work training penalties is still low. Normatively, legal regulations have provided clear

²⁸ Mirta Diatri Reisasari. "Imposing Criminal Sanctions of Work Training on Children in Conflict with the Law." *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 1, no. 1 (2020), p.5. 10.18196/ijclc.v1i1.9154.

²⁹ Reisasari, p.8-9.

³⁰ Goverment Regulation Of The Republic Of Indonesia Number 58 Of 2022 Concerning The Form And Prosedure For The Implementation Of Criminal Penalties And Actions

protection for children, but in practice, violations often occur. This creates disharmony between ideal norms and reality in the field, which ultimately reduces the main objective of work training penalties, namely to nurture children without sacrificing their basic rights.

6. Institutional Guidance

Guidance in institutions is applied to children whose behavior and condition do not pose a threat to society. This rehabilitation can be provided in job training institutions or rehabilitation institutions managed by the government or private sector, such as the Special Child Rehabilitation Institution (LPKA) and the Social Welfare Institution (LPKS). The minimum duration is 3 months, with a maximum of 2 years. Children who have served half of their sentence and no less than 3 months and have behaved well are entitled to conditional release.

The main objective of institutional guidance is to reform the child's behavior and provide them with skills and knowledge that will be useful for their future. The emphasis of this punishment is not on punishment, but on the process of rehabilitation and social reintegration so that children can return to society as better and more productive individuals. Correctional institutions are designed to create an environment conducive to the moral, mental, and social development of children.³¹ These guidelines seek to prevent recidivism and provide a better future for children.

However, in practice, correctional institutions still face various obstacles, as seen in the Ambon Class II Correctional Institution.³² Inmates often face obstacles in fulfilling their rights to education and health services. In terms of education, obstacles arise due to limited facilities, a lack of competent teaching staff, and minimal coordination with schools, making it difficult for inmates to obtain an optimal education and take package exams. Meanwhile, in terms of health, the absence of general practitioners, limited clinic facilities, and budget constraints mean that health services are inadequate and can only treat minor illnesses.

7. Imprisonment

Prison is designated as a last resort when minors threaten society. This punishment is carried out in Special Child Guidance Institutions (LPKA) with the provision that the length of the sentence cannot exceed half of the maximum sentence for adults. A child can be sentenced to a maximum of 10 years in prison for crimes punishable by death or life imprisonment.

The LPKA rehabilitates children who are serving prison sentences until the age of 18. If the age limit is exceeded but the sentence has not been completed, the child will be transferred to a youth correctional facility to continue rehabilitation. If a youth correctional facility is not available, the

³¹ Swanti Novitasari Siboro, "LEGAL ANALYSIS OF THE EFFECTIVENESS OF THE IMPLEMENTATION OF CRIMINAL DECISIONS AGAINST CHILDREN IN CONFLICT WITH THE LAW (CASE STUDY AT THE AMURANG DISTRICT COURT)." Thesis (Sultan Agung Islamic University, 2024), p.74.

³² Pricia Uty Vianty Loppies, Elsa Rina Maya Toule, and Hadi Zachra Wadjo. "Fulfilling the Rights of Juvenile Offenders in Special Juvenile Correctional Institutions." *PAMALI: Pattimura Magister Law Review* 4, no. 1 (2024), p.13-16. 10.47268/pamali.v4i1.1405.

child will be placed in an adult correctional facility with the stipulation that there must be a special youth block. However, if there is no such special block, the child can remain in the LPKA until the age of 21 (twenty-one). In addition, children who have served half of their sentence and demonstrated good behavior are entitled to parole, with supervision by the Correctional Center (Bapas).

Research conducted by Sutatiek shows that prison sentences for children are ineffective. She found that the conditions in LPKA in Indonesia are not conducive to children's growth and development, both in terms of facilities and the atmosphere of guidance, making children vulnerable to depression and alienation from their original environment. This situation is exacerbated by the risk of the formation of juvenile delinquent groups in prison, given that children who have entered LPKA tend to be negatively labeled by society as "criminals." Based on labeling theory, this kind of label has the potential to foster deviant behavior and worsen the child's personality. In addition, isolating children from outside society can also reduce their communication skills, further hindering the process of social reintegration.³³

Furthermore, prison sentences for children often fail to achieve their original purpose, which is to rehabilitate children to become better citizens. On the contrary, the experience of being a child prisoner often makes it difficult for them to be accepted back into society, thereby potentially damaging their future. On the other hand, studies have shown the negative impact of prison sentences on children, while the LPKA available in Indonesia is considered inadequate. Therefore, the imposition of prison sentences should be minimized in accordance with the mandate of Article 5 of the Juvenile Criminal Justice System Law, which requires prioritizing restorative justice. If necessary, guidance in LPKA must be made effective by improving facilities, equalizing institutions, and improving the quality of human resources within them.

Based on the discussion above, it can be concluded that diversion is the main instrument in resolving juvenile cases, as it prioritizes protection, rehabilitation, and social reintegration. However, diversion is not always achievable due to legal limitations, the condition of the victim, or technical constraints in the field. In such circumstances, judges still have other sentencing alternatives as stipulated in the Juvenile Criminal Justice System Law. Of the various types of basic penalties available, community service is the best alternative to other types of basic punishments.

Normatively, community service penalties are also in line with the objectives of punishment set out in Article 51 of the National Criminal Code, which states:³⁴

"The objectives of punishment are:

- a. to prevent criminal acts by enforcing legal norms for the protection and welfare of society;*

³³ Giselle Suhendra, "Government Imposes Prison Sentences on Children: Appropriate or Not?," accessed on September 27th, 2025, <https://share.google/yIA15nVtFDNSXKs2Z>.

³⁴ Law Number 1 of 2023 concerning the Criminal Code

- b. to rehabilitate convicts by providing guidance and counseling so that they become good and useful members of society;*
- c. to resolve conflicts arising from criminal acts, restore balance, and bring about a sense of security and peace in society; and to foster remorse and relieve convicts of their guilt."*

One of the changes in this Law is related to the criminal law paradigm, which was previously oriented towards retribution, to criminal law that focuses on corrective, rehabilitative, and restorative justice.³⁵

Community service is considered the most appropriate form of punishment for children because it is in line with the objectives of punishment and the corrective, rehabilitative, and restorative criminal law paradigm. From a corrective perspective, community service upholds legal norms and provides a deterrent effect by demonstrating that every violation has consequences, without subjecting children to the negative stigma of imprisonment. This punishment provides supervision, guidance, and training to juveniles through positive social activities, building discipline and responsibility and preparing them to reintegrate into society. Meanwhile, from a restorative perspective, community service encourages the resolution of social conflicts resulting from criminal acts by having children make a real contribution to their environment, which can also foster remorse, restore public trust, and create social harmony. Thus, community service not only balances the interests of children and society but also embodies a more humanistic justice in accordance with the principles of child protection.

Thus, community service can be recommended as one of the most appropriate basic penalties to be applied in the Juvenile Criminal Justice System when diversion cannot be implemented, either because the child has committed a serious crime or a repeat offense. In such circumstances, judges no longer have the discretion to apply diversion as stipulated in the Juvenile Criminal Justice System Law, so sentencing is carried out through the selection of a primary punishment, one of which is community service.

The forms of community service that can be applied to children include light administrative work at the sub-district office or social institutions, helping to clean the environment, distributing internal documents, and assisting in social activities that are educational, harmless, and appropriate to the child's age, psychological condition, and abilities. According to community counselors, these activities aim to foster a sense of responsibility and social awareness in children, while also serving as a means of resocialization through exposure to a formal work environment.³⁶

The application of community service penalties, including for children who commit serious crimes, must continue to be carried out selectively and proportionally, taking into account the best interests of the child, the level of wrongdoing, and the recommendations of social workers. This approach shows that even though diversion cannot be applied, the juvenile criminal justice system continues to prioritize educational, rehabilitative, and restorative punishment. Therefore, strengthening regulations, ensuring the availability of facilities, and

³⁵ "National Criminal Code Changes Criminal Law Paradigm to Focus on Social Rehabilitation," accessed on October 2th, 2025, <https://share.google/4vQ4SuqwZ9hENSOqB>.

³⁶ Setyorini, p. 6.

coordinating between law enforcement agencies are important so that community service penalties can be implemented consistently and effectively throughout Indonesia, thereby optimally achieving the objectives of child protection and guidance in the Juvenile Criminal Justice System Law.

CONCLUSION

Based on the results of the research and discussion, it can be concluded that if diversion is not achieved, the most ideal form of basic punishment for children in conflict with the law is community service. Various other forms of basic punishment, such as warnings, guidance outside institutions, supervision, job training, guidance within institutions, and imprisonment, have their own weaknesses in terms of the effectiveness of guidance and the protection of children's rights. Community service is considered the most proportionate because it is in line with the corrective, rehabilitative, and restorative objectives of juvenile punishment. Through this punishment, children not only avoid the negative effects of imprisonment, but can also participate in social activities that build empathy, responsibility, and concern for their surroundings. Therefore, community service is the best alternative that balances the aspects of guidance, improvement, and protection of children when diversion is not successful.

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