

Legal Certainty of Child Detention Outside the Temporary Child Placement Institution (LPAS): Analysis of Decision Number 8/Pid.Sus-Anak/2025/PN Png

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Abstract

This study aims unlike previous studies that mainly discuss juvenile criminal sanctions and restorative justice in general, this research specifically examines the legal implications of detaining children outside the Temporary Child Placement Institution (LPAS) through judicial analysis of Decision Number 8/Pid.Sus-Anak/2025/PN Png. The study contributes to the development of juvenile justice by emphasizing that compliance with detention procedures constitutes an essential element of legal certainty and child protection rather than merely an administrative requirement. to evaluate the legal certainty and protection of children facing the law regarding the deviation of juvenile detention outside the Temporary Child Detention Center (LPAS), specifically examining Case Decision Number 8/Pid.Sus-Anak/2025/PN Png. Normatively, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System mandates that child detention must be carried out at LPAS to ensure the separation of child offenders from adult inmates. However, in practice, the child offender was detained within an adult correctional facility/detention center. This legal research employs a normative legal research method with a statutory approach, a conceptual approach, and a case approach. The scientific findings indicate that such detention constitutes a structural violation of children's rights and creates legal uncertainty due to non-compliance with mandatory statutory provisions. The conclusion suggests that the placement of children in adult detention centers invalidates the protective essence of the juvenile justice system and demands stricter institutional accountability and infrastructure fulfillment to guarantee child protection.

INTRODUCTION

Indonesia as a state of law (*rechtsstaat*) as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia has an absolute obligation to ensure justice, utility, and legal certainty for every citizen without exception, including children.¹ Children are the next generation of the ideals of the nation's struggle that have immature physical and mental characteristics, so they require exclusive attention and legal protection.² In the realm of criminal law, the involvement of children as perpetrators of criminal acts or what is juridically referred to as Children Facing the Law (ABH) is a very concerning sociological and juridical issue.³ The limitations of children's psychological abilities require law enforcement officials to prioritize an accommodating approach to children's human rights, not just using a retributive paradigm or conventional punishment.

The Government of Indonesia has promulgated Law Number 11 of 2012 concerning the Child Criminal Justice System as the main legal instrument that prioritizes the principles of protection, justice, and the best interests of children.⁴ One of the crucial clusters in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is the regulation of child detention. Article 1 number 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System limits juvenile criminal liability to the age range of 12 to 18 years.⁵ Furthermore, the act of detention is a deprivation of liberty which according to international and domestic law must be positioned as the last alternative (*ultimum remedium*) and in the shortest possible time.⁶ In order to operationalize this protection, Law Number 11 of 2012 concerning the Child Criminal Justice System expressly mandates that detention of children must be carried out in Temporary Child Placement Institutions (LPAS), while imprisonment is carried out in Special Children's Development Institutions (LPKA). The physical and psychological separation between child prisoners and prisoners today is a concrete embodiment of the exclusive rights of the child guaranteed by the constitution and international conventions (*Convention on the Rights of the Child*). Although the regulation regarding the obligation to place children in LPAS has been expressly formulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, its implementation still faces various obstacles in the field. In law enforcement practice, children are still found to be placed in adult detention centers

¹ Constitution of the Republic of Indonesia of 1945, Article 1 paragraph (3).

² Abintoro Prakoso, *Child Protection Law* (Yogyakarta: LaksBang PRESS Indo, 2016), 45.

³ Abintoro Prakoso, *Child Protection Law*, 48.

⁴ Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 3.

⁵ Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 1 number 3.

⁶ Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 3 letter g.

due to the limited facilities and infrastructure of LPAS in certain areas. This condition shows that there is a gap between legal norms (*das sollen*) and their implementation (*das sein*), thus raising problems regarding legal certainty, protection of children's rights, and the accountability of law enforcement officials in carrying out the provisions of laws and regulations.

Doctrinally, the urgency of the separation of detention places is closely intertwined with the orientation of juvenile justice law enforcement, which must be based on three basic principles of legal values according to Gustav Radbruch, namely justice, utility, and legal certainty. Legal certainty requires full compliance from law enforcement authorities with mandatory written regulations in order to eliminate arbitrary actions.⁷ The placement of ABH into the right agency is not just a bureaucratic technical matter, but an absolute prerequisite for criminalization to be able to produce restorative benefits. Without consistency in implementing the law on detention procedures, the existence of the law will lose its identity, implicit in the collapse of public trust in judicial institutions, and ultimately fail to realize a fair legal order.

Furthermore, the detention of children outside the authorized agencies violates the limits of legal protection that ABH should accept. According to Philipus M. Hadjon, legal protection must include preventive and repressive means that aim to humanize human beings and protect citizens from the arrogance of the rulers.⁸ The characteristics of child detention in adult detention centers (Rutan) have the potential to give birth to negative criminal *contagion* and cause deep psychological trauma that disrupts the development phase of children's psyche.⁹ Therefore, the fulfillment of children's rights to be detained in LPAS, separated from adult prisoners, and receive educational coaching is a form of protection of human dignity and dignity that must be consistently maintained by the state of law.

However, there is a wide gap between *das sollen* (what should be according to the law) and *das sein* (what actually happens in the field). In the Decision of Case Number 8/Pid.Sus-Anak/2025/PN Png, in the case, the child was charged with committing the crime of sexual intercourse as stipulated in the Child Protection Law. At the investigation stage, the child was not detained and was only subject to mandatory reporting. However, when the case entered the prosecution stage until trial, the child was placed in the Ponorogo State Prison which is a detention house for adult prisoners. The placement is

⁷ Achmad Ali, *Revealing the Legal Veil of a Philosophical and Sociological Study* (Jakarta: Toko Gunung Agung, 2002), 87.

⁸ Philipus M. Hadjon, *Legal Protection for the Indonesian People* (Surabaya: PT. Bina Ilmu, 2007), 38.

⁹ Wagianti Soetodjo, *Child Criminal Law* (Bandung: Refika Aditama, 2010), 112.

interesting to study because it is carried out even though the Law on the Juvenile Criminal Justice System expressly requires the placement of children in LPAS. It was found that a child of the perpetrator (Boby Pratama Faisal Hermansyah) at the prosecution stage by the Prosecutor's Office until the trial process in the Court was placed and detained in the Ponorogo Adult Detention Center (Rutan).¹⁰ This is a manifest form of deviation or juridical deviation from the imperative provisions of Article 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which prohibits the detention of children from being combined with adult prisons. Although at the stage of the investigation at the police station the child was not detained and was only subject to mandatory reporting, the placement of the child in the adult detention center at the next stage injured the principle of legal certainty and the protection of the human rights of children who are facing the law.

Previous literature studies (*state of the art*) regarding the protection of children as perpetrators of criminal acts generally focus on the policy of formulating criminal sanctions in the abstract, the consideration of judges in imposing sanctions, or the sociological constraints of the application of *restorative justice* at the investigation level. Research by Litia Pratidina Sembiring (2018) emphasizes criminal law policy on child handling, while research by Arditiyaningrum Dwi Ratna (2024) examines judges' considerations of sanctions for child offenders. A lot of research has been done on the juvenile criminal justice system. Litia Pratidina Sembiring focuses her study on criminal law policy against children who are in conflict with the law, while Arditiyaningrum Dwi Ratna focuses more on the consideration of judges in imposing sanctions on children who commit criminal acts. The two studies have not specifically examined the legality of child placement during the detention period and its legal implications for legal certainty if detention is carried out outside LPAS. Thus, there is still room for research on the relationship between compliance with detention procedures and the protection of children's rights in the juvenile criminal justice system.

The novelty of this research lies in the analysis of the practice of child detention outside LPAS as a matter of legal certainty and the protection of children's rights through the study of Decision Number 8/Pid.Sus-Anak/2025/PN Png. This study not only assesses the conformity of the actions of law enforcement officials with the provisions of the Child Criminal Justice System Law, but also places detention procedures as an integral part of the protection of children's rights in the juvenile criminal justice system. The fundamental difference as well as *the novelty* of this article is the focus of its analysis

¹⁰ Ponorogo District Court Decision Number 8/Pid.Sus-Anak/2025/PN Png.

which plunges sharply into the aspects of legal certainty and the validity of child detention actions carried out outside LPAS (especially in adult prisons) and its impact on the loss of the essence of protecting children's rights in the judicial process. In the format of this scientific article, there is no separate literature review, but it is realized directly in the conceptual testing of the irregularities in the execution of the detention. Based on this background, the legal issues raised in this study are: (1) What is the juridical validity and legal force of the detention of children outside LPAS in the law enforcement process of Decision Number 8/Pid.Sus-Anak/2025/PN Png? (2) What is the ideal reconstruction of the law on child criminal liability to ensure legal certainty and protection of children's human rights?

METHODS

This research uses a normative legal research type with the main focus on doctrinal research. The normative type was chosen because this study seeks to test the consistency of norms, the validity of the actions of law enforcement officials, and the issue of legal uncertainty arising from the conflict between the regulation of child detention procedures and the practice of placing detention in the field. This research does not rely on the collection of sociological field data, but relies on analysis of primary, secondary, and tertiary legal materials. The problem approach used includes three types of approaches, namely: first, the statute approach is carried out by examining Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Law Number 35 of 2014 concerning Child Protection, and technical regulations related to detention; second, the conceptual approach refers to legal doctrine, Gustav Radbruch's theory of legal certainty, Philipus M. Hadjon's theory of legal protection, and the principle of the best interests of children; third, the case approach is applied through a comprehensive analysis of Case Decision Number 8/Pid.Sus-Anak/2025/PN Png to dissect the detention deviations that occur in the practice of juvenile criminal justice.

RESULTS AND DISCUSSION

1. Juridical Validity and Legal Strength of Child Detention Outside LPAS in Decision Number 8/Pid.Sus-Anak/2025/PN Png

The detention of child suspects or defendants is a form of restriction of independence that legally must be carried out very carefully because it has direct implications for human rights and the process of child growth and development. In the perspective of Gustav Radbruch's theory of legal certainty, law must be able to realize three basic values, namely justice (*gerechtigkeit*), utility (*zweckmäßigkeit*), and legal certainty (*rechtssicherheit*).

Legal certainty requires that every norm that has been established in laws and regulations be applied consistently by law enforcement officials without exception. In the context of the juvenile criminal justice system, legal certainty is realized through the implementation of special procedures designed to provide maximum protection to children facing the law. Therefore, every act of arrest or detention of children must be guided by the provisions of Law Number 11 of 2012 concerning the Child Criminal Justice System as a *lex specialis* which overrides general provisions in the criminal procedure law.¹¹

The guarantee of protection is explicitly reflected in Article 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which regulates various rights of children during the criminal justice process, including the right to be treated humanely, the right to obtain legal assistance, the right to be separated from adult detention, and the right not to be arrested, detained, or imprisoned except as a last resort and in the shortest possible time. In addition, Article 32 paragraph (5) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System emphasizes that in the event of detention of children, their placement must be in the Temporary Child Placement Institution (LPAS). The arrangement shows that the existence of the Temporary Child Placement Institution is not just an administrative option, but an imperative legal order to ensure the fulfillment of children's rights during the judicial process.¹²

When associated with the legal facts in Decision Number 8/Pid.Sus-Anak/2025/PN Png, the placement of Bobby Pratama Faisal Hermansyah as the perpetrator's son in the Ponorogo Adult State Prison (Rutan) shows that there is a discrepancy between normative provisions and law enforcement practices. The placement basically eliminates the special protection that should be given to children as mandated by the Law on the Juvenile Criminal Justice System. From the point of view of state administrative law, actions that are not in accordance with the procedures set by laws and regulations can be categorized as a form of abuse of authority that has the potential to cause procedural defects in the implementation of detention. Thus, even if the detention is carried out under lawful authority, its implementation must still be subject to the mechanism determined by law.¹³

¹¹ Gustav Radbruch, *Legal Philosophy* dalam Kurt Wilk (ed.), *The Legal Philosophies of Lask, Radbruch and Dabin* (Cambridge: Harvard University Press, 1950), hlm. 107-109.

¹² Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 3 and Article 32 paragraph (5).

¹³ Peter Mahmud Marzuki, *Legal Research*, Revised Edition (Jakarta: Kencana, 2017), pp. 134-136.

According to the theory of legal protection put forward by Philipus M. Hadjon, legal protection aims to ensure the fulfillment of citizens' rights through preventive and repressive instruments. In a quo case, the placement of children in adult detention centers shows that the preventive legal protection that should be provided by the state is not optimal. The adult prison environment is basically not designed to support the psychological needs, education, or character development of children. On the contrary, this condition has the potential to cause psychological pressure, social stigmatization, and the risk of imitation of negative behavior from adult inmates. Therefore, placing children outside LPAS not only violates the procedural aspect, but also has the potential to ignore the purpose of protection which is the main spirit of the juvenile criminal justice system.¹⁴

From the perspective of international law, the practice of holding children together with adult detainees is also contrary to universally accepted child protection standards. Article 37 (c) of the *Convention on the Rights of the Child* states that every child deprived of his liberty must be separated from an adult unless it is seen as more in the best interests of the child. The provision emphasizes that the separation of children from adult prisoners is part of the protection of fundamental human rights. As a country that has ratified the Convention on the Rights of the Child, Indonesia has an obligation to ensure that all law enforcement policies and practices are in line with the principles of child protection recognized in international law.¹⁵

Based on this description, it can be concluded that the practice of detaining children outside LPAS cannot be justified just because of limited facilities and infrastructure. The absence of adequate facilities is the responsibility of the state which must be resolved through institutional policies and budgeting, not by setting aside the rights of children guaranteed by law. Therefore, in order to realize legal certainty and child protection effectively, it is necessary to strengthen supervision of the implementation of the Child Criminal Justice System Law, increase the capacity of law enforcement officials, and provide adequate LPAS in each region. This step is important to ensure that the goals of the juvenile criminal justice system, namely the protection, coaching, rehabilitation, and best interests of children, can be realized consistently in law enforcement practices.¹⁶

2. Legal Construction of Child Criminal Liability and Polarization of Fair Sanctions

Children's criminal liability is based on the principle of *mens rea* (mistake) which is measured casulistically based on the level of mental, emotional, and psychological

¹⁴ Philipus M. Hadjon, *Legal Protection for the Indonesian People* (Surabaya: PT Bina Ilmu, 2007), pp. 2-5.

¹⁵ United Nations, *Convention on the Rights of the Child* 1989, Pasal 37 huruf (c).

¹⁶ Abintoro Prakoso, *Child Protection Law* (Yogyakarta: LaksBang PRESSindo, 2016), pp. 112-118.

maturity of the child concerned.¹⁷In the case of criminal acts of immorality or underage intercourse in Decision Number 8/Pid.Sus-Anak/2025/PN Png, the material actions carried out by the child perpetrator juridically have indeed met all the objective elements of criminal acts prohibited by the child protection law.¹⁸ However, in formulating the draft construction of the criminal liability law, juvenile justice institutions should not necessarily be trapped using a purely retributive paradigm that focuses on the aspect of physical retribution alone.¹⁹ Prison or adult detention is not an instant answer to solve complex child delinquency, but rather risks killing children's future.²⁰

When reviewed in depth based on the theoretical thinking of Barda Nawawi Arief, the conception of legal protection of the community (social defence) must always go hand in hand and be balanced with the protection of the child perpetrator himself.²¹ This is part of the logical consequence of the social contract argument and the social solidarity argument that impose the responsibility of improving children's morals on the state and society, rather than violently isolating them.²² Therefore, the legal sanctions imposed by the panel of judges in the court must be radically shifted towards a recovery orientation through a restorative justice approach and measurable resocialization efforts.²³ This is in line with the classic legal adage *delinquens per iram provocatus puniri debet mitius*, which emphasizes that children who commit criminal acts must actually be seen as children who are going astray, so that the legal sanctions must be lighter, humane, and foster-oriented.²⁴

Furthermore, the polarization of sanctions imposed on children who commit sexual intercourse or moral crimes ideally optimizes the variant of non-prison sanctions that have been accommodated by Article 71 of the Law on the Juvenile Criminal Justice System, such as conditional punishment, the obligation to participate in job training, or the fulfillment of community service actions.²⁵ Restrictions on freedom in designated institutions must be content with the educational curriculum, not just restrictions on

¹⁷ Abintoro Prakoso, *Child Protection Law* (Yogyakarta: LaksBang PRESS Indo, 2016), p. 72.

¹⁸ Ponorogo District Court Decision Number 8/Pid.Sus-Anak/2025/PN Png.

¹⁹ Romli Atmasasmita, *The Problem of Delinquency of Adolescent Children* (Bandung: Armico, 1983), p. 44.

²⁰ M. Nasir Djamil, *Children Not to Be Punished* (Jakarta: Sinar Grafika, 2013), p. 29.

²¹ Barda Nawawi Arief, *Law Enforcement Issues and Crime Prevention Policies* (Bandung: Citra Aditya Bakti, 2001), p. 65.

²² Barda Nawawi Arief, *Law Enforcement Issues and Crime Prevention Policies*, p. 68.

²³ Setya Wahyudi, *The Implementation of the Idea of Diversion in the Reform of the Juvenile Criminal Justice System in Indonesia* (Yogyakarta: Genta Publishing, 2011), p. 81.

²⁴ Wagiaty Soetodjo, *Child Criminal Law* (Bandung: Refika Aditama, 2006), p. 53.

²⁵ Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 71.

freedom of movement in the iron bars of adult prisons.²⁶ This kind of criminal construction will provide space for children to reflect on their mistakes without losing their basic human rights. Judges are required to have progressive courage in exploring the value of substantive justice, so that the verdicts that are born do not only become a mouthpiece of the law, but also become an instrument for restoring social conditions damaged by criminal acts.

If drawn into the sociological analysis of the law, the involvement of minors in the vortex of immoral acts cannot actually be separated from the various external factors that are urgent around them. Moral degradation and deviant behavior are often triggered by the negative excesses of unstoppable globalization, easy access to pornography through the sophistication of information technology, and the dysfunction of social control both at the family level and the local play environment.²⁷ Given that these triggering factors are dominated by children's immaturity in filtering environmental stimuli, the purely punitive legal approach becomes irrelevant and unfair. The state through its judicial system must position itself as an adoptive parent who corrects the wrong behavior through macro coaching, not as an executioner who destroys the rest of the phase of his soul development.

Furthermore, the policy of criminal execution that places children in prisons or adult detention centers is very dangerous because it has great potential to trigger the phenomenon of criminal contagion.²⁸ In an adult cell environment, children with a vulnerable mentality will very easily adopt criminal behaviors, strategies, and mindsets that are much more mature than adult recidivist inmates. This destructive impact not only harms a child's personal future, but also creates a sociological time bomb for society when the child is free later. Instead of undergoing a process of repentance and resocialization, children are released from detention institutions with a much increased capacity for criminality and professionalism due to the wrong placement of the social environment during the detention period.

The anomalous condition of child detention in detention centers today clearly clashes with the vital function of law stated by Roscoe Pound regarding law as a tool of social engineering. According to Pound, the law must act as a tool to maintain a proportionate balance in arranging various conflicting interests in people's lives.²⁹ In the ABH case,

²⁶ Abintoro Prakoso, *Child Protection Law*, p. 75.

²⁷ W.A Gerungan, *Social Psychology A Summary* (Bandung: Eresco, 1996), p. 102.

²⁸ Wagiati Soetodjo, *Child Criminal Law*, p. 112.

²⁹ Roscoe Pound in Bernard L. Question, *Legal Theory; Strategies for Human Order Across Spaces and Generations* (Surabaya: CV. Kita, 2006), p. 140.

there are the interests of victims who demand justice, the interests of the community who want order, and the interests of the perpetrator's children who are entitled to future protection.³⁰ Putting children in adult detention centers for the sake of satisfying a sense of public justice is a form of imbalance of legal orientation. The law fails to carry out its function as a social organizer if in the process of upholding justice, it actually creates new injustice by unlawfully depriving children of human rights.

Therefore, within the framework of modern juvenile justice law, criminal sanctions of imprisonment must be strictly positioned as the ultimate remedy that should only be taken if all diversion efforts and other non-prison sanctions have been declared ineffective or inadequate. The restraint of physical freedom must be limited to the shortest period of time and be under the strict supervision of judicial supervisory agencies. The judge must also explicitly include urgent emergency reasons in his legal consideration if forced to choose a prison sentence for the child, in order to avoid the subjectivity or arrogance of the judiciary in deciding the ABH case.

As a conclusion of this construction, if the criminal sanction of imprisonment is forced to be applied because the weight of the crime is considered very heavy, then the execution of its placement absolutely and without tolerance must be carried out in the Special Children's Development Institution (LPKA), not in an adult prison.³¹ LPKA is a special institution that is juridically designed to ensure the continuity of educational rights, the fulfillment of health services, mental spiritual development, and comprehensive psychological recovery of children.³² With placement that is in accordance with this written legal corridor, the essence of child protection can be maintained, legal certainty can be enforced consequentially, and children of criminal offenders still have a real opportunity to improve the direction of their lives in order to welcome a better future.³³

CONCLUSION

The practice of detaining Children in Face with the Law (ABH) in adult State Prisons (Rutan) as revealed in Decision Number 8/Pid.Sus-Anak/2025/PN Png shows that there is a discrepancy between the implementation of law enforcement and the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The placement of children outside the Temporary Child Placement Institution (LPAS) is contrary to the

³⁰ Roscoe Pound in Bernard L. Question, *Legal Theory; Strategies for Human Order Across Spaces and Generations*, p. 143.

³¹ Setya Wahyudi, *The Implementation of the Idea of Diversion in the Reform of the Juvenile Criminal Justice System in Indonesia*, p. 85.

³² Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 3.

³³ M. Nasir Djamil, *Children Not to Be Punished*, p. 35.

provisions of Article 32 paragraph (5) of the Law on the Juvenile Criminal Justice System which imperatively requires the detention of children to be carried out at LPAS. This condition not only causes procedural defects in the implementation of detention, but also reduces the guarantee of legal certainty and the protection of children's rights, because children have the potential to experience psychological pressure, stigmatization, and negative influences due to being placed with adult prisoners.

The ideal construction of criminal liability law must remain oriented to the principle of the *best interests of the child* through the application of restorative and rehabilitative approaches. The imposition of imprisonment must be placed as *the ultimate remedium*, while if restrictions on independence cannot be avoided, its implementation must be carried out in institutions specifically intended for children in accordance with the provisions of laws and regulations. Thus, the goal of the juvenile criminal justice system to realize legal certainty, protection of children's rights, and recovery-oriented coaching can be carried out optimally.

This research makes an academic contribution by emphasizing that compliance with detention procedures is not just an administrative issue, but an inseparable part of ensuring legal certainty and protection of children's rights in the juvenile criminal justice system. Through an analysis of Decision Number 8/Pid.Sus-Anak/2025/PN Png, this study strengthens the argument that deviations from the procedure for placing children during the detention period can have an impact on the non-fulfillment of children's rights as guaranteed in the Law on the Juvenile Criminal Justice System and child protection instruments.

This study still has limitations because it uses a normative legal approach that focuses on the analysis of a single court decision so that it has not described the practice of child detention in various regions. Therefore, further research is recommended to use an empirical approach or comparative research on the implementation of child placement in LPAS in various regions in Indonesia in order to obtain a more comprehensive picture of the effectiveness of the implementation of the Juvenile Criminal Justice System Law in ensuring legal certainty and protection of children's rights.

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