

## Juridical Review of Conditional Punishment for Perpetrators of Petty Crimes in Indonesia

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### ABSTRACT

*This study examines the application of conditional punishment for perpetrators of petty crimes in Indonesia, emphasizing child protection within the juvenile criminal justice system. Parole represents a form of restorative justice that balances punishment with rehabilitation, education, and the social reintegration of the offender. It analyzes case number 6/Pid.Sus-Anak/2025/PN PSW as a practical example of conditional punishment applied to children involved in minor acts of violence. The imposition of a conditional sentence considers the perpetrator's age, psychological condition, family support, and demonstrated good conduct. This study employs a normative method, drawing on secondary data from legal regulations, doctrines, and pertinent court decisions. The findings indicate that conditional sentences mitigate the adverse effects of detention while enabling supervised self-improvement for offenders. Upholding the principle of the "best interests of the child," the juvenile justice system prioritizes rights restoration and protection. Moreover, family- and community-based supervision proves essential to the effective implementation of conditional punishment as restorative justice. This paper advances more equitable criminal law development, particularly for children facing legal issues, and urges law enforcers and policymakers to expand conditional mechanisms within Indonesia's criminal justice system.*

**KEYWORDS** conditional crime, misdemeanor, child protection, restorative justice, juvenile criminal justice system.



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### INTRODUCTION

Law has an important function in social life as a tool to create justice, order, peace and order, but also to ensure legal certainty (Hidayat et al., 2024; Manik, 2025; Nainggolan, 2023). At the next level, the law is directed as a means of progress and welfare of society which is formed by the desire and awareness of each individual in society, with the intention that the law can run as aspired by the society itself, namely wanting harmony and peace in living together (Wahyuni & Munandar, 2023). The person who commits a criminal act will be held criminally accountable if he has a mistake, a person has a mistake if at the time of committing

the act seen from the perspective of society shows a normative view of the criminal act (Fatmawati et al., 2023).

One of the criminal acts that often occur in daily life is a minor crime (*Tipiring*) (Erdianti et al., 2021; Lindsey & Pausacker, 2020). What is meant by a misdemeanor is a case that is threatened with imprisonment or imprisonment for a maximum of 3 (three) months or a fine of up to Rp 7,500 seven hundred and fifty thousand rupiah) and minor insults, except as determined in the examination of traffic violation cases, according to the Criminal Code (Mulyani, 2016).

As a concrete example, case Number 6/Pid.Sus-Anak/2025/PN PSW shows the application of conditional punishment to children involved in minor crimes. In this case, the judge at Pasarwajo Court imposed a conditional sentence on the child as a form of punishment, based on age, condition, and family support in the rehabilitation process. The decision is based on the Law on the Juvenile Justice System (Law No. 11 of 2012) which emphasizes the protection and guidance of children as perpetrators of criminal acts. The imposition of conditional sentences aims to support children to improve themselves under appropriate supervision, while preventing the negative impact of detention that can interfere with their psychological development (Nusa et al., 2024; Pamintori et al., 2023; Hafrida & Usman, 2024).

This case illustrates the challenge in practice, namely the need for strict supervision during the probation period and the involvement of families and the community in fostering perpetrators so that parole can function optimally as a tool of restorative justice (Hannum, 2013; Kumari, 2024; Purba, 2017). On the other hand, the case is an important reference for judges and law enforcement officials to better understand the criteria and mechanisms of conditional punishment in the context of child and minor crimes (Widayanti, 2021).

In the criminal law system, one form of punishment applied is imprisonment. However, not all cases require an immediate prison sentence. Especially for cases of minor crimes, prison sentences can have negative impacts, such as making the perpetrator considered bad and difficult to return to society after release. In overcoming this, the criminal law provides an alternative in the form of a conditional sentence. Probation is also known as probation or *voorwaardelijke veroordeeling* (VW). Conditional punishment is the postponement of the implementation of the main punishment during a certain probationary period, provided that the perpetrator does not repeat the criminal act or commit certain acts. Theoretically, parole is a form of restorative justice that respects the human value of the perpetrator and encourages positive improvement without having to completely eliminate criminal responsibility.

The use of conditional punishment as an alternative to punishment cannot be separated from various criminal law theories. The theory of conditional criminal

law is rooted in the concept of restorative justice and the theory of punishment that emphasizes aspects of rehabilitation, education, and social reintegration of perpetrators, not just isolation through detention. Even since the beginning of the modern criminal law system, parole has become a manifestation of humanity and social need so that the criminal process is not only punitive, but also provides opportunities for improvement. The concept of conditional punishment, which is often called *suspendea* or probation in international legal literature, is an important tool in the criminal justice system, especially in handling misdemeanor offenses.

The settlement of criminal cases with this approach or concept of restorative justice focuses more on the direct participation of both the perpetrator, the victim and the community in the case settlement process. In addition, the concept of restorative justice emphasizes more on the values of balance, harmonization, peace, harmony, peace, equality, brotherhood, and kinship in society rather than punishment or imprisonment. Efforts to resolve cases carried out in this way not only solve the problems that arise but deeper than that, the concept of resolving cases using a restorative justice approach is felt to provide a sense of justice for the community (Flora, 2018).

The legal basis for conditional punishment is contained in the Criminal Code (KUHP), especially in Articles 14 to 17. These articles explain the delay in the execution of the crime during the probation period, as well as the legal consequences if these conditions are not met. In the Criminal Code, the judge has the authority to postpone the execution of the crime during the probation period if certain conditions are met, according to the type of criminal act and the condition of the perpetrator.

In addition, especially for children, Law Number 11 of 2012 concerning the Child Criminal Justice System provides more specific arrangements in the treatment of children in dealing with the law and encourages the use of conditional punishment as a form of protection and coaching. This law emphasizes the principle of child protection and the use of a restorative justice approach so that punishment must be carried out in a manner that takes into account the rights and development of children (Widayanti, 2021).

Article 14a Paragraph (1) of the Criminal Code establishes the basic limits for the application of conditional punishment, namely when the judge gives a maximum prison sentence of one year or imprisonment, except for imprisonment as a substitute. Additional limitations are set out in Article 14a Paragraph (2) of the Criminal Code, which states that judges are authorized to apply probation if the principal sentence imposed on the defendant is a fine without a substitute prison sentence. However, this provision only applies if the fine will impose a significant burden on the defendant. Article 14c sets out special requirements. In addition, Article 14d of the Criminal Code discusses supervision, while Articles 14e and 14f

of the Criminal Code regulate supervision and orders for the execution of sentences if one of the requirements is not met

Thus, this research is expected to contribute to developing a fairer criminal law, especially related to child protection and the application of criminal penalties. Thus, the results of the research are not only beneficial for academics, but also for legal practitioners and policymakers in improving the quality of criminal law enforcement in Indonesia.

### **RESEARCH METHOD**

This research employed a normative legal research approach. Normative legal research involves collecting materials from library sources. Because the study relied on preexisting written materials, it is also termed literature law research. The objective was to compile relevant legal materials from diverse written sources. Normative legal research utilizes secondary data—information not gathered directly from the community but previously processed by other parties—including laws and regulations, legal doctrines, books, scientific articles, and court decisions pertaining to the application of conditional punishment for perpetrators of minor crimes.

### **RESULT AND DISCUSSION**

#### **Juridical Analysis of Conditional Criminal Offenses for Perpetrators of Minor Crimes in Indonesia**

In practice, conditional sentences can be imposed for various types of crimes, both those regulated in the Criminal Code (KUHP) and those not regulated in it. Criminal acts regulated in the Criminal Code include misdemeanor offenses such as petty theft and misdemeanor, as well as general criminal acts such as robbery, gambling, defamation, and property damage. In addition, there are also criminal acts that are not regulated in the Criminal Code, but in practice have been sentenced to probation, such as domestic violence, traffic violations, and planting prohibited plants.

The legal basis for probation is regulated in Articles 14a to 14f of the Criminal Code. Article 14a paragraph (1) of the Criminal Code establishes a simple limit on imposing a probationary sentence, which is when the judge sentences not more than one year in prison or imprisonment, but does not include a substitute prison sentence. Another restriction is explained in Article 14a paragraph (2) of the Criminal Code, which provides that judges are authorized to impose a probationary sentence in cases where the main punishment imposed on the perpetrator is a fine that is not accompanied by a substitute sentence. However, there are criteria that must be met in the context of fines, namely if the fine will be very burdensome for the perpetrator.

Article 14b regulates the probationary period. Article 14c sets out the special conditions for probation. In addition, Article 14d of the Criminal Code regulates supervision, while Articles 14e and 14f of the Criminal Code regulate supervision and orders to carry out punishment if one of the provisions is not met, it is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), which emphasizes the protection and interests of children. protection and special treatment for children in conflict with the law. Law Number 35 of 2014 concerning Child Protection affirms children's rights to legal protection and a child-friendly judicial system. In addition, Supreme Court Regulation Number 2 of 2012 concerning Procedures for Examining Juvenile Criminal Cases facilitates quick and simple settlement without detention.

It can be concluded that probation can be imposed under the following conditions: 1) In a judgment granting a sentence, the duration of the sentence shall not exceed one year. In this situation, a probation sentence can be imposed along with a prison sentence, provided that the judge does not impose a sentence of more than one year. Therefore, the main factor considered is not the maximum punishment in the criminal article, but the actual punishment imposed on the defendant. 2) Probation may also be applied to a prison sentence, provided that the prison sentence is not a substitute for a fine. Regarding prison sentences, there are no additional restrictions because Article 18 Paragraph (1) of the Criminal Code explicitly states that a prison sentence can be imposed on the defendant with a maximum of one year and a minimum of one day. 3) In the context of a fine, a conditional sentence may be applied on the condition that the judge is satisfied that the payment of the fine will impose a significant burden on the defendant.

Discussing misdemeanor offenses, namely criminal acts regulated in Article 205 Paragraph (1) of Law Number 8 of 1981 concerning the Criminal Code, which regulates the procedure for examining misdemeanor cases. This case is threatened with imprisonment or imprisonment for a maximum of 3 months, or a maximum fine of IDR 7,500 (Kumendong, 2012) (with adjustments), as well as minor insults, except for traffic violations.

One example of a case of a misdemeanor that was sentenced to a conditional sentence is. Lifting from the case of decision 6/Pid.Sus-Anak/2025/PN PSW. The judge decided on a conditional sentence to the perpetrator, while the victim's family did not accept that as a result of the fight, the victim was injured and bruised until he was hospitalized so that he could not carry out his usual routine. In this case, the perpetrator is charged with Article 80 Paragraph (1) Jo. Article 76C of Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

This case involved two minors, namely the perpetrator and the victim, in an incident of violence. Initially, the perpetrator was threatened with a prison sentence

of three months. To try to defuse the situation, the perpetrators gave money as medical expenses for the victims as a sign of goodwill to achieve peace. However, the victim's family refused peace after seeing a video of the fight showing the violent act. As a result, the case was brought back to court. During the hearing, the perpetrator's lawyer asked that the punishment be given as severely as possible. The judge granted the request by granting a conditional sentence in the form of community service for 40 hours, and freeing the perpetrator from the prison sentence previously demanded.

Conditional criminal sentences in children's cases have important legal and social impacts, especially related to the protection of children's rights. The decision is in accordance with the principle of "best interest of the child" contained in the Child Protection Law (Law No. 35 of 2014) and the ratification of the Convention on the Rights of the Child by Indonesia. This principle emphasizes that in any legal action involving children, the welfare and best interests of the child must be a top priority.

By applying conditional sentences, the court tries to preserve the right of children to grow and develop optimally in a supportive environment, not in conditions that can hinder their psychological, emotional, and social development. This shows that the juvenile justice system is more focused on protection and rehabilitation, not just punishment, so that children can still enjoy the right to education and opportunities for self-improvement without being exposed to the stigma of detention.

In addition, conditional punishment accompanied by strict supervision and community duties also helps prevent children from repeating mistakes. This system not only provides a deterrent effect, but strengthens social awareness and changes in children's behavior. Coaching carried out during the conditional sentence can bring positive changes in children through guidance and supervision from the authorities. Research shows children who are given constant attention and guidance tend to be less likely to return to unlawful acts. Thus, parole is not only a punishment, but also an effective rehabilitation tool. In addition, this decision also highlights aspects of education and socialization.

Children's involvement in community service provides an opportunity for them to learn social values such as responsibility, empathy, and solidarity from an early age. Programs like this not only teach children the consequences of their actions, but also help them reintegrate into society. The active participation of children in this activity is very helpful in the formation of character and understanding of laws and social norms. This encourages children to develop traits that uphold good behavior.

Finally, this ruling demonstrates the application of restorative justice that focuses on dialogue, reconciliation, and peaceful settlement. Although initial peace



efforts were unsuccessful, the perpetrators' good intentions and good settlement efforts remained important considerations for judges in making decisions. Restorative justice involves victims, perpetrators, and communities in a constructive process to restore social relations, not just providing punishment and retribution. This approach is very suitable in the case of children because it avoids the negative impact of severe punishment while providing an opportunity for children to improve themselves and restore social harmony damaged by the criminal act.

Therefore, the use of conditional punishment as in this ruling shows a balanced and humane legal mechanism, with a focus on the protection, development, and reintegration of children into society. This provides a significant example in the development of the juvenile criminal justice system in Indonesia which increasingly emphasizes the aspects of education, rehabilitation, and restoration as the main basis in the application of the law to children who are in conflict with the law.

### **Judges' Considerations in Imposing Parole Sentences on Perpetrators of Minor Crimes in Indonesia**

The judge's consideration in resolving the case of perpetrators of petty crimes in Indonesia is a complicated legal process and involves philosophical considerations. This process combines the prevailing legal order with human values and justice that leads to recovery. This is very important, especially in child protection, especially in the juvenile criminal justice system (SPPA) regulated in Law Number 11 of 2012.

This conditional criminal arrangement is contained in Articles 14a to 14f of the Criminal Code. Although it is referred to as a conditional crime, this crime is not one of the types of crimes listed in Article 10 of the Criminal Code. Therefore, parole is more appropriately referred to as a special penal system, namely prison, where in the court decision it is determined that the defendant is not obliged to serve the sentence as long as it meets certain conditions set by the judge

In the criminal justice process, before the judge considers various legal aspects, he will first collect the facts that appear in the trial. These facts are conclusions formed from the testimony of witnesses, the testimony of the defendant, and the evidence submitted and examined in full. A judge's decision or court decision is an important part needed to resolve a criminal case. Therefore, the judge's decision can function as a tool for the defendant to obtain legal firmness regarding his status, as well as assist the defendant in determining the next steps, such as receiving the verdict, filing legal remedies such as *verzet*, appeal, cassation, or clemency.

On the other hand, from the point of view of the judge's vision in carrying out his duties, the judge's decision is the culmination of a reflection on the values of justice, truth, human rights, a mature and factual understanding of the law, as well as the appointment of the judge's ethics, mentality, and morality.

Criminal acts related to violence against children are specifically regulated in Law Number 23 of 2002 concerning Child Protection. This Law was then amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002, as well as by Law Number 17 of 2016, which ratified the Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 into the Child Protection Law. seen in Decision Number 6/Pid.Sus-Anak/2025/N PN PSW, where the judge decided to give probation to the perpetrator.

The facts revealed at the trial are that it is true that the defendant hit the child victim by slamming on the ground and after the child victim fell, then the defendant child committed an act by wrapping the victim's neck around the child's neck with his left hand, then directly hit the child's head with the palm of his right hand several times. After that, some of Anak's friends came and immediately separated the fight between Anak and Anak Victim (Ramadhani, 2019; Sugama et al., 2024; Awaluddin, 2024).

Then, Anak and his friends left the scene. As a result of the incident, the victim's child experienced pain in the head and felt dizzy. The victim's child was hospitalized at the Buton Regency Regional General Hospital for several days, so that the victim's child's daily activities were disrupted, and the victim's child could not go to school. This is supported by *Visum Et Repertum* Letter No.XXXXXXX dated September 5, 2024, issued by the Buton Regency Government Regional General Hospital and signed by doctor dr. Yeni Arnas. In the letter, it was stated that there were two black bruises on the victim's left forehead, each measuring one centimeter by zero point five centimeters and zero point five centimeters by zero point five centimeters, which was caused by contact with a blunt object.

Previously, when the Child Victim was being treated in the hospital, there was peace where the child's family was represented by the child's uncle, while the child's side was represented by the child's mother and third brother. In the reconciliation, the Child's family gave money in the amount of Rp3,000,000.00 (three million rupiah) to the family of the Victim's Child as agreed by both parties. However, after returning from the hospital, the other brothers of the Child of the Victim did not want to make peace because they saw the video of the fight between the Child and the Child Victim circulating in the community, so the family of the Child Victim reported the Child to the police for the incident.

Based on the facts of the trial and the fulfillment of the elements contained in the Child Protection Law no. 23 of 2002 in decision number 6/Pid.Sus-



Anak/2025/PN PSW which handles cases of violence between minors, the judge granted a conditional sentence in the form of community service for 40 hours in lieu of a three-month prison sentence proposed by the prosecutor.

The following are the factors that are the basis for the judge's consideration in imposing a conditional sentence in decision Number 6 / Pid.Sus-Anak / 2025 / PN PSW, namely:

1. Types and Severity of Criminal Acts

The judge considers the type of criminal act to be important in deciding the punishment. When a child commits a misdemeanor, such as petty violence or petty theft, the judge considers that direct detention or imprisonment can be detrimental to the child's psychological development, education, and social interaction. Therefore, according to the provisions of the Criminal Code and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), guilty children are better given coaching and rehabilitation treatment. This is in accordance with the restorative justice approach that focuses on social recovery and recovery, not just harsh punishment. As seen in decision number 6/Pid.Sus-Anak/2025/PN PSW which handles cases of minor violence between children, the perpetrator's actions are considered unnecessary to be given a prison sentence that can cause trauma. Therefore, parole is more suitable to be used as a more humane settlement.

2. Perpetrator and age of the child

It is one of the important factors in determining the penalty. According to the SPPA Law, minors are considered not yet mature psychologically and emotionally, so their legal treatment is different and more humane than adults. The judge considered that severe punishments, especially imprisonment, could cause trauma and interfere with children's educational and mental growth. Therefore, conditional punishment is emphasized, in order to provide opportunities for fostering and rehabilitation, as well as protecting the child's future.

3. The history and behavior of the perpetrator.

If the perpetrator is a child who has never committed a crime before, this shows the potential for improvement. In addition, the attitude of the perpetrator who is remorseful for his actions, commitment not to repeat the mistake, and good intentions during the legal process are considerations for reducing the punishment. For example, in decision number 6/Pid.Sus-Anak/2025/PN PSW, the judge saw the perpetrator who tried to provide medical expenses to the victim as a form of good faith, which made the judge strengthen the reason for granting a conditional sentence.

4. The Existence of Peace and Good Faith Efforts

There are efforts to make peace and good faith which are important conditions that judges consider when handing out coaching-based sentences. Although peace efforts can fail due to rejection on the part of the victim, the existence of goodwill and economic assistance from the perpetrator can be an important factor in reducing the punishment given. This effort reflects the spirit of restorative justice, which is the restoration of social relations, not just revenge. Therefore, conditional punishment is given as a form of respect for the perpetrator's good intentions, so that he has the opportunity to improve himself really.

5. Consideration of the Effectiveness and Usefulness of the Law.

The judge also examined the effectiveness and benefits of granting parole compared to prison sentences. Community services, for example, are provided with certain social work hours that involve actors in socially beneficial activities and character building. In the context of children, this is much better than direct detention which can damage the mental and hinder the educational process. The experience of several decisions shows that this approach is able to provide a deterrent effect while helping rehabilitation so that perpetrators can more easily reintegrate into society without stigma as inmates.

6. Other Non-Juridical Factors

Factors such as the law, socioeconomic conditions, physical and psychological circumstances of the perpetrator, and family conditions are considered in granting the appropriate conditional sentence. Judges try to make decisions that are not too harsh and take into account the long-term impact on children and families. The condition of the family that supports and does not exclude the perpetrator is also a consideration so that the probation period of conditional punishment runs well.

In accordance with the judge's considerations, the case in decision Number 6/Pid.Sus-Anak/2025/PN PSW in the case of minor violence between children, the court decision decided on a conditional sentence in the form of community service for 40 hours, instead of a prison sentence for three months. The judge considered several things, namely the young age of the perpetrator, the perpetrator's good intentions in helping the victim's medical expenses, and the negative risk of prison sentence on the psychological development of the perpetrator.

In addition, the perpetrator's attitude of remorse, which has never been punished before, and the family's social conditions also support the imposition of conditional sentences aimed at the recovery and social return of the perpetrator. This decision shows a balance between legal and humanitarian aspects, in accordance with the principles of restorative justice and child protection in Indonesia.

## CONCLUSION

Conditional punishment in Indonesia provided a restorative justice alternative to traditional penalties for minors committing petty crimes, as supported by the Juvenile Criminal Justice System Act, which prioritized children's rights and development over detention's harmful effects, as exemplified in case Number 6/Pid.Sus-Anak/2025/PN PSW where judges weighed the offender's age, social conditions, and intent to impose community service focused on education and reintegration. This approach aimed not only at deterrence but also rehabilitation to curb recidivism and facilitate stigma-free societal reintegration, requiring collaboration among law enforcement, robust supervision, and family-community support. Improvements involved stricter probation oversight, judicial training on restorative justice, uniform enforcement of regulations like Supreme Court Regulation Number 1 of 2024, enhanced child-tailored community programs, and stigma-reducing socialization efforts. For future research, empirical studies could evaluate recidivism rates post-conditional punishment across Indonesian districts to refine policy implementation and measure long-term reintegration success.

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