

Criminal Application Exceeds the Maximum Limit of the Law in Child Criminal Cases

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Keywords

Criminal; maximum; child

ABSTRACT

The imposition of criminal sanctions against children in conflict with the law in Indonesia is fundamentally regulated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which limits maximum imprisonment to half of the adult penalty and restricts capital punishment. However, recent judicial practice reveals a significant legal discrepancy, as demonstrated by Decision Number 50/Pid.Sus-Anak/2024/PN.Plg where the prosecutor demanded the death penalty, and Decision Number 3/Pid.Sus-Anak/2024/PN.Pnj where the judge imposed a 20-year prison sentence, both exceeding the statutory maximum limits for child offenders. This research aims to analyze the basis of considerations from the public prosecutor and the panel of judges in applying penalties beyond the maximum limit of the law against children and to review their suitability with progressive legal approaches and substantive justice frameworks for society. The approach method used in the study was normative juridical, with a qualitative approach through literature studies of laws and regulations, court decisions, and other legal materials. The results of the study show that the basis for consideration from the public prosecutor and the panel of judges in applying the crime beyond the maximum limit of the law is based on the severity of the crime committed by the child, the social impact and the increase in criminal acts committed by the child, so that in the practice of sentencing it considers progressive law enforcement and the framework of substantive justice.

INTRODUCTION

Indonesia as a country of law certainly requires all its people to comply with every applicable regulation (Butt & Murharjanti, 2022; Fauzia et al., 2021; Muliadi, 2017; Sugianto et al., 2023; Warsono et al., 2023). Therefore, any act that is contrary to the law, will be resolved through legal means. All age ranges will definitely face legal proceedings if they commit unlawful acts. This shows that it is not only for adults but also for children. The State of Indonesia has provided constitutional guarantees for children as affirmed in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that every child has the right to be protected from violence and discrimination. Law Number 35 of 2014 concerning Child Protection also explains that a child is someone who has not reached the age of 18 (eighteen) years or even who is still in the womb. In addition, Law Number 11 of 2012 concerning the Child Criminal Justice System basically adheres to the principle of the best interest of the child by prioritizing a system of coaching and protection, not just punishment. Thus, normatively the law has provided clear limits on the criminalization of children, including the maximum limitation of criminal punishment as a form of protection for children

(AlOmran et al., 2025; Hajiyeve, 2024; Ramaswamy et al., 2024; Ristama & Nugroho, 2026; Simatupang & Jamba, 2025).

However, social developments and technological advances have brought changes related to children's behavior patterns (Adeyemi, 2025; Clemente-Suárez et al., 2024; Del Vecchio et al., 2023; Volti & Croissant, 2024). Deviant behavior committed by children is a juvenile delinquency, but currently juvenile delinquency is transformed into a delinquency that leads to a criminal act or criminal act (Cinini & Mkhize, 2023; Fedorovich Kostyuk & Kunts, 2022; Sun et al., 2025). Criminal acts that can usually only be committed by adults today can also be committed by children, even with acts of violence and social impacts that disturb the community. Based on data on the Public Correctional Database System (SDP) of the Directorate General of Corrections, as of December 18, 2025, there were 1,938 children who were facing the law. With details as many as 352 are prisoners and are still undergoing judicial proceedings and 1,586 children are serving sentences as fostered children. The data shows that children are involved with the criminal justice system which can result in the inhibition of the growth and development process for the future of children if not handled appropriately.

Although normatively the juvenile criminal justice process is distinguished by the existence of the Juvenile Criminal Justice System Law. However, in practice, there is a phenomenon that shows the insynchronization between the written law and its application. This is contained in the decision Number 50/Pid.Sus-Anak/2024/PN.Plg, where the prosecutor demanded the death penalty that exceeded the maximum penalty limit in the law on the juvenile justice system. In addition, in decision Number 3/Pid.Sus-Anak/2024/Pn.Pnj, the judge handed down a criminal verdict that also exceeded the maximum limit of the law. This condition raises juridical questions about whether the practice is a form of deviation from the principle of legality, or is it a response to the demand for justice for the community who consider that the act has a serious social impact. Both cases show that there is a practice of criminal application exceeding the maximum limit of juvenile punishment, but also shows a shift in the orientation of law enforcement from child protection to community protection against crimes that have high seriousness. In line with that, the view of progressive legal theory explained by Satjipto Rahardjo also emphasizes that law is created for society and aims at substantive justice that is tailored to the needs of society in order to achieve true justice.

Thus, in the context of juvenile crime, the application of criminal offenses exceeding the maximum limit of the law poses quite complex problems. On the one hand, the practice raises a debate about the compatibility with the principles of legality and the principles of child protection. But on the other hand, these actions can be understood as a form of retribution for people who feel disadvantaged by children's actions that have the potential to have a wide and serious impact. To date, there has been no research that specifically examines the application of criminal law beyond the maximum limits of the law in juvenile criminal cases, with an approach that places the practice as a form of substantive justice for society.

Previous research has examined various aspects related to juvenile justice and substantive justice, but there are still significant research gaps. Nopriyansah and Yuningsih (2026) analyzed the juridical considerations of the public prosecutor in demanding the death penalty against the child of the perpetrator of the crime of premeditated murder, but the study only focused on formal juridical aspects without examining its suitability with the framework of substantive justice and progressive law. Dwi Mutiara Kartika Ningsih et al. (2025) discuss

substantive justice and criminal theory in the verdict of persecution resulting in death, but does not specifically highlight the practice of child punishment that exceeds the maximum limit of the law. Situngkir (2018) examines the principle of legality in national and international criminal law, while Julyano and Sulistyawan (2019) discuss the understanding of the principle of legal certainty through the construction of legal positivism reasoning, but the two studies do not relate it to the context of child punishment. Research on the age limit of adulthood in a psychological perspective by Astuti et al. (2025) and the study of children as perpetrators of criminal acts in the perspective of positive law and Islamic criminal law by Handoko et al. (2025) provide a cross-disciplinary perspective, but have not integrated it with criminal practices that go beyond the maximum limit. Thus, until now there has been no research that specifically examines the application of criminal law outside the maximum limits of the law in juvenile criminal cases with an approach that places the practice as a form of substantive justice for society, so this research is here to fill this gap.

This research aims to analyze the considerations of public prosecutors and judges in imposing crimes beyond the maximum limit of the law, and assess that the practice can be justified as a step to realize substantial justice in the midst of social changes in society. This research contributes to the development of criminal law and child protection law by integrating progressive legal theory and substantive justice in the context of juvenile criminalization that goes beyond maximum limits, as well as providing a new perspective on the tension between formal legal protection for children and societal justice demands in cases of serious child crimes. The results of this study are expected to provide recommendations for law enforcement, policymakers, and juvenile justice practitioners in formulating a balanced approach between legal certainty, child protection, and substantive justice, as well as being considered in policy reform of the juvenile criminal justice system in Indonesia.

METHOD

The approach method used in this study was normative juridical, with a qualitative type of research, the legal materials used are in the form of decision Number 50/Pid.Sus-Anak/2024/PN.Plg, decision Number 3/Pid.Sus-Anak/2024/Pn.Pnj and related laws and regulations so as to produce data descriptively. Data sources consist of primary legal materials (the Juvenile Criminal Justice System Law, the Child Protection Law, the Judicial Power Law, and both court decisions), secondary legal materials (books, journals, articles), and tertiary legal materials. Data collection techniques were carried out through literature study and document analysis, while data analysis techniques employed descriptive and prescriptive methods with deductive reasoning and legal interpretation. Data validity was ensured through source triangulation, theory triangulation, and original document tracing.

RESULTS AND DISCUSSION

The Basis for Consideration of the Public Prosecutor's Claim Exceeding the Maximum Limit in Decision Number 50/Pid.Sus-Anak/2024/PN.Plg and the Judge's Consideration of Imposing a Decision Exceeding the Maximum Limit in Decision No.3/Pid.Sus-Anak/2024/PN.Pnj in a Child Criminal Case

Mardjono Reksodiputro explained that the criminal justice system is a system consisting of a subsystem of the Police, Prosecutor's Office, Courts, and Correctional Institutions that work together in an integrated manner to tackle crime. Therefore, the effectiveness of the law enforcement system is highly dependent on synergy between institutions in carrying out their respective functions and authorities. Article 1 number 11 of Law No. 20 of 2025 concerning the Procedural Code, hereinafter referred to as the Criminal Procedure Code, explains that prosecution is an act carried out by the public prosecutor to delegate a case to a district court that has the authority to be examined and tried in trial. Furthermore, the explanation of the Public Prosecutor's authority to prosecute is also contained in article 65 letter e of the Criminal Code which basically states that the public prosecutor has the authority to delegate the case and prosecute it to the Court. Furthermore, the authority of the Public Prosecutor is also expressly regulated in Article 30 paragraph (1) of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia which states that in the criminal field, the prosecutor's office has full authority to prosecute. Muh. Ibn Fajar in his previous research also explained Muh. Ibnu Fajar in the previous research explained that the principle of *dominus litis* means that the public prosecutor is a party who has a clear interest in a criminal case, so that he has the authority to determine whether or not a case can be examined in court.

In principle, the juvenile criminal justice system in Indonesia is based on a restorative approach that prioritizes the best interests of children as the main principle, as stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law). This rule provides a lighter form of punishment compared to adults. These provisions include:

1. The implementation of handling by means of diversion at the stages of the criminal justice process;
2. Changing the form from a fine to a job training penalty;
3. There is a maximum limit of imposition of imprisonment for children at most 1/2 (one-half) of the maximum criminal threat for adults;
4. Granting parole rights for children who have served 1/2 (one-half) of the duration of coaching at LPKA and are well behaved;
5. The application of imprisonment for children is only a last resort (*ultimum remedium*);
6. There are restrictions for children who commit acts with the threat of the death penalty or life imprisonment, with criminal penalties.

These provisions indicate that the formation of laws consciously provides maximum criminal restrictions on children as a form of legal protection. On the other hand, these provisions create a legal loophole for parties who deliberately involve children to commit acts, because they know that criminal punishment for children is lighter than criminal punishment for adults. This is also the background for the public prosecutor in imposing a death penalty charge that exceeds the maximum limit of the law on children facing the law (ABH) in the case of intercourse that caused the death of the child of the AA victim in the decision Number

50/Pid.Sus-Anak/2024/PN.Plg so as to exceed the limits stipulated in the law. In line with that, the Head of the Legal Information Section of the South Sumatra High Prosecutor's Office, Vanny Yulia Eka, explained that the death penalty charges given to the child perpetrator explained that the considerations of the Public Prosecutor to prosecute the child perpetrator in the case include:

1. Crimes committed by Sadists and Barbarians

In the Great Dictionary of the Indonesian Language (KBBI), the word sadist is interpreted as an adjective that knows no mercy. Based on the facts in the trial, the child perpetrator committed an immoral act by having sex with the victim's child twice in the victim's child's vaginal opening and anal hole when the victim's child was lifeless or had become a corpse. In addition. The child perpetrator also invited his friends to take turns having sex with the victim's child twice by inserting the penis of the child perpetrator into the vaginal opening of the victim's deceased child.

With the age that is still in the category of children, namely 17 years old, it can be thought that committing such a very sadistic act so that the public prosecutor considers that the child perpetrator can be categorized as biologically and psychologically mature.

2. To provide a deterrent effect so that others do not commit similar crimes or deterrent effect

In the legal context, the deterrent effect can be defined as the emergence of fear/fear that arises due to the punishment given to the perpetrators of criminal acts. So basically, the imposition of a criminal offence is carried out to prevent criminal acts from being committed. The results of the study also show that the application of criminal sanctions is a form of punishment based on cause and effect. The reason is the unlawful act and the consequence is the application of sanctions or punishments such as imprisonment or other forms of punishment imposed by the authorities.

The main goal of criminalization is to create order in society and its application is necessary to be able to ensure that such order can be enforced. The imposition of death penalty charges against child perpetrators in a quo case must make the community aware to protect and educate their children so that they do not commit sadistic and barbaric crimes that cause unrest in society.

3. The Defendant's Age is Biologically and Psychologically Mature

The evidence from the Public Prosecutor stating that a 17-year-old child who committed a crime sadistic as in the a quo case is supported by a study on the Evaluation of Monitoring the Implementation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System conducted by the Law Monitoring Center of the Secretariat General of the House of Representatives of the Republic of Indonesia which states that:

"The definition and age limit of children are regulated differently in several laws, these differences are based on the background of regulating children's interests in each law. The age limit for children in Article 1 number 3 of the SPPA Law is that they have been 12 (twelve) years old but not yet 18 (eighteen) years old, where the limit has also been considered too high and no longer relevant for the psychological age and biological age of a child."

In the a quo case, the child perpetrator is legally and convincingly proven to have committed a criminal act of obscenity that resulted in the death of the child of the AA victim. However, the Panel of Judges had a different view in its ruling, namely sentencing him to

imprisonment for 10 (ten) years and the obligation to attend job training at the Palembang City Social Service for 1 (one) year. The panel of judges considered that the age status of the child defendant committed the crime charged by the public prosecutor was still 17 years old so it was still included in the category of children. The Panel of Judges is of the opinion that the imposition of a prison sentence of 10 (ten) years has fulfilled the sense of justice.

The approach in the Public Prosecutor's considerations is also found in the consideration of the Panel of Judges in the case of simultaneous premeditated murder of one family and theft with the weight of decision Number 3/Pid.Sus-Anak/2024/Pn.Pnj which sentenced the child perpetrator in the form of criminal imprisonment for 20 years. The public prosecutor with his authority given by law to prosecute a child facing the law (ABH) in a case of a quo with a prison sentence of 10 (ten) years minus the period of detention and coaching actions at the Social Welfare Organizing Institution (LPKS) for 1 (one) year. With consideration of the age of the perpetrator who is still in the child category in accordance with the provisions of Article 81 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is stated that "The prison sentence that can be imposed on a child is a maximum of 1/2 (one peer two) of the maximum criminal threat for adults" so that the Public Prosecutor in the case a quo prosecutes in accordance with the Law on the Juvenile Criminal Justice System.

However, regarding the public prosecutor's demands, the Panel of Judges in this case did not agree with the public prosecutor in terms of imposing a criminal sentence on the child perpetrator. So in this case, the panel of judges decided to sentence the child perpetrator to 20 (twenty) years in prison. Penajam District Court spokesperson Amjad Fauzan said that the verdict decided by the Council of Judges considered the facts, the testimony of witnesses and experts and the evidence submitted at the trial. Amjad also explained that the Panel of Judges has the principle of *res Judicata pro veritate habetur*, where the decision of the panel of judges is considered correct and has special considerations. In addition, the Panel of Judges explained its considerations in deciding its decision, as follows:

1. Children are perpetrators in criminal acts

In the case of a quo child perpetrator named J in accordance with the Law, it is expressly regulated that the perpetrator is still included in the category of child because he is not yet 18 (eight) years old, even though it is less than 3 (three) weeks but as a rule the child perpetrator does not meet the requirements to be declared an adult.

The Panel of Judges is of the opinion that the age limit up to 18 (eighteen) years which is regulated normatively has been limited by changes and what is expected is the protection of children and the mindset of the child perpetrator in a quo case is like an adult who is able to consider the act and its consequences and commit a criminal act without any doubt like the age of a child.

2. The severity of the crime committed by the child (gravity crime)

Basically, the term gravity crime only exists in international crimes and is extraordinary, but in this case the Panel needs to consider this aspect because the actions of the child perpetrator, in this case, are considered extraordinary for a child to be able to commit an act against the victim. There are several things that need to be considered in measuring the severity of a criminal act committed by a child perpetrator in this case, namely:

- a. The type of criminal act, according to the results of the sampling methodology test in international cases, states that murder has the highest value for the type of serious crime

related to the soul and the second is rape or related to immorality. In the case of a quo criminal acts committed by children, including serious criminal acts, namely related to the soul and second, namely related to intercourse carried out on 2 (two) victims' bodies whose legal facts have been found and acknowledged by the child perpetrator.

- b. As a result of the criminal act committed, the child perpetrator has committed a criminal act that murdered 5 (five) people where the victims are 1 (one) family which resulted in the cessation of one lineage from the victim's family both from the father and mother's side, and also caused severe trauma to the victims on both sides.
- c. The number of victims or the number resulting from the crime, the child perpetrator has committed an act that resulted in the death of 5 (five) people. This includes a large number for a child to commit such a criminal act and can be categorized as an extraordinary criminal act.
- d. The purpose or purpose of committing the criminal act refers to the Public Prosecutor's indictment that the child perpetrator in the a quo case committed premeditated murder. Basically, murder has three levels and the act of the child in this case is premeditated murder which is the first level of seriousness of the level of seriousness of the murder, because in premeditated murder the perpetrator plans with the aim of taking the lives of the victims.
- e. Regarding the cruelty or sadism of the acts committed, in this case the child had committed murder against the victims and in accordance with the facts at the trial, the child perpetrator repeatedly stabbed the victim in the neck and overran the victim until he was lifeless, then the child perpetrator also committed intercourse with 2 (two) lifeless bodies.
- f. A criminal act that is planned or can also be interpreted as that the act committed is planned in a mature, conscious and structured manner. Criminologist and Criminal Law expert Dr. H. Syamsudin, S.H., M.Hum in the trial of this case explained that the act was not committed by a child and was no longer a delinquency but had become a criminal offense, and the act committed by the child was far from a sense of humanity where in addition to killing the child perpetrator also had sexual intercourse with the victim's body who was no longer helpless until he released sperm.
- g. The identity of the victim. Based on the formulation obtained that criminal acts against children are criminal acts that are categorized as serious crimes, and women are at the second level. In this case, the child perpetrator has committed murder of 3 (three) child victims with 2 (two) of them being the victim's mother's child so that the actions of the child perpetrator can be categorized as serious and increasingly serious.

3. The Impact of the Decision Decided by the Panel of Judges

This decision will then be a benchmark and value that will develop in society that a child who is still in the category of a child but becomes a child who is in conflict with the law and commits a serious criminal act or at the level of a child commits an act that is not at his age and is categorized as serious but in the Juvenile Criminal Justice System in Indonesia the regulations regarding the application of criminal penalties for children where only 1/2 (one half) of the threat to adults can be imposed and if Acts with the threat of death or life imprisonment are subject to a maximum of 10 (ten) years. So that in this case with careful consideration and all aspects, especially legal aspects that can provide justice for all parties, the Panel of Judges made a legal breakthrough so that it can be understood that even though it

is still in the category of children but commits a serious criminal act, the panel of judges with its authority can make a breakthrough in laws and regulations without eliminating and violating the principle in the best interest of the child.

4. Purpose of criminalization

In the case of the purpose of punishment, either historically or in principle, the child is not allowed to be given a penalty or punishment to receive retribution, so the death penalty or life sentence is not allowed. However, the purpose of punishment is also not only for retribution because it was the purpose of punishment when the rule was made so that there are many developments regarding the purpose of punishment, one of which is relative (doel theorien) where the purpose of punishment is to prevent the creation of a criminal act or even a preventive form of an act. In its consideration, the Panel of Judges in this case paid attention to the purpose of relative punishment / prevention so that it can be applied and implemented so that the limitation of the punishment of the judge's child is necessary to break through the rules for criminal acts committed by children which are included in the category of serious and serious criminal acts.

From the two child criminal cases, similarities were found where both were committed by someone who is still in the category of Children and committed acts that can be said to be barbaric or sadistic to be done at a young age. To obtain a more systematic picture of the basic similarities between the considerations of the public prosecutor and the panel of judges in the two cases, the following is presented a table of similarities between Decision No. 50/Pid.Sus-Anak/2024/PN.Plg and Decision No. 3/Pid.Sus-Anak/2024/PN.Pnj.

Table 1. Similarity of Considerations of the Two Cases

No.	Aspects	Consideration of the Public Prosecutor's Claim in Case No. 50/Pid.Sus-Anak/2024/PN.Plg	Legal Considerations Judge in Decision Number 3/Pid.Sus-Child/2024/PN.Pnj
1.	Case Status	Still included in the category of children who face the law under the UUSPPA	Still included in the category of children who face the law under the UUSPPA
2.	Character of Crime	Serious criminal acts are in the form of criminal abuse that results in the death of the victim's child.	A serious crime in the form of premeditated murder against one family which resulted in the death of one family accompanied by theft with aggravation.
3.	The incriminating thing	The level of acts committed caused the loss of the victim's life in a heinous and sadistic way, causing unrest in the community.	The level of acts committed was heinous and sadistic, causing anxiety for the community and children did not make up stories in their testimony.
4.	Criminal Intent	The public prosecutor considers his demands from the defendant's actions, the consequences that can be caused and the condition of the child who is biologically and psychologically mature, and also pays attention to justice for the community.	The Panel of Judges considered the severity of the actions committed by the child and also the protection of the community.

5.	Consideration orientation	Emphasizing the sense of justice due to the severity of the crime committed.	Emphasizing the sense of justice due to the severity of the crime committed.
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Source: Author's analysis of Decision Number 50/Pid.Sus-Anak/2024/PN.Plg and Decision Number 3/Pid.Sus-Anak/2024/PN.Pnj

Based on table 1 above, it can be seen that the two cases have different characteristics, but there are fundamental similarities in the considerations given by law enforcement officials. The equation shows that both in the prosecution and criminal stages, the application of penalties that exceed this maximum limit is based on the severity of the criminal act committed, the consequences caused, and the consideration for community protection. The public prosecutor's demands have exceeded the maximum limit set by the law on the imposition of penalties against child offenders, who cannot be imprisoned for life, the death penalty and a penalty of more than half the prison sentence for adults. Therefore, if analyzed further, the public prosecutor's demands in this case show the courage to be able to interpret the law more broadly, which is not only based on the juridical aspects of the regulation, but also pays attention to the need to respond to the increase in criminal acts committed by children and also considers the factual conditions in society.

Criminal Arrangements and Practices Against Children That Exceed the Maximum Limits of the Law Reviewed in the Framework of Substantive Justice

In assessing the arrangements and practices of criminalization of children that exceed the maximum limit of the law, it is first necessary to understand the concept of "child". Article 1 number 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System stipulates that children in conflict with the law are children who are 12 (twelve) years old and have not yet reached the age of 18 (eighteen) years. The determination of the age of 12 years is based on the Constitutional Court Decision Number 1/PUU-VIII/2010, which explains that a child who is 12 (twelve) years old will legally be held accountable for his criminal acts and is considered mature enough to be held accountable. However, in its development, the age limit of 18 (eighteen) years as an indicator of maturity is inseparable from various criticisms and evaluations because in its development the age limit of children is still a debate both in the perspective of law and other disciplines. One of them is in the study of Law Number 11 of 2012 concerning the Child Criminal Justice System of the House of Representatives of the Republic of Indonesia stated that:

"The definition and age limit of children are regulated differently in several laws, these differences are based on the background of regulating children's interests in each law. The age limit for children in Article 1 number 3 of the SPPA Law is that they have reached the age of 12 (twelve) years but are not yet 18 (eighteen) years old, where the limit has also been considered too high and no longer relevant for the psychological age and biological age of a child" So there needs to be a change regarding the provisions regarding the age limit of children in the Law on the Juvenile Criminal Justice System, Because the age limit of 18 years as an indicator of maturity is no longer seen as fully capable of describing the psychological and biological development of children in today's society.

From a psychological perspective, the age limit of children and adults is not only determined from biological factors, but also from children's cognitive development, emotional maturity, and social interaction which must also be considered. Cognitive development in children is seen from their ability to think, reason, solve problems and understand abstract concepts. Emotional maturity includes the ability to be able to recognize, manage, and be able to express emotions in a healthy and appropriate manner. Meanwhile, regarding the aspect of social interaction, it is seen from the way a person builds relationships with others, understands the existence of social norms that live in society, and carries out his role in society.

Meanwhile, biologically, a person's maturity refers to the stage of development that has reached full sexual and physical maturity. This biological process is often also referred to as sexual maturity and puberty. According to Islamic law, a child is someone who has not reached puberty, such as the growth of pubic hair in men and women, menstruation in women and wet dreams and voice changes in men. Islamic law sets the age of puberty (about 15 years for males and between 9 – 15 years for females) before the child can be punished for his actions. In addition, Imam Shafi'i also mentioned that the age of puberty for boys and girls is fifteen years.

These various views show that the measure of the age limit called "child" in Indonesia is that there is an inconsistency regarding the age limit of children that differ in positive law in Indonesia. This is because it adjusts to the needs and objectives of the formation of regulations. These differences also show that determining the age of children is a legal policy specially formed by lawmakers as a basis for special protection for children who are in conflict with the law. Therefore, the regulation regarding the age limit for children in criminal liability will not be separated from the maximum limit of juvenile penalties.

As a result of this age limit, the Law on the Juvenile Criminal Justice System provides special treatment in the penal system. This is contained in Article 81 paragraphs (2) and (6) of the Law on the Juvenile Criminal Justice System. This article emphasizes that children can only be sentenced to 1/2 (one and one-half) of the maximum threat of imprisonment for adults, and if the crime is threatened with the death penalty or life imprisonment, the maximum sentence imposed is 10 (ten) years. This provision is a form of protection for children and upholds the principle of the best interests of children. This is also in line with the expression of Barda Nawawi Arif who stated that child protection is a legal remedy to maintain fundamental rights and freedoms of children, as well as various interests related to child welfare.

However, in the development of law enforcement practices, the regulation of the maximum penalty also raises its own problems. Because it has the potential to create a legal loophole that is used by certain parties by involving children as perpetrators of criminal acts, because it is assumed that children will only get lighter criminal sanctions than adult perpetrators. This condition is also increasingly evident from the development of the criminal characteristics of the child has undergone significant changes, where the acts committed by children are not only in the form of juvenile delinquency but have shown increasingly severe criminality. Therefore, the death penalty in the case of intercourse that resulted in the death of the child of the AA victim in the decision Number 50/Pid.Sus-Anak/2024/PN.Plg and the verdict exceeded the maximum limit in the concurrent case premeditated murder of one family and theft with aggravation in decision Number 3/Pid.Sus-Anak/2024/Pn.Pnj shows that in

certain circumstances law enforcement officials view the existence of the maximum criminal limit as not fully able to accommodate a sense of justice, both for the victim and the community.

This condition shows that the application of the maximum limit of juvenile punishment is not seen solely as a matter of compliance with normative provisions. In certain circumstances, the textual application of the law actually ignores the purpose of the law, namely utility. Therefore, there is a need for an approach that is able to place legal goals in the form of justice, certainty and usefulness in one line. The concept of Substantive Justice is actually a form of justice resulting from the progressive legal process proposed by Satjipto Rahardjo where progressive law emphasizes that law enforcement should not only be based on the text but also about the context of progressive law that occupies certainty, justice and usefulness in one line. This is because laws that are too rigid are often far from the value of justice itself. The key philosophy of progressive law is that law is for human beings not human for law, this philosophy affirms that the reorientation of legal goals from the enforcement of formal texts to humanitarian service. So philosophically, progressive law is an attempt to provide a more humanistic and adaptive middle ground, clearly placing the values of legal goals that provide justice, certainty and utility in a more flexible hierarchical line, where justice should dominate more when positivism fails morally

If it is associated with prosecution which is the authority of the Public Prosecutor as a law enforcement officer has the discretion to make heavier demands than the provisions of the law in order to realize justice in society. In the application of the death penalty to a person who has committed murder, the imposition must consider aspects of benefits both for the defendant himself and for the community. If the death penalty is considered more beneficial for the community, then the death penalty is imposed.

Furthermore, the concept of substantive justice is relevant to be considered in the process of enforcing child criminal law. Substantive justice basically emphasizes that law enforcement does not only focus on the formal and textual application of rules, but must also be able to bring real justice in accordance with the social conditions of the community. In both the considerations of the prosecution and the verdict that exceeded the limits of the mamksium, both have fulfilled the formal juridical element by proving that there was an act of intercourse that caused death and an act of coercion of premeditated murder and coercion of theft with aggravation. Furthermore, substantive justice positions law as an instrument to achieve the goal of justice itself. Thus, judges do not only act as a mouthpiece of the law (*la bouche de laloi*), but also play a role as the inventor of the law who is obliged to integrate the values of justice, utility, and the interests of society in every decision. In Article 5 of Law Number 48 of 2009 concerning Judicial Power, which requires judges to be obliged to explore, follow, and understand the legal values and sense of justice that develop in society. This provides space for judges not only to stick to the law rigidly, but also to have the flexibility to find legal breakthroughs (*contra legem*) or through legal construction (*rechts constructie*), through the interpretation of existing rules or the excavation of social values. However, the relaxation must be carried out within certain limits by always adhering to the principles of objectivity, unity and the principle of comparison.

Thus, when normative provisions are seen as not fully able to answer the increasingly serious development of child crimes, the substantive justice approach can be the basis for considering the application of law that is more adaptive and responsive to social realities.

CONCLUSION

The regulation regarding the age limit and the maximum criminal limit in Law Number 11 of 2012 concerning the Child Criminal Justice System is basically a legal policy established to provide special protection to children who are facing the law through the application of the principle of the best interests for children. However, the development of social conditions, changes in the characteristics of criminal acts committed by children, and differences in views on the age limit of maturity from the perspective of legal, psychological, biological, and Islamic law show that these arrangements are not always able to accommodate the needs of law enforcement under certain conditions. The practice of prosecution and punishment that exceeds the maximum penalty limit as in Decision Number 50/Pid.Sus-Anak/2024/PN.Plg and Decision Number 3/Pid.Sus-Anak/2024/PN.Pnj show that the application of the maximum criminal limit cannot be understood solely as compliance with normative provisions, but must consider the level of seriousness of the crime, the protection of the victim, and the sense of justice that lives in society. Therefore, the substantive justice approach that is in line with progressive law is a relevant foundation in assessing the application of the law to children, because it places justice, certainty, and usefulness as a single legal objective. Thus, in certain circumstances when normative provisions are no longer able to answer the increasingly serious development of child crimes, the application of more adaptive law through legal discovery by judges can still be justified as long as it is carried out proportionately, based on the values of justice that live in society, and does not eliminate the principle of child protection as the main goal of the Child Criminal Justice System.

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