

# Philosophical Legal Review on The Implementation of the Rights of the Child for Youth Offender Associated with Terrorism Case in Indonesia

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**Abstract:** *Terrorism has been qualified as a serious crime in Indonesia. The gravity of the crime can be estimated based on the fact that a person accused of such an offence is classified as a high-risk offender. However, complications arise when children and/or youth are suspected of this crime. Indonesia has ratified international human rights instruments, including the Convention on the Rights of the Child. The question emerges on how the rights can be exercised when youth is suspected to commit such high-degree crime. There are some laws that must be taken into account for further analysis in relation to this issue, especially the Law on Juveniles Justice System and the Terrorism Law. The context of how these laws intersect with the implementation of the Rights of the Child is important to be considered for the best interest of the child, including their comprehensive rehabilitation and reintegration process. The philosophical legal approach used in this research aims to have comprehensive analysis and solution of the complexity associated with the implementation of the rights of the children associated with a terrorism charge, especially when it comes to the legal system. It is also of critical importance to identify possibilities of improvement in the implementation of these rights.*

**Keywords:** *children's rights, Convention on the Rights of the Child, Child in Conflict with Law (CICL), Juvenile Justice System Law, terrorism*

**Abstrak:** Terorisme telah dikualifikasikan sebagai kejahatan serius di Indonesia. Berat ringannya kejahatan dapat diperkirakan berdasarkan fakta bahwa orang yang dituduh melakukan pelanggaran tersebut diklasifikasikan sebagai pelaku berisiko tinggi. Namun, komplikasi muncul ketika anak-anak dan/atau remaja dicurigai melakukan kejahatan ini. Indonesia telah meratifikasi instrumen hak asasi manusia internasional, termasuk Konvensi Hak Anak. Timbul pertanyaan bagaimana hak tersebut dapat dilaksanakan ketika seorang pemuda diduga melakukan kejahatan tingkat tinggi tersebut. Ada beberapa undang-undang yang harus diperhatikan untuk dianalisis lebih lanjut terkait isu ini, khususnya UU Sistem Peradilan Anak dan UU Terorisme. Konteks bagaimana undang-undang ini berinteraksi dengan pelaksanaan Hak Anak penting untuk dipertimbangkan demi kepentingan terbaik bagi anak, termasuk proses rehabilitasi dan reintegrasi yang komprehensif. Pendekatan hukum filosofis yang digunakan dalam penelitian ini bertujuan untuk mendapatkan analisis dan solusi yang komprehensif atas

kompleksitas yang terkait dengan implementasi hak-hak anak yang terkait dengan tuduhan terorisme, terutama jika dikaitkan dengan sistem hukum. Juga sangat penting untuk mengidentifikasi kemungkinan-kemungkinan perbaikan dalam pelaksanaan hak-hak ini.

**Kata kunci:** hak anak, Konvensi Hak Anak, Anak yang Berkonflik dengan Hukum (CICL), Hukum Sistem Peradilan Anak, terorisme.

## INTRODUCTION

Indonesia has ratified international human rights law including the International Convention on the Rights of the Child. As its commitment, the country has amended its law for youth offender from retributive-oriented perspective law<sup>1</sup> to restorative-oriented justice.<sup>2</sup> The current law on the Juvenile Justice System (JJS) has accommodated several values of child-oriented treatment such as best interest of the child. The JJS Law is a substitute for Law Number 3 of 1997 concerning Juvenile Courts with the aim of realizing a judiciary that truly guarantees the protection of the best interests of children who are in conflict with the law. The substances regulated in the JJS Law include, among other things, the placement of children who undergo the judicial process can be placed in the Special Child Development Institution (LPKA) as well as strict arrangements regarding Restorative Justice and Diversion.

Diversion in the JJS Law is the transfer of settlement of child cases in the criminal justice process to processes outside the court. Diversion is carried out at the level of investigation, prosecution and examination in court through deliberations involving all components involved in the legal process. The purpose of the diversion includes (1) achieve child peace outside the judicial process; (2) resolving child cases outside the judicial process; (3) prevent children from deprivation of independence; (3) encouraging the public for participation; (4) Instill a sense of responsibility to children; (4) Protection for the children in conflict with the law is stated in the law. It is a massive progressive in the JJS Law as compared to previous law. A legal reform with the orientation to the best interest of the child seems to exist in the current law. It is expected that the children in conflict with the law are treated the same regardless their associated crimes including children associated with terrorism crime.

Law on eradication of terrorism, Law Number 5 of 2018 concerning Stipulation of Government Regulation in lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism, does not mention the setting of sanctions for child offenders. It raises when the youth are associated with the crime occurs related to the high-degree offence in Indonesia context. Terrorism is qualified as high degree offence<sup>3</sup> that emerges a situation to questioning the implementation of the rights of the child in the case of high

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<sup>1</sup> UU No. 3 Tahun 1997 tentang Pengadilan Anak (Law No. 3 Year 1997 on Juvenile Court), 1997.

<sup>2</sup> UU No. 11 Tahun 2012 Tentang Sistem Peradilan Perlindungan Anak (Law No. 11 Year 2012 on Juvenile Justice System), 2012.

<sup>3</sup> Direktorat Jenderal Pemasyarakatan, Peraturan Direktur Jenderal Pemasyarakatan No. PAS-58.OT.03.01 Tahun 2010 Tentang Prosedur Tetap Perlakuan Narapidana Resiko Tinggi, 2010.

degree offence such as terrorism.<sup>4</sup> The importance of having the rights implemented in the treatment of youth offender is necessary not only it serves Indonesia's commitment to ratified of human rights instrument, but also addressing the aspect of correct rehabilitation and reintegration process of the child. This article aims to respond this question and identify relevant aspects identify as implementation of rights of the child through philosophical legal approach in order to have in-depth analysis and comprehensive solution. In Article 16 A, it is stated that every person who commits a crime of terrorism involving a child, the penalty threat is increased by 1/3 (one third).

That is, this applies to adults who commit terrorism involving children. However, no specific provision in relation to juvenile on which the children can lost their possibility of gaining the restorative justice method and diversion as given in the JJS Law.

## RESEARCH METHOD

The type of research used by the author in this study is normative research with legal philosophical approach. The philosophical-juridical research is beneficial to reviewing the general principle guiding the law, criticizing the law including its implementation, and factors that motivating the law.<sup>5</sup> The qualitative research is research that aims to understand the phenomena that occur in the object of research by using existing methods and producing descriptive data in the form of written words. Qualitative research methods try to explain the theoretical concepts of several methods, and have a technical nature of implementation by describing philosophical and theoretical.<sup>6</sup> The philosophical approach selected in this study aims to answer the question on whether the legal system has appropriately treated children associated with terrorist crime. The philosophical approach in this research is intended to find wisdom in legal realm for the sustainable improvement.

The qualitative-normative method is used because this method has the nature and scope of the discipline of law, which is a system that teaches about law as a norm or reality of something that society aspires to. Meanwhile, by its nature, this research is descriptive analytical with philosophical approach. Descriptive is a method by describing and describing a state of the subject and object, as well as current conditions based on facts, characteristics, characteristics, and relationships between existing elements or legal phenomena, while analytical means critically analyzing terms. as well as expert opinions by explaining beliefs by asking, reading, cleaning, and managing where the essence of what is being researched is finally found.<sup>7</sup>

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<sup>4</sup> UNODC, *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System*, 2017, [https://www.unodc.org/documents/justice-and-prison-reform/Child-Victims/Handbook\\_on\\_Children\\_Recruited\\_and\\_Exploited\\_by\\_Terrorist\\_and\\_Violent\\_Extremist\\_Groups\\_the\\_Role\\_of\\_the\\_Justice\\_System.E.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Child-Victims/Handbook_on_Children_Recruited_and_Exploited_by_Terrorist_and_Violent_Extremist_Groups_the_Role_of_the_Justice_System.E.pdf).

<sup>5</sup> Lili Rasjidi and Ira Thania Rasjidi, *Pengantar Filsafat Hukum*, 7th ed. (Bandung: CV Mandar Maju, 2018).

<sup>6</sup> Muhaimin, *Metode Penelitian Ilmu Hukum* (NTB: Mataram University Press, 2020).

<sup>7</sup> Ibid.

## DISCUSSION AND ANALYSIS

### The Philosophical Approach to the Legal Problems

Soejono Soemargono called philosophy of science a new dimension because philosophy of science is in the form of a process of advanced investigation with scientific characteristics in which scientific activities are carried out by the organizers conducting investigations of objects and problems of a special type from each of the sciences themselves.<sup>8</sup> Philosophy of science is concerned with all the assumptions, foundations, methods, implications of science, and with the uses and benefits of science. These disciplines sometimes overlap with metaphysics, ontology and epistemology, namely when exploring whether scientific results consist of the study of truth.<sup>9</sup>

Philosophy of science has historically been met with mixed responses from the scientific community. Although scientists often contributed to the field, many prominent scientists felt that the practical effect of their work was limited; a popular quote attributed to physicist Richard Feynman reads, "Philosophy of science is as useful to scientists as ornithology is to birds." In response, some philosophers (e.g., Craig Callender) suggested that ornithological knowledge would be of great benefit to birds, if it were possible for them to possess it.<sup>10</sup>

If Richard Feynman's understanding is related to law, then Richard Feynman's argument becomes "Philosophy of law is useful for the law itself" which is the same as the term society for law, not law for society. This view may be very strong in the flow of Legal Positivism. Van Apeldoorn argues that law is a social phenomenon; there is no society that does not know the law, the law becomes an aspect of culture such as religion, decency, customs and habits.<sup>11</sup> Meanwhile, Von Stammer and Hans Kelsen argue that law is a mere necessity or known as *sollen*, not *sein*, and according to them, because law is *sollen*, law is not science.<sup>12</sup>

This is very different from the views of several legal philosophers, especially in Indonesia, such as Arif Sidhartha and Satjipto Raharjo. Arif Sidhartha raised the phenomenon of 'law bearers'<sup>13</sup> where the law here is interpreted as human activity with regard to the existence and enactment of law in society, which includes the activities of forming, implementing, applying, discovering, interpreting, researching, and systematically studying and teaching law<sup>14</sup> Legal bearers are also divided into practical law bearers and theoretical law bearers where theoretical law bearers become something that contributes to the building of legal discipline.<sup>15</sup> Thus Sidhartha's study:

<sup>8</sup> Soejono Soemargono, *Pengantar Filsafat Ilmu* (Yogyakarta: Tiara Wacana Yogya, 2003).

<sup>9</sup> Stanford University, "Philosophy of Science," n.d., <https://web.stanford.edu/class/symsys130/Philosophy%20of%20science.pdf>.

<sup>10</sup> "Richard Feynman's Philosophy of Science | Issue 114 | Philosophy Now," accessed November 23, 2022, [https://philosophynow.org/issues/114/Richard\\_Feynmans\\_Philosophy\\_of\\_Science](https://philosophynow.org/issues/114/Richard_Feynmans_Philosophy_of_Science).

<sup>11</sup> Nandang Alamsah Delianoor, *Pengantar Ilmu Hukum* (Jakarta: Universitas Terbuka, 2022).

<sup>12</sup> Ibid.

<sup>13</sup> Shidarta Shidarta, "Bernard Arief Sidhartha: Dari Pengembangan Hukum Teoretis Ke Pembentukan Ilmu Hukum Nasional Indonesia," *Undang Jurnal Hukum* 3 (December 1, 2020): 441–476.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

*Dalam pengembangan hukum teoretis, terdapat area ilmu-ilmu hukum yang berobjek telaah tatanan hukum nasional dan internasional. Ilmu-ilmu hukum ini ada yang berkarakter normatif dan empiris. Dikatakan berkarakter normatif karena ia berangkat dari perspektif internal dengan objek telaah hukum sebagai Sollen-Sein. Di sini akan hadir ilmu hukum yang praktikal-normologis, yang bersentuhan dengan interpretasi dan sistematisasi bahan hukum serta teori perundang-undangan, penemuan hukum, dan argumentasi hukum. Di sisi lain ada ilmu hukum empirikal yang berperspektif eksternal, seperti perbandingan hukum, sosiologi hukum (objek telaahnya adalah hukum sebagai Sein-Sollen), sejarah hukum (objek telaahnya adalah hukum dalam konteks waktu), antropologi hukum (objek telaahnya adalah hukum dalam konteks kultur), dan psikologi hukum.*

In English, it can be interpreted as follows;

In the development of theoretical law, there is an area of legal sciences whose object is the study of national and international legal orders. These legal sciences have a normative and empirical character. It is said to have a normative character because it departs from an internal perspective with the object of legal study as Sollen-Sein. Here, practical-normological legal knowledge will be present, which deals with the interpretation and systematization of legal material as well as legislation theory, legal discovery, and legal argumentation. On the other hand, there is empirical law with an external perspective, such as comparative law, legal sociology (the object of study is law as Sein-Sollen), legal history (the object of study is law in the context of time), legal anthropology (the object of study is law in the context of culture). ), and legal psychology.

The difference between the two is then examined using a philosophy of science approach, in this case the theory of knowledge or epistemology. Epistemology, from the Greek words episteme (knowledge) and logos (science), is a branch of philosophy that deals with the origin, nature and types of knowledge. This topic is one of the most discussed and debated topics in the field of philosophy,<sup>16</sup> or example, what is knowledge, what are its characteristics, types, and its relation to truth and belief. Epistemology or theory of knowledge concerning the nature, assumptions, basis and accountability of science with questions about the knowledge that everyone has. Humans acquire this knowledge through reason and five senses through various methods, including inductive methods, deductive methods, positivist methods, contemplative methods, and dialectical methods.

In English, this epistemology can be interpreted as a Theory of Knowledge, which is defined as a theory of knowledge to determine the nature of knowledge. Epistemology is a branch of philosophy that deals with what is knowledge, and when do we begin to accept it as a truth and how can we justify that acceptance as a truth.<sup>17</sup> In terms of its relation to law and science, the problem becomes what is law, when did law begin to be accepted as something and how is the justification that law is science. Philosophy of law was not known before Socrates because in the time before Socrates, namely the Greek/Roman Antiquity, the attention of philosophers was still to the universe.<sup>18</sup> The thing that was of concern at that time was about the core of the universe while about

<sup>16</sup> Nyong Eka Teguh Imam Santosa, *Fenomena Pemikiran Islam* (Sidoarjo: UruAnna Books, 2015).

<sup>17</sup> "The Philosophy of Science - Understanding Science," April 18, 2022, accessed November 8, 2022, <https://undsci.berkeley.edu/the-philosophy-of-science/>.

<sup>18</sup> Rasjidi and Rasjidi, *Pengantar Filsafat Hukum*.

humans and behavior (ethics) and law, even if we talk about law, it is still about law in the sense of natural necessity. This natural law was known at that time as a law that was not only limited to human society but encompassed the universe. Prof. Lili believes that it was only when Socrates did legal philosophy appear because Socrates was the first to philosophize about humans where all aspects of humans were his talk. This thought is interesting for further review from the point of view of human rights, especially related to natural law.<sup>19</sup>

In the philosophy of human rights there are two dominant streams, namely natural law rights (rights based on natural law) and positivism rights (rights derived from positive law).<sup>20</sup> The natural law rights argument is advanced by thinkers like John Locke who considers that the origin of human rights is from God Almighty, while positivism rights sees that the origin of human rights is because the state recognizes and guarantees these rights.<sup>21</sup> By looking at this argument, it is possible that natural law itself is law if it is related to human rights so that it does not have to be called law when talking about humans and society in the Socratic era. Apart from that, it means here that the origin of law as a science here has been found. What needs to be found is that as part of the philosophy of law science, the epistemological context is the nature and type of knowledge of the law so that one can see the duties and functions of law science and its development.

The duties and functions of legal science here can be initiated through how we define law. Unfortunately, legal experts are still debating whether or not a legal definition is necessary where some thinkers consider that a legal definition will never happen. This was conveyed by Thurman Arnold as follows:<sup>22</sup>

“Obviously, ‘law’ can never be defined. With equal obviousness, however, it should be said that the adherents of the legal institution must never give up to define law, because it is an essential part of the ideal that is rational and capable of definition ... Hence the verbal expenditure necessary in the upkeep of the ideal ‘law’ is colossal and never-ending. The legal scientist is compelled by the climate of opinion in which he finds himself to prove that an essentially irrational world is constantly approaching rationally ...

However, with the same clarity, it must be said that the bearers of legal institutions must not give up on defining law, because it is an important part of the ideal rational achievement in legal aspects is to be able to define. A verbal dispensation is therefore necessary in the maintenance of 'law' the ideal is colossal and never-ending. The legal scientist is compelled by the climate of opinion in which he finds himself to prove that an essentially irrational world is constantly approaching rationally. Based on this view, the definition of law is needed to be for the law to be studied because through this definition the aiming of the law can be scientifically observed.

Law is defined by John Austin as something that is charged to regulate thinking beings where orders are carried out by thinking beings who hold power so that law is the

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<sup>19</sup> Ibid.

<sup>20</sup> Firdaus Arifin, *Hak Asasi Manusia: Teori, Perkembangan, Dan Pengaturan* (Yogyakarta: Thafa Media, 2019).

<sup>21</sup> Ibid.

<sup>22</sup> Rasjidi and Rasjidi, *Pengantar Filsafat Hukum*.

power of a ruler who has 4 elements, namely orders, sanctions, obligations and sovereignty.<sup>23</sup> Mochtar Kusumaatmadja disagrees if law is defined as a 'tool', as is his criticism of Roescoe Pound if this legal understanding is contextualized in Indonesia.<sup>24</sup> Mochtar tends to use the word means where law becomes a means of development. Law as a discipline is a teaching that determines what should be done (a prescriptive discipline) or a teaching about how it is actually done (descriptive).<sup>25</sup> From the understanding of these experts, it can be concluded that the nature of law is coercive, regulated, and binding because law has duties and functions as conveyed by Gustav Radbruch, there are 3 namely certainty, justice and expediency.<sup>26</sup> The legal problems in relation to juvenile associated with terrorism is approached in the philosophical approach has been addressed in this section combined with the dynamic and the perspective of legal reform on JJS.

### **The Right of the Child in relation to Youth Offender Terrorism-Related case**

International Convention on the Rights of The Child (CRC) underlines children as persons below 18 (eighteen) years old. The Convention covers all rights guarantee rights of the children including those who in convicted with act of terrorism. It is to provide the children with the holistic approach as a comprehensive measure that also address under the Sustainable Development Goals (SDGs) number 5, 8, 11,16, and 17.<sup>27</sup> It is in line with the General Comment 10 issued by the Committee on the Right of the Child as the guidance for and recommendations for their efforts to establish an administration of juvenile justice in compliance with the Convention.<sup>28</sup>

In General Comment No. 10 (2007), the Committee highlighted the importance for States parties to adopt a comprehensive approach to juvenile justice and commit themselves to the necessary broad reforms of their criminal justice and social responses to children in conflict with the law. The committee underlines this with the basic principles that should be the foundation for the comprehensive approach to juvenile justice<sup>29</sup>:

- (a) The need to ensure that all children in conflict with the law are treated equally and fairly, without discrimination, and, when necessary, to take specific measures to prevent discrimination. One form of discrimination of particular concern remains the practice of many countries of criminalizing certain conducts for children that do not constitute crimes for adults;
- (b) The need to ensure that, in all decisions concerning children taken within the context of the criminal justice system or its juvenile justice components, the

<sup>23</sup> Soerjono Soekanto, *Sosiologi Suatu Pengantar* (Jakarta: PT Raja Grafindo, 2007).

<sup>24</sup> Anthon F. Susanto, *Filsafat Dan Teori Hukum* (Jakarta: Kencana, 2019).

<sup>25</sup> Mahfud Fahrazi and Nawawie Hasyim, *Pengantar Ilmu Hukum* (Bandung: PT Refika Aditama, 2019).

<sup>26</sup> Soedikno Mertokusumo, *Mengenal Hukum* (Yogyakarta: Penerbit Atmajaya, 1999).

<sup>27</sup> UNODC, *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System*.

<sup>28</sup> UNODC, *Criteria for the Design and Evaluation of Juvenile Justice Reform Programmes.*, 2010, www.unodc.org.

<sup>29</sup> Ibid.

best interest of the child is a primary consideration. This, in practice, is a central principle which many communities find difficult to implement since, on the surface, it often seems to compete— even if it does not necessarily do so—with the primary purpose of the criminal justice system, which is defined in terms of crime prevention and public safety;

- (c) The need to ensure that the child in conflict with the law can express his or her views freely and be heard in all matters affecting him or her;
- (d) The need to ensure that the child is treated in a manner:
  - a. That is consistent with the child’s sense of dignity and worth;
  - b. That reinforces the child’s respect for the rights and freedoms of others;
  - c. That takes into account the child’s age;
  - d. That promotes the child’s reintegration and his or her assuming a constructive role in society;
  - e. That excludes all forms of violence.

The General Comment No. 10 is later being replaced by General Comment No. 24, which emphasized the basic principles on non-discrimination (Article 2 CRC), Best interest of the child (Article 3 CRC), the right to life, survival, and development (Article 6 CRC), right to be heard (Article 12 CRC), and dignity (Article 40 (1)). Specifically, for the issue on dignity, the children should be more to be paid attention on the aspects of:<sup>30</sup>

- a. Treatment that is consistent with the child’s sense of dignity and worth;
- b. Treatment that reinforces the child’s respect for the human rights and freedoms of others;
- c. Treatment that takes into account the child’s age and promotes the child’s reintegration and the child’s assuming a constructive role in society;
- d. Respect for the dignity of the child requires that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented.

The measure should be taken by the state, which are encouraged by the Committee under this General Comment No. 24 comprises of diversion throughout the proceeding, disposition of juvenile court/judges, prohibition of the death penalty, no life imprisonment without parole, and monitoring the execution of measure.<sup>31</sup>

In the case of the child recruited and/or exploited by terrorist and/or violent extremist organisation (VEO), the social reintegration becomes necessary for him/her. It is important for public authorities to achieve the social reintegration of the society and it is crucial for the child to have a constructive role in the community. The multidimensional reintegration process with multidisciplinary approach is fundamental. Some the key components of multidimensional approach the youth with terrorism case related are:<sup>32</sup>

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<sup>30</sup> “OHCHR | General Comment No. 25 (2021) on Children’s Rights in Relation to the Digital Environment,” *OHCHR*, accessed November 20, 2022, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation>.

<sup>31</sup> *Ibid.*

<sup>32</sup> UNODC, *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System*.



1. Focus on preventing health-related issues from having a long-term impact on the development of the child;
2. Educational and vocational opportunity focus on the objective of promoting self-sufficiency in the life of the child. Interventions should take into account the needs and the aspirations of children, as well as the social and economic environment in which reintegration occurs;
3. The process of reintegration in the family and the community should address conflict and stigma and should rebuild a social network for the child. In order to do so, related initiatives should take into account the needs of the children, as well as those of their families and communities, paying particular attention to social norms that require recognition in order to overcome the disruption;
4. The initial assessment should consider the child's age, level of development and personal experience in relation to his or her association with the group, including the risk of secondary victimization;
5. The reintegration plan should include clear objectives and sound indicators of progress and should identify the different services that best respond to the needs and specific circumstances of the child;
6. Best interests' assessment: this refers to a procedure that should be carried out systematically to determine the most appropriate actions to be taken in relation to the situation of the individual child; and
7. Best interests determination: this describes the formal process designed to determine the child's best interests for particularly important decisions affecting the child, that require stricter procedural safeguards.

Addressing the rights approach to children first before his/her offence is called positive youth justice. Haines and Case argued that “*the approach gives responsibility to the adults around the child to ensure that the child's rights and needs, as identified by the UNCRC,<sup>33</sup> are met<sup>34</sup>*”. This approach looks at the responsibility lays on the adult namely family and wider community to be accountable to fulfil the children's rights. Based on the criminological evidence, the scientist believe that the approach can reduce the crime and victimisation at the same time to also give positive result for the children with the relationship-based partnership.<sup>35</sup> It is an approach that moves away from the “top-down corporate correctionalism” into bottom-up with youth justice focus. The initiative has started in UK as a response to the insignificant process of UK in treating juvenile as what had been commented by the Committee on CRC.<sup>36</sup>

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<sup>33</sup> General Assembly, *Convention on the Right of the Child*, 1990.

<sup>34</sup> Ben Byrne and Stephen Case, “Towards a Positive Youth Justice,” *Safer Communities* 15 (April 11, 2016): 69–81.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

## Terrorism Case in Indonesia

Act considers to be terrorism happened in Indonesia actually started long before Bali Bom, but the term of terrorism begins to heavily use after the Bali Bom. Terrorist attacks in Indonesia began on March 28, 1981 when the flight hijacking of Garuda flight 206, often referred to as the Woyla incident, resulted in the deaths of one crew member, one commando soldier and three terrorists. However, there are also those who indicate that the first act of terrorism occurred in Indonesia in 1962. Terrorists bombed the Cikini College complex with the intention of killing the first president of Indonesia, Sukarno.<sup>37</sup>

Starting 2000, the media's report on terrorism becomes emerging. After the 9/11 attack in USA, Indonesia's media has quite often published the news about terrorism including the one happened in the country. The term of terrorism has taken public attention especially taking into account the damage and public casualties. The form of the attack has evolved in complex way known as lone-wolf. There are five terrorism case classified as lone-wolf according to the media: the 2015 Alam Sutra Bom terror, TATP (triacetin triperoxide) bomb setting, pot bomb, Kartasura Police Office Bomb, and attack at Indonesia Police headquarter.<sup>38</sup> Many acts of terror in Indonesia are based on different motives. The action was also carried out by different elements. The majority of terror acts in Indonesia are carried out by outside ideological forces, and a few are carried out by Indonesian citizens themselves with personal motives and political interests. Based on the terror events that occurred, there are five categories of motives:<sup>39</sup>

### 1. Ideology

This motive is an attack driven by international terrorist organizations with Islamic flags that want to expand their influence such as Al Qaeda and ISIS (Islamic State for Iraq and Syria). It is the case related to Bali Bom (1 and 2).

### 2. Protest

Protest terror acts can also be referred to as acts of revenge. These acts of terror are carried out as a form of objection or disappointment over the government's injustice to its citizens. Like the terrorist acts that arose as a result of the riots in the Tanjung Priok incident on September 12, 1984, which resulted in the death of many innocent people.

### 3. Political Interest

Terror acts with motives of political interest are intended to disrupt the proceedings, decision-making, and other political agendas by providing psychological pressure such as insecurity, fear, and even disbandment of the agenda. This action took place on March 20, 1978 in the form of bombs detonating in several places in Jakarta and the burning of the president's car.

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<sup>37</sup> Petrik Matanasi, "Waktu Pesawat Woyla Dibajak Teroris," *tirto.id*, accessed November 20, 2022, <https://tirto.id/waktu-pesawat-woyla-dibajak-teroris-cGQK>.

<sup>38</sup> Dok Detikcom, "Lima Daftar Teror Lone Wolf di Indonesia," *detiknews*, accessed November 20, 2022, <https://news.detik.com/foto-news/d-5516263/lima-daftar-teror-lone-wolf-di-indonesia>.

<sup>39</sup> Ucu Martanto et al., *Meredam Teror Pencegahan Terorisme Dan Radikalisme Berperspektif Hak Aasi Manusia* (Surabaya: Puham Ubaya, 2018).

4. Competing

In this case, acts of terror are carried out based on personal competition, such as business competition or competition that causes personal conflict. Like the incident on January 2, 1999 at the Ramayana Toserba, Jalan Sabang, Central Jakarta. The perpetrators of the blasting were V.M. Rosalin Handayani and Yan Pieterman Manusama, businessmen who were motivated by a personal dispute. The explosive used is TNT.

5. Crime

Bomb detonation on April 15, 1999 at Plaza Hayam Wuruk, West Jakarta. The perpetrators were Ikhwan, Naiman, Edi Taufik, Suhendi, and Edi Rohadi, members of a group known as the Indonesian Mujahidin Islam Archipelago (AMIN) led by Eddy Ranto. The motive for the bombing was criminal (robbery). The AMIN group is also accused of blowing up the Istiqlal Mosque. Surprisingly, in this case, the motive was determined to be criminal.

Currently, the factors contribute to violent extremism known as push and pull factors.<sup>40</sup> The push factors consist of something that triggering a person to be involved in violent extremism, as for the pull factors reflect of something that attract a person to join the violent extremism (Table 1).

**Tabel 1**  
**Factors Contribute to Terrorism**

No.	Push Factors	Pull factors
1.	Lack of Socio-Economic Opportunity	Individual backgrounds and motives
2.	Marginalization and discrimination	Collective grievances and victimization
3.	Poor governance	Stemming from domination, oppression, subjugation
4.	Violation of Human Rights and Rule of Law	Distortion and misuse of believe
5.	Prolong and unresolved conflict differences	Political ideologies and cultural
6.	Certain Prison Enviroment	Personal social networks

Source: UNODC year 2019 (UNODC, 2019)

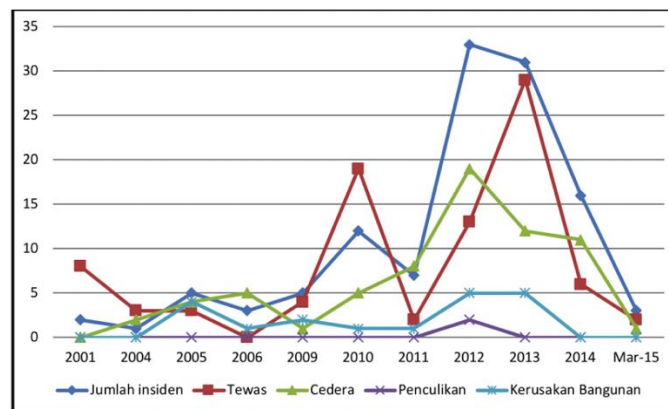
The actors have also become more vary by involving women and children. These dramatic changes had started in 2013 after the establishment of ISIS calling for the fight in home country.<sup>41</sup> The data from The Habibie Center on terrorism indicates the dynamic impact of the case (Picture 1).<sup>42</sup>

<sup>40</sup> Un Secretary-General, “Plan of Action to Prevent Violent Extremism :” (December 24, 2015), accessed November 20, 2022, <https://digitallibrary.un.org/record/816212>.

<sup>41</sup> Indah Pangestu Amaritasari, “The Indonesia’s Urgency on Adopting New Approach on Comprehensive Prevention in Countering Terrorism Strategy: Lesson Learnt from the Mako Detention Facility’s Riot and East Java Bombs,” *Jurnal Keamanan Nasional* 4, no. 1 (May 25, 2018): 103–122.

<sup>42</sup> Mohammad Hasan Ansori et al., *Memberantas Terorisme Di Indonesia: Praktik, Kebijakan Dan Tantangan*, Pertama. (Jakarta: The Habibie Center, 2019).

Picture 1: The Dynamic Impact of Terrorism 2001-2015



Source: *The Habibie Center, year 2019.*

The involvement youth in the terrorist attack and/or terrorist activities has questioned the way on how the authority handling the situation. The Berlin Declaration on Combating Terrorism has highlighted principles to be adhered by member states: 1. Duty to Protect; 2. Independent Judiciary; 3. Principles of Criminal Law; 4. Derogations; 5. Peremptory Norms; 6. Deprivation of Liberty; 7. Fair Trial; 8. Fundamental Rights and Freedoms; 9. Remedy and Reparation; 10. Non-refoulement; and 11. Complementarity of Humanitarian Law.<sup>43</sup> Under these norms, it is important to see how the children being handled when they were accused of committing terrorism.

The case of the riot at the Mobile Brigade Corps Command Headquarters detention center (Mako Brimob) in 2018, after development it turned out that the network also involved children.<sup>44</sup> The case at the Mobile Brigade Headquarters had not yet been completed, yet another suicide bombing occurred in Surabaya. The terrorist act involved a family including their child. Bombs were attached to the bodies of young children which were then detonated.<sup>45</sup> Their children were involved because they had received education from a young age, especially from their mother. Children and women are involved to show the level of piety of a woman.<sup>46</sup>

Involving children in acts of terrorism is because young children do not yet have strong cognitive defence mechanisms and tend to accept more so that they are more easily indoctrinated.<sup>47</sup> There are at least three reasons why children are involved in terrorism crimes, namely: 1) The child's psychological condition is still unstable so that it is easier to be indoctrinated with radical things; 2) The enemies of the terrorists never thought that

<sup>43</sup> "The Berlin Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism," *International Commission of Jurists*, August 28, 2004, accessed November 20, 2022, <https://www.icj.org/the-berlin-declaration-the-icj-declaration-on-upholding-human-rights-and-the-rule-of-law-in-combating-terrorism/>.

<sup>44</sup> Hari Setiawan et al., "Anak Sebagai Pelaku Terorisme Dalam Perspektif Ekologi Sosial," *Sosio Informa* 6 (December 30, 2020).

<sup>45</sup> "Dari Mako Brimob sampai Polrestabes Surabaya: Satu minggu penuh teror," *BBC News Indonesia*, n.d., accessed November 20, 2022, <https://www.bbc.com/indonesia/trensosial-44110808>.

<sup>46</sup> Sityi Maesarotul Qori'ah, "Keterlibatan Perempuan dalam Aksi Terorisme di Indonesia," *Samwa: Jurnal Studi Gender* 14, no. 1 (April 30, 2019): 31–46.

<sup>47</sup> Hirda Rahmah, "Anak Dan Terorisme: Sanksi Dan Perlindungan Hukum Dalam Sistem Hukum Indonesia," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 18 (December 1, 2018): 109–122.

children would commit such sadistic and brutal crimes, so they were caught off guard in anticipation; 3) The drivers of these acts of terror understand the legal construction of child criminal responsibility both at the international and national levels.<sup>48</sup>

According to data from the Indonesian Child Protection Commission (KPAI) there has been an increase in cases related to religion and culture. Children exposed to terrorism increased by 42 percent, from 180 cases in 2015 to 256 cases in 2016.<sup>49</sup> Meanwhile, according to data from the National Counterterrorism Agency (BNPT) there are 500 terrorists detained in Correctional Institutions (Lapas). Of these 500 people, they had children totaling 1,800 people. Their condition has not been handled by the government, and they experience discrimination from society.<sup>50</sup> The data shows that the number of terrorists involving children is increasing, so that the government's attention must be increased to overcome this problem.

Based on the ecological perspective, viewing children as perpetrators of terrorism will have implications for the policies taken in dealing with the problem. The view of social ecology tends to see children as terrorist actors are the victims of their social environment. Discomfort in the family, social rejection, invitation from peers and the influence of terrorist-controlled media are the causes of children participating in terrorist networks.<sup>51</sup>

Judging from the process of exposure of children to terrorism, there are two groups, namely children who are exposed to terrorism from outside their families and children who are exposed to it from their parents. For children who are exposed from outside their family, parents are one of the parties who are responsible for the development of children's education. Parents, in carrying out their role in education, need to continuously encourage, guide, motivate and facilitate the achievement of good children's education.<sup>52</sup> Meanwhile, for children who are exposed to terrorism from their parents, substitute parents are needed.<sup>53</sup>

### The Juvenile Justice System Law and Terrorism Law

The Juvenile Justice System Law (JJS Law) and Terrorism Law are considered to be the *lex specialis*. However, supposedly, if a youth under 18 commits a terrorism crime, he/or she should be subjected under JJS Law for the procedural aspect. The Law comes into effect in 2012. The law underlines the rights of child in conflict with the law. A child

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<sup>48</sup> Lilik Purwastuti, "Perlindungan Hukum Terhadap Anak Dalam Kejahatan Terorisme," *Jurnal Ilmu Hukum Jambi* 2, no. 3 (2011): 43269.

<sup>49</sup> Fathiyah Wardah, "BNPT: Anak-Anak Rawan Terpengaruh Ideologi Radikal, Teroris," *VOA Indonesia*, accessed November 20, 2022, <https://www.voaindonesia.com/a/bnpt-anak-anak-rawan-ideologi-radikal-teroris/3720946.html>.

<sup>50</sup> medcom id developer, "1.800 Anak Pelaku Terorisme Tidak Terjamah Pemerintah," *medcom.id*, last modified March 30, 2019, accessed November 20, 2022, <https://www.medcom.id/nasional/hukum/IKY6ZoWN-1-800-anak-pelaku-terorisme-tidak-terjamah-pemerintah>.

<sup>51</sup> Setiawan et al., "Anak Sebagai Pelaku Terorisme Dalam Perspektif Ekologi Sosial."

<sup>52</sup> Anggreni, S. (2020). Peranan Orang Tua Dalam Pembinaan Pendidikan Karakter Anak Di Nagari Tigo Jangko Kecamatan Lintau Buo. *IJOCE: Indonesia Journal of Civic Education*, 1(1), 28–31.

<sup>53</sup> Setiawan et al., "Anak Sebagai Pelaku Terorisme Dalam Perspektif Ekologi Sosial."

involved in the Juvenile Justice System is granted the following rights (Article-3):

- a. to be treated in a humane manner and to have his or her needs fulfilled in accordance with his or her age;
- b. to be kept separate from adults;
- c. to be provided with legal and other assistance in a concrete and effective manner;
- d. to engage in recreation
- e. to be protected from torture, cruel or inhuman punishment or treatment, and degrading or demeaning treatment;
- f. to be exempt from the death penalty and life imprisonment;
- g. to be spared arrest, detainment or imprisonment, save as a last resort. In all circumstances, deprivation of liberty shall be for the shortest period of time.
- h. to receive justice from an objective and impartial juvenile court, and for court proceedings
- i. to be held in camera.
- j. to have his or her identity kept confidential during the course of the legal process.
- k. to receive support from family members and/or those whom the child is comfortable with;
- l. to obtain social advocacy;
- m. to have a private life;
- n. to accessibility, particularly in the case of children with disabilities;
- o. to have access to education
- p. to obtain health services; and
- q. to be accorded such other rights as may be provided for by the provisions of the laws and regulations in effect.

The administration of juvenile justice system is based on the following principles (Article-2, JJS Law):

- a. protection
- b. justice
- c. non-discrimination
- d. The best interests of the child
- e. respect for the opinions of children
- f. the right to live, grow and develop
- g. mentoring and guidance;
- h. proportionality;
- i. the deprivation of liberty only as a last resort; and
- j. non retributive;

The Constitutional Court declared that the minimum age of criminal responsibility for children in Indonesia is 12 years old. This decision is then adopted under Article 1 (3) of the Juvenile Justice System (JJS) Law, Thus, the age of criminal responsibility under Juvenile Justice Law no. 11/2012 is considered between 12-18 years (Article-1.3 of the JJS Law). A juvenile may only get sanction or subjected to particular measure in line with the provisions set out in this Law (Article-69).

Child above 12 years old and below 14 years old: The CICLs (Children in Conflict

with the Law) in this age category may only be imposed by measures under the prosecution i.e. - return to the parents/guardian; transfer to a authorized person; treatment at psychiatric hospital; treatment at LPKS for 1 year at maximum; obligation to undergo formal education for 1 year at maximum.

Child above 14 years old and below 18 years old – In this age group, the CICLs may be charged with primary penal and supplementary penal (Article-71). Article – 71 (1) states that the primary penal sanction that may be imposed on a juvenile are as follow: a) official reprimand; b) conditional punishments (non-custodial training; community service, or supervision); c) vocational training; d) institutionalized guidance; and e) imprisonment. Likewise, Article-71 (2) specifies supplementary penal that consists of: a). forfeiture of the profits obtained from the crime, or 2). an order to comply with the requirements of “adat” (customary) law.

One of the positive side of the new Juvenile Justice System is the acknowledgement of restorative justice concept under the adoption of diversion. “Diversion” shall mean a process of diverting cases involving juveniles away from the criminal justice system so that the matter can be resolved out of court. The restorative justice is an effort from all involved parties in handling a crime, to overcome the problem and to create an obligation for each parties in realizing a better situation for the victim, child, and the society to seek a solution for the purpose of improvement, reconciliation, and reassurance without revenge.

Under the Juvenile Justice System, diversion is mandatory for every level of examination except for appeal and cessation. In brief, diversion is a settlement process for a case involving a child, in which the criminal justice process is no longer used and the case is settled out of court. Diversion is aimed to:

- a. Achieve an amicable settlement as between the victim and the child;
- b. Ensure the settlement of cases involving children out of court;
- c. Prevent children being deprived of their liberty;
- d. Encourage the public to participate; and
- e. To inculcate a sense of responsibility in the Child.

The rules regarding the handling of children who commit crimes of terrorism have not been specifically regulated in Indonesia, but the Law no. 5 year 2018 on Terrorism confirms Article 19 that special minimum punishments and the death penalty/lifelong sentence do not apply to children.<sup>54</sup> Based on the JJS Law, children aged 12-18 years who are threatened with the death penalty for committing an offense, then the maximum sentence given to the child is 10 years and must prioritize Restorative and Diversion efforts as stated in Article 5. The JJS Law provides special handling which can also be interpreted as legal protection for children who are not yet 12 (twelve) years old who commit or are suspected of committing a crime as regulated in Article 21 paragraph (1) of the JJS Law that:

In the event that a child under the age of 12 (twelve) years old commits or is

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<sup>54</sup> Ahmad Mahyani, “PERLINDUNGAN HUKUM ANAK SEBAGAI PELAKU TERORISME,” *Jurnal Hukum Magnum Opus* 2, no. 1 (2019): 47.

suspected of committing a criminal act, Investigators, Community Counsellors, and Professional Social Workers shall make a decision to:

- a. hand it back to the parent/guardian; or
- b. include them in education, coaching and mentoring programs in government agencies or LPKS in agencies dealing with social welfare, both at the central and regional levels, for a maximum of 6 (six) months.

The rules and regulations are missing in organising systematically and carefully the rights of the children for the CICL of terrorism related case. The JJS Law that should be as a reference for all cases related to juvenile can be miscounted when the crime is related to terrorism. It can be seen in the implementation sector of the Rights of the Child and JJS Law for the youth offender convicted with terrorism.

Terrorism law has been amended in 2018 (Law No. 5 year 2018), which consist of some aspects that allow state to detain the suspect prior the bomb exploded.<sup>55</sup> The following table shows the provisions changes in the new law.<sup>56</sup> The points of changes are described in the following table (Table 2).

**Table 2**  
**Changes in the Law No. 5 year 2018**

No.	Points of Changes	Content
1.	New Criminalization	Explosives, military or paramilitary training to commit criminal acts of terrorism
2.	Sanctions for terrorism perpetrators	Conspiracy, preparation, experimentation, and assistance for criminal acts of terrorism
3.	Expansion of criminal sanctions	Founders, leaders, administrators, people who direct the on corporation
4.	Additional sentence	Revocation of passport ownership
5.	Additional time	Arrest, detention and prosecution
6.	Victims Protection	Victims are the responsibility of the state
7.	Prevention of criminal acts of terrorism	Coordinated by BNPT
8.	Institution	BNPT as an Institution and TNI

*Source: The Habibie Centre, year 2019.*

The law still heavily on the hard approach side. The law address the new criminalisation in relation to owning explosive chemical, involve in military and paramilitary training for terrorism activities. Sanction is given for conducting terrorism in term actions identified as conspiracy, preparation, and assistance to terrorism acts. Additional sentence is set by revocation of passport ownership. There is an additional time in term of arrest, detention, and prosecution. The coordination of the countering terrorism by National Agency of Countering Terrorism (BNPT) is highlighted in the new law. Some important soft approaches are integrated in this new law on the issue of victims and prevention. The protection of victims is much strengthen in the amended law by making differentiation between direct and indirect victims, and services that they receive

<sup>55</sup> Juli Hantoro, “Sejak UU Terorisme Berlaku, 370 Tersangka Teroris Ditangkap,” *Tempo*, last modified January 10, 2019, accessed November 20, 2022, <https://nasional.tempo.co/read/1163684/sejak-uu-terorisme-berlaku-370-tersangka-teroris-ditangkap>.

<sup>56</sup> Mohammad Hasan Ansori et al., *Memberantas Terorisme Di Indonesia: Praktik, Kebijakan Dan Tantangan*.



as part of state responsibility.<sup>57</sup> The victims will receive: (a) medical treatment; (b) psychological and psychosocial rehabilitation; (c) compensation for victim's family; and (d) compensation.

### **The Implementation of the Rights of the Child and JJS Law for Youth Offender Convicted with Terrorism in Indonesia**

The fundamental problem in handling children who commit acts of terrorism is that there are violations of children's rights.<sup>58</sup> Procedures and processes for handling children in cases of criminal acts of terrorism are not fully based on Law no. 11 of 2012 concerning the Juvenile Criminal Justice System (JJS) both by Densus 88 when making arrests and investigations, Judges and Prosecutors during the trial process and placing detention, Correctional Institutions (Lapas) in conducting guidance, and BNPT in carrying out deradicalization. On the other hand, the terrorism law does not specify when discussing CICL terrorism related crime.

In this case, the child is still positioned as the guilty party who has committed a terror crime (Ibid). Thus, the treatment for the CICL terrorism related case is in position the same as adults who commit similar crimes. The involvement of children in cases of criminal acts of terrorism is as a victim being recruited by the networks through doctrines and propaganda initiated by adults. However, this perspective seems not been taken into consideration.<sup>59</sup> As experienced by IH, FL, AS when they carried out the investigation process regarding their connection to acts of terrorism. According to them, the acts of violence carried out by investigators have traumatized them.

Regulations have not provided legal protection for children as perpetrators of terrorism. Children are not actors who know or have intentions (*mens rea*) as in conventional crimes. Anti-terrorism regulations that do not allow for diversion for children as perpetrators need to consider the conditions of the child's psychological growth, which of course, on the other hand, still has the potential to be of good value if properly fostered.<sup>60</sup> If there are children as perpetrators of terrorism who are still charged with Law Number 5 of 2018, then this does not yet show restorative justice, considering that children who commit terrorism are actually victims of a deviant culture.<sup>61</sup>

In the trial process, children affected by terrorism cases does not prioritize diversion efforts with a restorative justice approach according to Law no. 11 of 2012 article 5 paragraph (1), article 7 on SPPA.<sup>62</sup> In this law, diversion efforts through a restorative justice approach are mandatory. Restorative justice is a non-criminal settlement by involving the perpetrator, victim, family of the perpetrator or victim and

<sup>57</sup> Article 35A of the Law No. 5 year 2018 on the Amended Law on Terrorism.

<sup>58</sup> "Penanganan Anak Dalam Tindak Pidana Terorisme – C-SAVE," n.d., accessed November 20, 2022, <http://csave.org/product/penanganan-anak-dalam-tindak-pidana-terorisme/>.

<sup>59</sup> Ibid.

<sup>60</sup> Eka Setiawan, "Anak sebagai Pelaku Terorisme Mestinya diatur Sanksi Pidana Khusus," last modified July 23, 2019, accessed November 20, 2022, <https://ruangobrol.id/2019/07/23/ulasan/anak-sebagai-pelaku-terorisme-mestinya-diatur-sanksi-pidana-khusus/>.

<sup>61</sup> Ibid.

<sup>62</sup> "Penanganan Anak Dalam Tindak Pidana Terorisme – C-SAVE."

other related parties to jointly seek a fair solution by emphasizing restoration to its original condition and not retaliation. Meanwhile, Diversion is the transfer of the settlement of children's cases from the criminal justice process to processes outside of criminal justice. The implementation of diversion and restorative justice for CIKL is carried out by the Marsudi Putra Social Institution (PSMP) Handayani under the auspices of the Ministry of Social Affairs. PSMP Handayani is not involved in handling children with terrorism cases. PSMP Handayani admits of unknowing if there are children who have criminal cases of terrorism.<sup>63</sup>

So far, these children have received legal verdicts and are serving time in prison just like adults who have criminal cases of terrorism. Although they are placed in the Child Special Guidance Institute (LPKA), they have not received guidance that is in accordance with LPKA's concepts and standards. For example, not all of these children get facilities to continue their education and develop their talents and interests. This was experienced by GA, PR, SK and GD when they were in LPKA Class II Jakarta.<sup>64</sup> Talking about restorative efforts, efforts to de-scale children also still need to be developed better. BNPT as an institution that has a mandate to carry out deradicalization, does not yet have and carry out appropriate deradicalization for children affected by terrorism cases. Their deradicalization is still equated with adult perpetrators. Makhunah argued that restorative efforts, efforts to deradicalised children also still need to be better developed.<sup>65</sup> According to her, BNPT as an institution that has a mandate to carry out deradicalization, does not yet have and carry out appropriate deradicalization for children affected by terrorism cases. Their deradicalization is still equated with adult perpetrators.<sup>66</sup>

Not only in the investigation process, an inappropriate approach also occurred when they were sentenced, especially regarding the management of prison placements, which were still deemed inappropriate. From the results of research conducted by Yayasan Prasati Peramaian<sup>67</sup> several children involved in terrorism cases were placed in Penitentiary (LP) which, although administratively different from adult prisons, structurally physically they inhabit the same physical building and are located in the same prison complex.<sup>68</sup> As experienced by IH, GA, RP, SK, DG, and FL, before being transferred they had been in Jakarta Class II LPKA, which is in the same complex as Salemba Class II LP A, for approximately six months. This inappropriate placement management has caused these children to interact intensively with adult terrorist convicts (convicts) who have a strong radical understanding. Even according to a confession from IG, the convicts today also had a bad influence on him related to radical understanding.<sup>69</sup>

In the detention process, the children who are involved in terrorism cases are also

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<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> Rosyid Nurul Hakiim, "Anak Pada Kasus Terorisme, Pendampingan Selamanya Ada Di Orang Tua," last modified September 21, 2019, accessed November 20, 2022, <https://ruangobrol.id/2019/09/21/ulasan/anak-pada-kasus-terorisme-pendampingan-selamanya-ada-di-orang-tua/>.

<sup>68</sup> "Penanganan Anak Dalam Tindak Pidana Terorisme – C-SAVE."

<sup>69</sup> Ibid.

often placed far from their parents or family, who on average are not from Jabodetabek.<sup>70</sup> This certainly makes it difficult for their parents to visit their children. This is important because the closest family, such as parents, should be given greater access to visit their children. Not only that, the role of the family and parents can also be to "radicalize" these children, because not all of these children come from families that also have a radical understanding. Detention of children who are still united with terrorist convicts today is a vulnerability in itself. Because of the potential for recruitment to new networks or the crystallization of radicalization from adults to children while in prison.

There are some positive developments also happen even though they are not institutionalized and possibly an ad hoc basis. In the case of treatment to children involved in Surabaya bombing and CICL name "Sandi" for example, some efforts show in relation to humanity approach for fulfilling the rights of the child. The four children of the terrorists in Surabaya and Sidoarjo who survived were AR (15), FP (11), and GHA. The three are the children of Anton Febriantono, a suspected terrorist who died after a bomb inside his house in the Wonocolo Flat, Sidoarjo. The children got psychological intervention until the children are recovering.<sup>71</sup> Assistant Deputy for Child Protection in Special Conditions of the Ministry of Women's Empowerment and Child Protection (PPPA) Elvi Hendrani said that children of terrorists are victims and must be educated. She said that children caught in acts of terrorism are victims of the wrong upbringing or environment.<sup>72</sup> As for Sandi who in charged for setting up bomb in Bandung's police office, he serves sentences in LPKA Tangerang for Boy Institution. He involves in meaningful activities that he interested such as dealing with mechanic for fixing the broken machine.<sup>73</sup>

### **The Philosophical Legal Review: Perspective, Dynamic and Juvenile Legal Reform Associated with Terrorism case**

Philosophical perspective of the JJS and Terrorism can be seen in the consideration section of the law. The reasoning behind the existence of the JJS Law is (1) the existence of children as the human being with dignity; (2) the need of special protection in the justice system; (3) the position of Indonesia as state party to the Convention on the Right of the Child; and (4) the need for the comprehensive legal basis for the children in conflict with the law replacing Law No. 3 year 1997 on Juvenile Court.<sup>74</sup> As for the Terrorism

<sup>70</sup> Ibid.

<sup>71</sup> Abi Sarwanto, "Anak Pelaku Teror Surabaya Alami Gangguan Psikologi Berat," *nasional*, accessed November 20, 2022, <https://www.cnnindonesia.com/nasional/20180515203921-20-298483/anak-pelaku-teror-surabaya-alami-gangguan-psikologi-berat>.

<sup>72</sup> Kompas Cyber Media, "Kemen PPPA: Anak Pelaku Terorisme Korban dan Harus Dibina," *KOMPAS.com*, last modified April 21, 2021, accessed November 20, 2022, <https://nasional.kompas.com/read/2021/04/21/17311281/kemen-pppa-anak-pelaku-terorisme-korban-dan-harus-dibina>.

<sup>73</sup> Juli Hantoro, "Kisah Warga Binaan Terorisme Di LPKA Tangerang, Dulu Rakit Bom Sekarang Insyaf," *Tempo*, last modified September 3, 2020, accessed November 20, 2022, <https://metro.tempo.co/read/1382233/kisah-warga-binaan-terorisme-di-lpka-tangerang-dulu-rakit-bom-sekarang-insyaf>.

<sup>74</sup> UU No. 11 Tahun 2012 Tentang Sistem Peradilan Perlindungan Anak (Law No. 11 Year 2012 on Juvenile Justice System).

Law, the preamble states:<sup>75</sup>

- a. that the criminal act of terrorism that has been occurring in Indonesia is a serious crime which endangers state ideology, national security, state sovereignty, human values, and various aspects of social, national and state life, and is transnational in nature, organized and has an extensive network and have specific goals so that eradication needs to be carried out in a special, planned, directed, integrated, and sustainable, based on Pancasila and the 1945 Constitution of the Republic of Indonesia;
- b. that there is involvement of a person or group of people as well as the involvement of Indonesian citizens in organizations within and/or abroad that intend to carry out an evil conspiracy that leads to criminal acts of terrorism, has the potential to threaten the security and welfare of society, nation and state, including world peace; and
- c. that in order to provide a stronger legal basis to ensure legal protection and certainty in eradicating criminal acts of terrorism, as well as to meet the needs and developments in law in society, it is necessary to amend Law Number 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Law Number 1 Year 2002 concerning Eradication of Criminal Acts of Terrorism to become Law;

Another approach of looking into the philosophical perspective of the law is through the academic manuscript that supposed to be the prerequisite document prior drafting the law. The only academic manuscript existed in the website is in relation to previous terrorism law, which can be seen from the manuscript no indication of the children and/or youth associated with terrorism cases.<sup>76</sup> The JJS Law is looking into the protection side where as the terrorism law is heavier to punishment part. The two laws seem to be contradicted and when it comes to the children in conflict with the law associated with terrorism cases, the children will be given retributive justice with no diversion and restorative justice occurred.<sup>77</sup> However, the case of the children of the Surabaya bombs who survive after joining their parents, are not hosted at the penitentiary institution,<sup>78</sup> but rehabilitation center which creates possibility of having children in the restorative setting.

The philosophical perspective is viewing from Gustav Radbruch's duties and functions of the law namely certainty, justice and expediency.<sup>79</sup> The questions arise

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<sup>75</sup> Undang-Undang No. 5 Tahun 2018 Tentang Perubahan Atas Undang-Undang No. 15 Tahun 2003 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang No. 1 Tahun 2002 Tentang Pemberantasan Tindakan Pidana Terorisme Menjadi Undang-Undang, Pasal 25, vol. ayat 8, 2018.

<sup>76</sup> Mahkamah Agung RI, "Naskah Akademik Undang-Undang Terorisme" (Jakarta, 2007), <https://perpustakaan.mahkamahagung.go.id/assets/resource/ebook/Naskah%20Akademis%20%20Undang-Undang%20Terorisme.pdf>.

<sup>77</sup> As indicated in the explanation of the JJS law the diversion is not intended to be given to serious crimes including terrorism.

<sup>78</sup> "Begini Kondisi Terkini Anak-Anak Pelaku Bom Bunuh Diri di Surabaya," *Wartakotalive.com*, accessed November 20, 2022, <https://wartakota.tribunnews.com/2019/05/14/begini-kondisi-terkini-anak-anak-pelaku-bom-bunuh-diri-di-surabaya>.

<sup>79</sup> Mertokusumo, Op. Cit.

whether or not the certainty, justice and expediency are reached in the situation like this for the children in conflict with the law associated with the terrorism case. It must be understood that children as terrorists are victims. He/she is not an intellectual actor in terrorism, but a victim of adult promises and lures.<sup>80</sup> Psychosocially they are also not healthy and capable children, because their brain performance has been fed and exposed to radical values that are misguided and indoctrinated. Therefore, it is necessary to understand the need for legal protection for children as perpetrators of terrorism. Not only investigators, public prosecutors and judges, but also involving social workers, child psychologists, psychiatrists, clergy and even humanists at every stage of the case examination. The Indonesian Government's policy on this matter can be seen in Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection that confirms about children's right to protection.

In regard to children involved in terrorist groups, article 12B of Law Number 5 of 2018 in conjunction with Article 81 paragraph (2) of Law Number 11 of 2012 explains that criminal threats to someone who participates in training the aim is terrorism, whereas in the Law on the Juvenile Criminal Justice System (SPPA) it is explained that the sentence imposed on a child is a maximum of 1/2 (one half) of the adult punishment threat can have an attempt of diversion.<sup>81</sup> Furthermore, the explanation of the article 2 on the principle of the JJS law particularly on the avoidance of retaliation addressed that what is meant by "avoidance of retaliation" is the principle of distancing attempts of retaliation in the criminal justice process and that deprivation from liberty should be the last resort.<sup>82</sup> The problem is that there is no guidance in relation to this, which might bring law enforcement officers interpreted the law in their own perspective. As indicated by Prof. Romli that the most weakness of the law enforcement in Indonesia is in relation to human resource with good legal understanding and interpretation.<sup>83</sup> Mochtar Kusumaatmadja observed that the law education in Indonesia only create as labor, not as an agent with critical perspective contribute to the legal reform.<sup>84</sup> According to him, the legal system needs to address ability in analyzing cases that are aware and have expertise on non-legal aspects (social).<sup>85</sup> In the case of the children associated with terrorism cases, the ecological approach needs to be also the knowledge of law enforcement officers in analysing the case and justifying the children to be treated for the restorative justice. One views that for the children as perpetrators, a minimum starf (minimum criminal limit) should be regulated specifically for criminal sanctions which include trial procedures and rights for children as perpetrators of terror.<sup>86</sup>

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<sup>80</sup> Setiawan et al., "Anak Sebagai Pelaku Terorisme Dalam Perspektif Ekologi Sosial."

<sup>81</sup> Ikka Puspitasari, "Perlindungan Terhadap Anak Sebagai Pelaku Tindak Pidana Kejahatan Terorisme," *Jurnal Meta-Yuridis* 3, no. 2 (September 20, 2020), accessed November 20, 2022, <http://journal.upgris.ac.id/index.php/meta-yuridis/article/view/5841>.

<sup>82</sup> UU No. 11 Tahun 2012 Tentang Sistem Peradilan Perlindungan Anak (Law No. 11 Year 2012 on Juvenile Justice System), 11.

<sup>83</sup> Romli Atmasasmita, *Teori Hukum Integratif: Rekonstruksi Terhadap Teori Hukum Pembangunan Dan Teori Hukum Progresif* (Bandung: CV. Mandar Maju, 2019).

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

<sup>86</sup> Setiawan, "Anak sebagai Pelaku Terorisme Mestinya diatur Sanksi Pidana Khusus."

## CONCLUSION

The philosophical approach, particularly in legal aspect, can help to deepen cristalising the critics among the possible legal doctrine that might prevent the attainment the objective of the law namely certainty, justice, and expediency. The JJS Law is a progress in Indonesia legal system in term of protection using child perspective on the best interest of the child that is important for his/her development to become an adult. However, the existence of terrorism law, which is classified as high classify crime can create the children deprive from the rights articulated under the JJS law. As experienced by IH, FL, AS when they carried out the investigation process regarding their connection to acts of terrorism. According to them, the acts of violence carried out by investigators have traumatized them. Regulations have not provided legal protection for children as perpetrators of terrorism. Children are not actors who know or have intentions (*mens rea*) as in conventional crimes. Anti-terrorism regulations that do not allow for diversion for children as perpetrators need to consider the conditions of the child's psychological growth, which of course, on the other hand, still has the potential to be of good value if properly fostered.

The Indonesia's commitment to ratified of human rights instruments needs to follow up with the implementation of the rights of the youth offenders including those who are associated with terrorism cases. The JJS Law has accommodated important principles for the implementation of the rights for the children: (a) protection; (b) justice; (c) non-discrimination; (d) The best interests of the child; (e) respect for the opinions of children; (f) the right to live, grow and develop; (g) mentoring and guidance; (h) proportionality; (i) the deprivation of liberty only as a last resort; and (j) non retributive. These principles are not articulated and implemented well in the case of youth associated with terrorism cases. The implementation on the field indicates that there is a legal problem especially for the law enforcement officers on the reference to be made as the legal basis treating the CICLs with JJS Law for the terrorism offense. It impedes the children from obtaining their rights acknowledge under UNCRC and JJS Law. It lacks the treatment of positive youth justice and might hamper the children's rehabilitation and reintegration process. The improvement should be made in connection to a better understanding of responding CICLs associated with terrorism cases. Furthermore, the absence of guidance in connecting the JJS law and terrorism law create rooms for possible arbitrary interpretation on treating the children associated with the terrorism cases. Thus, in this study can be concluded that, by looking into philosophical approach, the certainty, justice, and expediency of the CICLs associated with terrorism cases have not been achieved. Improvement is needed in term of knowledge of the law enforcement officers and guidance for treating the children associated with terrorism cases.

## RECOMMENDATION

Some efforts have to be made regarding the implementation of the JJS Law, namely on the issue of restorative justice and diversion. Better comprehension in the understanding of the principles of the JJS Law and the impact of neglecting the principles should be owned critically by law enforcement officers through critical thinking legal education on

positive youth justice. In this case, the law enforcement officers cannot be law laborers but law enforcement with a prudent approach concerning children associated with terrorism cases.

Possible guidance for the children as perpetrators of terrorism cases might be needed. The ecological approach needs to be also the knowledge of law enforcement officers in analyzing the case and justifying the children to be treated for restorative justice. A case study exercise for self-reflection on the approach concerning CICLs with terrorism cases needs to be developed to protect the right of the child. The evaluation of the certainty, justice, and expediency of CICLs associated with terrorism cases has to be made regularly to achieve sustainable improvement.

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