



The Best Interest of the Child of Double Burden Crime Perpetrators from the Perspective of the Juvenile Criminal Justice System (UU SPPA)

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Abstract

This study examined the application of the best interest of the child principle in cases of double burden crime sexual assault combined with murder committed by a child perpetrator against a child victim under Indonesia's Juvenile Criminal Justice System (Law No. 11 of 2012). The research employed a juridical-normative method using statutory, case, and conceptual approaches, with Verdict No. 50/Pid.Sus-Anak/2024/PN.Plg as the primary object of analysis. Findings revealed that the Law established a multi-layered sentencing limitation system, including a maximum imprisonment ceiling of ten years for the most serious offenses, yet this framework was not designed to accommodate double burden scenarios. The application of the best interest principle in the examined verdict was procedurally satisfied but created a structural blind spot toward the child victim's rights, resulting in an imbalanced fulfillment of the four dimensions of punishment: retribution, general deterrence, specific deterrence, and societal protection. This study concluded that policy reforms were necessary, including reformulation of the maximum sentencing provision for double burden cases, strengthening of a double track system combining imprisonment and rehabilitation, integration of mandatory restitution, and issuance of judicial guidelines as a short-term measure to reduce sentencing disparities.

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Introduction

Children are the next generation of a nation and serve as the foundation of hope for a country's future. From the perspective of international law, children receive special protection through the Convention on the Rights of the Child (CRC), adopted by the UN General Assembly in 1989 and ratified by Indonesia through Presidential Decree Number 36 of 1990 (Prameswari, 2017). This convention affirms children's rights to survival, growth and development, protection from all forms of violence, and participation without discrimination (Munasifah, 2023). Under national law, Law No. 35 of 2014 stipulates that a child is every human being under the age of 18, including those still in the womb, and must therefore be regarded as a legal subject whose rights must be comprehensively guaranteed by the state (Chairul Bariah, 2024).

As part of human rights, children's rights are also constitutionally recognized under Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that every child has the right to survival, growth and development, as well as protection from violence and discrimination. This mandate was followed by the enactment of Law No. 11 of 2012 on the Juvenile Criminal Justice System (JCJS Law), which provides a specialized framework for handling children in conflict with the law. (Asbar, 2021) The JCJS Law explicitly distinguishes the treatment of children and adults within the criminal justice system not as a privilege, but as a logical consequence of children's psychological, moral, and social immaturity so that criminal accountability must be placed within a framework of protection and rehabilitation, rather than mere retribution (Chairul Bariah, 2024).

Yet amid this robust normative framework, empirical data reveals an alarming situation. Data from SIMFONI-PPA in 2024 recorded 11,796 cases of violence against children from January 1 to September 7, 2024, with 8,373 female child victims and 3,423 male child victims, illustrating the high vulnerability of children to various forms of violence. At the same time, SIMFONI-PPA also recorded 2,690 criminal cases committed by children aged 13-17 in 2024, indicating that children are not only positioned as victims but also as perpetrators of crime (Azzahra, 2025). This dual configuration underscores the urgency of juvenile sentencing regulations that not only protect child offenders but also address the demands of substantive justice for victims and society.

The most fundamental principle in every handling of juvenile cases is the best interest of the child. This principle derives from Article 3 paragraph (1) of the CRC, which obliges all actions concerning children by courts, governmental and private institutions, and administrative authorities to prioritize the child's best interest (Hiariej, 2016). Normatively, the JCJS Law also upholds this principle alongside the ultimum remedium principle, which requires that imprisonment be used only as a last resort after diversion and restorative justice have been pursued. However, in practice, serious tensions arise when this principle is applied to serious criminal offenses such as rape and murder especially when both the perpetrator and the victim are children. Verdicts that fall within the maximum limits of juvenile sentencing are often considered to not yet reflect substantive justice (Rizqiputri & Sofyana, 2024).

Normatively (*das sollen*), Indonesia's legal system has built a comprehensive framework for handling children in conflict with the law, with an emphasis on restorative justice and diversion. However, at the level of practice (*das sein*), a striking gap is apparent illustrated, among other cases, in the verdict of the Palembang District Court No. 50/Pid.Sus-Anak/2024/PN Plg, in which a 17-year-old child offender was sentenced to 10 years of imprisonment and 1 year of vocational training for the rape and murder of a 13-year-old child victim. This verdict formally consistent with Article 81 paragraph (6)

of the JCJS Law sparked controversy as it was deemed too lenient relative to the severity of the act and its social and psychological consequences (Rizqiputri & Sofyana, 2024).

The problem of the discrepancy between *das sollen* and *das sein* in the sentencing of child perpetrators of serious crimes reflects a clash among Radbruch's three legal values: legal certainty, justice, and utility (Anik Ifitah, 2023). Legal certainty demands the strict application of the 10-year maximum sentence for children, while substantive justice and social utility demand sanctions proportionate to the extreme harm caused namely the loss of life, bodily integrity, and the victim's sexual dignity. A sentence perceived as too lenient risks eroding public trust in the juvenile criminal justice system and reducing the law's effectiveness as an instrument of crime prevention (Galih Erlangga, Marlina Marlina, 2023). A number of previous studies have examined the application of the best interest of the child principle in criminal cases but have not specifically addressed the configuration of the double burden imposed by child offenders. Sibarani et al. (2022) found that at the investigation stage the best interest principle is not yet fulfilled due to the limited application of diversion and restorative justice. Rizqiputri and Sofyana (2024) identified inconsistencies in judicial considerations, while Amin and Fikri (2023) highlighted judges' tendency to prioritize the retributive dimension in cases of violence resulting in death.

Departing from this gap, this study offers novelty through an integrative analysis of the best interest of the child principle, the characteristics of the double burden crime committed by child offenders, and the dynamics of judicial considerations when the interests of the child offender and the child victim are set against one another within a single case while also formulating policy reforms for sentencing. The objectives of this study are: (1) to analyze the concept of limits on the imposition of principal punishment on children under Law No. 11 of 2012; (2) to examine the application of the best interest of the child principle by the judge in Verdict No. 50/Pid.Sus-Anak/2024/PN Plg; and (3) to formulate future policy frameworks for handling child offenders in serious double burden crimes. Theoretically, this study is expected to enrich the discourse on child sentencing based on substantive justice; practically, its findings are important as a basis for reforming Article 81 paragraph (6) of the JCJS Law, strengthening restitution mechanisms and victim protection, and developing sentencing guidelines that are more sensitive to double burden cases within the juvenile criminal justice system.

Methods

This study employs a juridical-normative method a form of legal research focused on literature review and the utilization of secondary data comprising legislation, court decisions, and legal doctrine. (Soerjono, 2011) the research specification is descriptive-analytical, meaning it describes the positive regulation of juvenile sentencing and connects it with legal theories and judicial practice as reflected in verdicts related to serious criminal offenses committed by children (Huda & Wahyudin, 2026).

Three primary approaches are employed. First, the statute approach, by examining the 1945 Constitution of the Republic of Indonesia, the Criminal Code, Law No. 11 of 2012 on the Juvenile Criminal Justice System (JCJS), and Law No. 35 of 2014 on Child Protection. Second, the case approach, by analyzing Verdict No. 50/Pid.Sus-Anak/2024/PN Plg as the primary case to dissect the judge's *ratio decidendi*. Third, the conceptual approach, drawing on the principle of the best interest of the child, the *ultimum remedium* principle, and sentencing theory as the ideal benchmark (*das sollen*) for evaluating juvenile sentencing practice (Prof. Dr. Mahmud Marzuki, 2017). The study's line of reasoning is deductive: proceeding from constitutional norms and general principles of child protection as the major premise, descending to the technical rules of juvenile sentencing, and then tested against

the concrete facts of Verdict No. 50/Pid.Sus-Anak/2024/PN Plg as the minor premise, in order to assess the coherence of the verdict with the spirit of child protection mandated by law.

The research stages are organized as a structured procedure. First, the collection of legal materials, encompassing primary legal materials namely the 1945 Constitution, the Criminal Code, the JCJS Law, the Child Protection Law, and relevant court decisions; secondary legal materials in the form of books, journals, scientific articles, and expert opinions; and tertiary legal materials including encyclopedias, the Indonesian Dictionary (KBBI), and Black's Law Dictionary to clarify terminology. Second, data collection is carried out through library research and documentary research, by tracing regulations, scientific literature, and case documents including forensic medical reports (*visum*) and the judicial considerations contained in the verdict.

Third, data analysis is conducted qualitatively through systematic interpretation, teleological interpretation, and legal argumentation applied to the collected legal materials. The stages of analysis include: (1) data reduction and legal synchronization, by sorting through the facts of Verdict No. 50/Pid.Sus-Anak/2024/PN Plg and testing the alignment of Article 81 paragraph (6) of the JCJS Law with Article 81 paragraph (5) of the Child Protection Law, in order to identify disharmony between the maximum sentencing limits for juvenile offenders and the degree of severity of the crime; (2) explanatory content analysis of the judge's *ratio decidendi*, to assess whether the sentence of 10 years of imprisonment and vocational training adequately fulfills sociological-juridical justice for the child victim, using Radbruch's theory of the purpose of law as a tool to test the balance among legal certainty, justice, and utility; and (3) penological logical inference, to evaluate the relevance of the vocational training sanction to the socio-psychopathological profile of the perpetrator of an extraordinary crime subsequently synthesized into a prescriptive argument regarding the urgency of reforming the juvenile sentencing system, including options for sentencing aggravation or the separation of the classification of heinous crimes from the child protection regime.

Results and Discussions

1. The Concept of Limits on the Imposition of Principal Punishment on Children Under Law No. 11 of 2012 on the Juvenile Criminal Justice System

From a philosophical standpoint, juvenile sentencing within Indonesia's legal system departs from the recognition that children have not yet attained the psychological, moral, and social maturity equivalent to that of adults and therefore their criminal accountability cannot be equated with that of adults but must be situated within a framework of protection and rehabilitation (Moeljatno, 2008; Rahardjo, 2000). In the international sphere, the CRC affirms the state's obligation to protect children's rights without discrimination, serving as the moral-juridical foundation for the special treatment of child offenders (Munasifah, 2023; Prameswari, 2017). These findings indicate that the limits on juvenile sentencing are conceptually grounded in the idea of the best interest of the child and in modern penology, which emphasizes rehabilitation rather than retribution.

Juridically, the JCJS Law restricts the subject of juvenile sentencing to the age range of 12–18 years, while children under the age of 12 may only be subjected to measures such as return to parents or guardians, or a guidance program of no more than six months (Article 1 paragraph (3), Article 21 paragraph (1) of the JCJS Law). The analysis reveals that this age-based regulation creates three layers of legal status: children under 12 years of age as subjects of measures only; children aged 12–17 as Children in Conflict with the Law who may be sentenced under special treatment; and those aged 18 and above as adult legal subjects without age-specific restrictions. This layered structure affirms that the limits on juvenile sentencing are not merely quantitative in terms of the duration of punishment but

also qualitative, through the differentiation of legal status and its normative consequences (Marlina., 2009; Muladi & Barda Nawawi Arief, 2005).

With respect to the types of principal punishment, an examination of Article 71 of the JCJS Law reveals that juvenile sentences are normatively arranged in the following order: warning, conditional punishment, vocational training, institutional guidance, and imprisonment. Conditional punishment itself encompasses guidance outside an institution, community service, and supervision. This arrangement is not merely a catalogue of sanctions but rather a gradation of state intervention into a child's liberty ranging from the least restrictive (warning) to the most restrictive (imprisonment). Tabular analysis shows that each type of punishment carries a different degree of liberty restriction and a distinct orientation: from repressive-symbolic, rehabilitative, and corrective, to retributive-preventive with imprisonment explicitly positioned as the ultimum remedium (Galih Erlangga, Marlina Marlina, 2023; Muladi & Barda Nawawi Arief, 2005). It is this distinction that is further elaborated in the following table of principal punishment types, which sets out:

Table 1. Types of Criminal Sanctions for Children under the Juvenile Criminal Justice System Law

Main Type of Crime	Details	Nature of Intervention	Basic Article
Warning Penalty	Direct reprimand without restriction of physical freedom	Lightest - non-restrictive	Article 71 paragraph (1) letter a of the SPPA Law
Criminal with Conditions	a. Out-of-institutional guidance b. Community service c. Supervision	Mild restrictive - child remains in a social environment with supervision	Article 71 paragraph (1) letter b in conjunction with Article 71 paragraph (2) of the SPPA Law
Job Training	Implemented for a minimum of 3 months and a maximum of 1 year; replaces a fine	Moderately restrictive - educational and rehabilitative	Article 71 paragraph (1) letter c jo. Article 80 of the SPPA Law
Coaching within the Institution	Placement of children in special child development institutions (LPKA)	Severely restrictive - restrictions on freedom in the foster care environment	Article 71 paragraph (1) letter d of the SPPA Law
Imprisonment	Maximum 1/2 of the adult threat (Article 79 paragraph 2); special minimum does not apply (Article 79 paragraph 3); absolute limit of 10 years for offenses that for adults are threatened with death/life imprisonment (Article 81 paragraph 6); death penalty and life imprisonment are prohibited	The most severe - ultimum remedium	Article 71 paragraph (1) letter e in conjunction with Articles 79 & 81 of the SPPA Law

At the level of intensity, the JCJS Law establishes several important limits: the maximum sentence for a child is only $\frac{1}{2}$ (one-half) of the maximum sentence applicable to adults (Article 79 paragraph (2)); special minimum sentences do not apply to children (Article 79 paragraph (3)); and there is an absolute ceiling of 10 years for offenses that carry the death penalty or life imprisonment for adults (Article 81 paragraph (6)). These findings indicate that the legislature consciously rejected the equalization of juvenile and adult sentencing even for the most serious crimes. On the other hand, the policy of replacing fines with vocational training lasting 3–12 months (Article 71 paragraph (3), Article 80) reflects a rejection of financial sanctions that could burden the child, while simultaneously reinforcing an educative-rehabilitative orientation through structured work (Reisasari, 2020).

Normatively, the principles set out in Article 2 of the JCJS Law particularly the principles of protection, the best interest of the child, proportionality, and the deprivation of liberty and punishment as a last resort function as value filters before a judge imposes a principal sentence. The analysis reveals that these principles form an "internal fence" that requires judges to move from the lightest to the most severe sanction, and to impose imprisonment only when other options are insufficient to achieve the goals of protection, guidance, and justice. Accordingly, the concept of limits on the imposition of principal punishment on children under the JCJS Law can be formulated as a combination of: restriction by subject (age and status), gradation of sentence types, reduction of sentence intensity compared to adults, prohibition of extreme forms of punishment, and the conversion of financial sanctions into more constructive alternatives. This combination affirms that juvenile sentencing under Indonesian positive law is designed to remain firm yet non-destructive, and to always preserve space for future resocialization.

2. Application of the Best Interest of the Child Principle in Verdict No. 50/Pid.Sus-Anak/2024/PN Plg

The analysis of Verdict No. 50/Pid.Sus-Anak/2024/PN Plg reveals that the panel of judges explicitly referred to the best interest of the child principle as mandated by Article 2 letter (d) of the JCJS Law and Article 3 paragraph (1) of the CRC. However, its application was largely manifested in the protection of the child offender through the limitation of sentence duration in accordance with Article 81 paragraph (6) of the JCJS Law, consideration of the offender's young age, and rehabilitation potential rather than in balanced protection for the child victim. Normatively, the judges complied with the sentencing ceiling and rehabilitative orientation; yet substantively, a question arises as to whether such a configuration truly reflects the "best interest" when the victim has permanently lost the right to life and sexual dignity (Andini, 2026; Kasimo, 2025).

From the perspective of Aristotle's corrective justice, proportional justice in this case demands an assessment grounded in the magnitude of the harm and the degree of the offender's culpability, assessed objectively. The research finds a disproportion between the severity of the harm and the weight of the sanction. The double burden rape followed by murder places this case at the most extreme level of harm; yet the sentence imposed remains at the structural maximum of 10 years, which makes no distinction between gradations of severity among different crimes (Wulandari, 2023). An application of the best interest principle overly centered on the child offender for instance, by highlighting the offender's remorse and future prospects results in a reduction of corrective justice for the victim and the victim's family, who receive no adequate redress for the absolute loss they have suffered (Azizah, 2025; Fitriani, 2025). These findings indicate that in practice, the principle tends to shift into a "best

interest of the offender" principle, rather than one that also seriously accommodates the interests of the child victim.

Examined through Hadjon's Theory of Legal Protection, this verdict exposes a tension between preventive and repressive protection. On the side of the offender, legal protection operates optimally: procedural rights are respected, the maximum sentence ceiling is maintained, and the rehabilitative orientation is accommodated. Conversely, on the side of the victim, repressive legal protection appears weak the relatively lenient sentence and the absence of adequate recovery instruments give the impression that the state has not fully expressed its commitment to protecting the right to life and dignity of the child (Hendra, 2026; Yudhistira, 2025). These results reveal a gap between *das sollen* comprehensive protection for children and *das sein* a verdict structure that concentrates more on the offender's rights.

Within the framework of Hiariej's Combined Theory, this study finds that the judicial considerations in the juvenile case do incorporate rehabilitative and specific deterrence dimensions, but the retributive and general deterrence dimensions are comparatively reduced particularly in the context of double burden crimes (Rasyid, 2026). The table of aggravating and mitigating factors shows that nearly all mitigating arguments age, remorse, the offender's future are accommodated, while the aggravating factors relating to the loss of life, destruction of sexual dignity, social effects, and public safety are not articulated in a balanced manner in the sentencing order. This means that the four pillars of the combined theory retribution, general deterrence, specific deterrence, and societal protection have not been operationalized proportionally.

Another significant finding is the existence of a blind spot in the application of the best interest principle: the victim, who is also a child, is not explicitly positioned as a subject of the best interest in the verdict. No mechanism for restitution, recovery, or any other substantive form of acknowledgment toward the victim's family is apparent, leaving the sense of justice felt by the victim and the public at risk of being neglected (Suharyono, 2025). This condition leads to the conclusion that the limitation lies not solely with the judges, but also with the normative design of the JCJS Law itself which sets an absolute 10-year ceiling without differentiation for extraordinary crimes thereby narrowing the judges' room to respond proportionally to double burden cases (Marbun, T. H., & Sinaga, t.t.).

Conceptually, the findings of this study carry two primary implications for future policy direction. First, the best interest of the child principle needs to be operationally reformulated so as to explicitly encompass the best interest of the child victim, not only the child offender. Second, the sentencing limits for children in cases of extraordinary crimes need to be reviewed whether through adjustment of the maximum ceiling, the addition of non-custodial sanction instruments (such as mandatory restitution and integrated rehabilitation programs), or the formulation of special sentencing guidelines for heinous crimes committed by child offenders. In this way, the best interest principle can be realized as a balance between protecting the offender's future and delivering substantive justice for the victim and society rather than functioning in practice as a principle that favors only one side.

3. Future Policy Formulation for Child Perpetrators of Serious Crimes (Double Burden)

The analysis reveals that the current framework of the JCJS Law is not sufficiently adaptive in responding to serious double burden offenses (rape and murder) committed by children. The principle of *Salus Populi Suprema Lex Esto* requires the state to ensure public safety and the sense of justice without simultaneously neglecting the special protection owed to child offenders. In this context, the

absolute 10-year imprisonment ceiling for children under Article 81 paragraph (6) of the JCJS Law has proven to generate serious tensions when confronted with crimes that are qualitatively extreme necessitating a more proportional and balanced policy reconstruction (Anggara, 2025; Tambunan, 2024).

First, this study points toward the formulation of a revision of Article 81 paragraph (6) of the JCJS Law through a special differentiation for double burden cases. Normatively, a single maximum ceiling of 10 years draws no distinction between an "ordinary" serious offense and an offense that simultaneously takes a life and violates the sexual dignity of a child victim. From Aristotle's justice perspective, treating two categories of crime with vastly different degrees of harm under the same maximum sanction risks producing injustice by disregarding the principle of proportionality. On this basis, the study proposes the addition of a special clause that affords judges the room to impose sentences exceeding 10 years for instance, up to 15 years in double burden cases that meet certain objective criteria (child victim, repeated violence, victim's death). This is intended as a form of fine-tuning within the child protection framework, not as a leveling of child offenders with adult perpetrators.

Second, in terms of sanction design, the findings support the strengthening of a more balanced double track system. The JCJS Law already provides a combination of criminal sentences and measures; however, in practice, serious cases tend to terminate at a formula of maximum imprisonment without a structured guidance pattern. This study proposes a combination model: imprisonment with a more adaptive range (specifically for double burden cases) automatically paired with an intensive and time-bound rehabilitation program within the Special Children's Correctional Institution (LPKA). From the perspective of Hiariej's Combined Theory, this approach enables all four sentencing objectives retribution, general deterrence, specific deterrence, and societal protection to be fulfilled simultaneously, so that sentencing no longer oscillates between "protecting the offender" or "satisfying public demands," but moves toward a measurable equilibrium.

Third, the study affirms the importance of restitution as a mandatory instrument in double burden cases. At present, although the restitution framework has been regulated under the Law on Sexual Violence (TPKS Law) and related regulations, its implementation in cases involving child perpetrators of sexual violence resulting in death remains weak. The analysis shows that without material and symbolic recovery for the victim's family, a verdict tends only to express protection for the offender and fails to realize repressive legal protection for the victim. Therefore, the study proposes that restitution be explicitly formulated as a legal consequence that automatically attaches to double burden cases involving child offenders, with a strengthened mandate for the courts and supporting institutions (LPSK, Ministry of Social Affairs, LPKA) to ensure its execution rather than merely listing it as an optional additional penalty.

Fourth, as a short-term measure pending legislative revision, the study recommends the issuance of judicial guidelines for example, in the form of a Supreme Court Circular Letter (SEMA) directing judges to: (1) explicitly weigh the victim's status as a child, the number of victims, and the permanent impact of the crime as aggravating factors; and (2) operationalize the best interest principle not only for the child offender, but also for the child victim and society at large. Such guidelines would help reduce sentencing disparities and strengthen the retributive-preventive dimension within the existing framework of the JCJS Law, while awaiting legislative reformulation at the level of *ius constituendum*.

Taken as a whole, the results and discussion demonstrate that these four policy formulations are not intended to eliminate protection for child offenders, but rather to shift the system from an offender-oriented pattern toward a more balanced model. Future research directions may be focused on empirical testing of the impact of more adaptive sentencing, the effectiveness of intensive rehabilitation

programs, and the implementation of mandatory restitution to ensure that the reconstruction of juvenile sentencing policy in double burden cases genuinely advances substantive justice for two equally deserving subjects: the child offender and the child victim.

Conclusion

This study concludes that the limitation on the imposition of principal punishment on children under Law No. 11 of 2012 on the Juvenile Criminal Justice System is grounded in philosophical, constitutional, and theoretical considerations aimed at protecting children from excessive punishment. The reduction of the maximum sentence to one-half of the adult sentence, the exclusion of special minimum sentences, and the prohibition of the death penalty and life imprisonment reflect the principles of proportionality, preventive legal protection, and the best interest of the child offender. However, in double burden crimes, particularly where both the offender and the victim are children and the crime results in severe or fatal consequences, the existing sentencing framework has not fully balanced the protection of the child offender with justice for the child victim. The analysis of Verdict No. 50/Pid.Sus-Anak/2024/PN Plg shows that the judge applied the JCJS Law procedurally, but the offender-oriented interpretation of the best interest principle created a substantive imbalance by insufficiently considering the victim's rights, suffering, and dignity.

Based on these findings, future research should empirically examine the impact of sentencing limits, combined imprisonment-rehabilitation models, and mandatory restitution in double burden cases to assess their juridical and sociological feasibility. For legal practitioners, especially judges and prosecutors, the best interest of the child should be interpreted in a more balanced manner by considering both the child offender and the child victim, while also taking into account the gravity of the offence, the number of victims, and the permanent impact of the crime. At the policy level, reform is needed through the reconstruction of Article 81 paragraph (6) of the JCJS Law, the strengthening of the double track system, the integration of mandatory restitution, and the issuance of judicial guidelines such as a Supreme Court Circular Letter. These measures are necessary to ensure that juvenile justice protects the future of child offenders without neglecting substantive justice for child victims.

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