



Examine The Concept of Forgiveness in Juvenile Cases as Per Article 70 of The Judicial System Act Regarding Children's Criminal Responsibility

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ABSTRACT

This paper aims to explore the meaning of forgiveness of judges set out in Article 70 Law No. 11 of 2012 on juvenile criminal justice system (SPPA). When examined further, the explanation of Article 70 of the law only contains the word "self-explanatory". This normative research uses legislation and conceptual approach. The results showed that the meaning of Article 70 of the SPPA law is punishment to the child can only be applied as a last resort by basing value of humanity and justice for children by basing on the philosophical basis of value-values of Pancasila and the Constitution of 1945, and rests on the implementation of the principles child protection

Keywords: *Forgiving judges; Ratio legis; juvenile criminal justice system*

1. Introduction

The concept of forgiveness, particularly within the framework of restorative justice, plays a pivotal role in the judicial system concerning children's criminal responsibility (Saefudin & Nasirudin, 2022). This approach prioritizes rehabilitation and reintegration over retributive punishment, aligning with the foundational principles of juvenile justice (Nurdina, 2021). This paradigm shift acknowledges that children in conflict with the law require a specialized approach that considers their developmental stage and potential for reform (Jufri et al., 2019). Central to this system is the implementation of diversion strategies, which aim to resolve juvenile cases outside the formal criminal court process, thereby emphasizing restorative outcomes (Suharto, 2021). This restorative approach, which incorporates forgiveness, is crucial for mitigating the long-term negative impacts that traditional punitive measures can have on a child's life trajectory, preventing sustained contact with the justice system and reducing reoffending (Edwards, 2017). The shift towards restorative justice in managing minors in legal trouble, as opposed to conventional punitive measures, has unfortunately not been fully integrated into explicit legal frameworks, remaining dispersed across various institutional norms (Hanafi, 2023). This framework is significantly influenced by international legal instruments, such as The Beijing Rules, which advocate for restorative justice principles in juvenile cases (Setyowati, 2020). This is particularly evident in Article 70 of the Judicial System Act, which implicitly supports diversion and restorative practices by emphasizing the protection and welfare of children over strict adherence to punitive measures (Kurniawan & Purwardi, 2020).

The son as a creature of God Of course, the UN has the right to human beings as they should be compliance and protection against Children'S rights must be guaranteed and regulated in such a way that the law that happens. Importance of human rights protection for children, of course, based on understanding that children are the future of the nation and the next generation of ideals of the nation, so that children are entitled to grow, develop, and protection of inhuman punishment and persecution (Purwanto, 2020). Protection for children is not this is a national issue, but the Child Protection Act has been to the attention of the

international community, this is illustrated from the formation of the convention The Convention on the Rights of the child the Child (CRC) convention by Eglantyne Jeb in 1923 approved by the United Nations on November 20 1989 (Fernando, 2020). With the existence of the convention obliges countries that recognize and ratify to provide guarantees for the rights of children in each ratifying country, the Government of Indonesia through Presidential Decree Number 36 of 1990 officially ratified the Convention on the Rights of the Child in Indonesia, so that with the ratification of the child rights convention in Indonesia, the Government is obliged to guarantee the protection of children's rights in Indonesia.

In line with the mandate of the 1945 Constitution that Indonesia is a state of law, the protection and recognition of Human Rights is one of the characteristics inherent in a state of law (Said, 2018). Thus it is an obligation that the Indonesian State as a state of law provides recognition and upholds human rights, namely the basic rights or citizenship inherent in individuals since they were born which are given directly by God which cannot be deprived and revoked and its existence must be respected (Reksodiputro, 1997). The protection of human rights must be given to every human being without recognizing age, gender, and religion, so that the protection and recognition of human rights must be given to all human beings as a fundamental right that they have had since birth, including to children (Asshiddiqie, 2008).

As a form of protection of children, especially for children in conflict with the law, the Government of Indonesia in 1997 has promulgated rules related to the settlement of cases of children dealing with the law, which is contained in Law Number 3 of 1997 concerning Juvenile Courts. However, along with the development of society and knowledge of criminal law, the Law on Juvenile Courts is no longer in accordance with the development and needs of society, this is considering that the provisions of the law have not comprehensively provided protection to children who are dealing with the law, so that the provisions of Law Number 3 of 1997 were revoked with the enactment of Law Number 11 of 2012 concerning the Criminal Justice System for Children (hereinafter referred to as the SPPA Law) (Darmika, 2019).

Law Number 11 Year 2012 on the Criminal Justice System for Children regulates the protection of children more comprehensively, where in the provisions of the Law also regulate diversion and restorative justice approaches as an effort to protect children. These arrangements provide opportunities so that children do not continue the legal process and avoid punishment and / or actions, so that children are not stigmatized. The restorative approach is also a barrier that the provision of sanctions or actions for children is not a retributive tool (Sari, 2013). The restorative approach in the criminal justice system is an approach that is used from the initial stage to post adjudication. Article 5 of the SPPA Law emphasizes that the Juvenile Criminal Justice System covers the stages of investigation, prosecution, trial of children, coaching, mentoring, supervision, and assistance (Ernis, 2017).

The SPPA Law has actually also regulated alternative settlement of juvenile cases through judge forgiveness, action and punishment. This can be understood because prison is actually the last alternative that must be chosen by the judge in imposing sanctions on the child. However, based on research data from the Ministry of PPN/Bappenas in collaboration with UNICEF and PUSKAPA, it is stated that as many as 90 percent of children processed in court are still sentenced to imprisonment, even in among them there are children under the age of 14 years (Bappenas, 2020). Similarly, based on data obtained from the Supreme Court in 2022, it was noted that of all juvenile cases that entered the Cassation level in the

last 2 years, none of them were resolved using Judge's Forgiveness as stated in Article 70 of the SPPA Law.

Article 70 of the SPPA Law stipulates that, "The severity of the offense, the personal circumstances of the child, or the circumstances at the time of the offense or those that occur later can be used as the basis for the judge's consideration not to impose punishment or impose measures by considering the aspects of justice and humanity". However, it is unfortunate that in practice, Article 70 of the SPPA Law has not been used properly by judges, to date the author can only find one judge's decision that applies article 70 in his decision, namely in decision Number 2/Pid-Sus-Anak/2021/PN.Rgt. Judges have not paid attention to the importance of Article 70 of the SPPA Law regarding judge forgiveness. When examined further, the Explanation of Article 70 of the SPPA Law only contains the word "Quite clear". The absence of further explanation of Article 70 of the SPPA Law is actually an obstacle for judges in resolving children's cases so it is necessary to explore the value of judge forgiveness in this article.

Based on the description above, this paper explores the meaning of the judge's interpretation for children through the Ratio Legis of Article 70 of the Law on the Criminal Justice System for Children by basing it on doctrinal research using a regulatory approach legislation and a conceptual approach. The legal materials used are laws and regulations, treatises, journals, and others related to legal issues which are classified as primary and secondary legal materials and then analyzed using grammatical interpretation and teleological interpretation.

2. Methods [Bookman Old Style 11pt bold]

The research method uses a normative juridical approach with a type of doctrinal legal research that aims to examine positive legal norms and applicable legal principles. This research is sourced from secondary data in the form of primary legal materials, such as Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, court decisions, as well as secondary legal materials in the form of legal literature, scientific journals, and opinions of relevant legal experts (Waris, 2022). Data collection techniques were conducted through library research by identifying and reviewing legal documents and related literature. Data analysis was carried out qualitatively with a descriptive-analytical approach, namely parsing the meaning of the judge's forgiveness of the child in the context of the ratio legis of Article 70 of the SPPA Law, and evaluating the relationship between the norm and the purpose of punishing children who prioritize the principle of restorative justice (Ali, 2021).

3. Findings and Discussions

3.1 Development of Judicial Pardon and its Regulation in provisions of the Criminal Code and Law on Criminal Justice System for Children in Indonesia

The concept of forgiveness as applied in the view of Judicial Pardon has long been known in the system of customary forgiveness in the life of the people of Indonesia. In several provisions of customary law in various regions in Indonesia have regulated a lot related to the pattern of solving problems by forgiving someone who has violated the applicable customary provisions where the forgiveness is included in one type of sanction in customary law. To be able to achieve the settlement of cases by way of forgiveness, then a person who violates the provisions of the customary law is obliged to ask for forgiveness and realize his mistakes to the victim and his family. The pattern of solving problems with forgiveness can be seen in the Mewari mechanism known by the people of Lampung Menggala, Mewari is a type of customary judicial decision known by the traditional people of

Lampung, namely a statement of agreement between the two disputing parties to carry out the removal of the bond of brotherhood between the two parties after an amicable settlement of the subject matter, then against this is continued with the ceremony of tying the rope of brotherhood. By holding the ceremony then for both parties will be good and harmonious as well as relationships between families (Farikhah, 2018).

The concept of judge forgiveness or Judicial Pardon in the level of the Indonesian criminal justice system can be said to be a new thing, where judges are given the authority to grant forgiveness to the perpetrator of a crime that has fulfilled the elements of the crime and has been proven to have committed a criminal offense but based on consideration of the severity of the crime or the circumstances at the time of committing the criminal act, if imposed punishment will harm justice and humanity. The decision on forgiveness given by the judge in the concept of judicial pardon is basically currently not recognized in Law Number 8 Year 1981 on Criminal Procedure Law. The Criminal Procedure Code clearly has divided the types of judges' decisions into 3 (three) types of decisions including namely Free decisions (*Vrijspraak*), Release decisions (*Ontslag van alle rechtsvervolg*ing), and Punishment decisions (*Veroordeling*).

An acquittal (*Vrijspraak*) can occur because the defendant is declared not proven legally and convincingly to have committed a criminal offense as charged by the Public Prosecutor in the indictment. So it can be concluded that an acquittal verdict is issued by the Panel of Judges because the charges as drawn up and read out by the Public Prosecutor before the trial are not proven based on valid evidence as stipulated in the provisions of Article 184 of the Criminal Procedure Code and there is no conviction of the judge that the defendant has been guilty of a criminal offense (Sofyan & SH, 2020).

Then against the release decision (*Ontslag*) has been regulated in the provisions of Article 191 paragraph 2 of the Criminal Procedure Code which basically states that even though the alleged act is proven in court, but the act is not a criminal offense, then the defendant is released from all legal charges. Where from the arrangement, it is known that there are two forms of elements in imposing a release decision on the perpetrator of a criminal offense, including 1) what is charged is proven legally and convincingly, 2) The court is of the opinion that the act does not constitute a criminal offense (Hiariej, 2015).

The third type of decision known in criminal procedure law is a decision of punishment (*veroordeling*), a decision of punishment or imposing a criminal sentence on a person can only be imposed by a judge if the charges have been tested in court and it has been proven and the judge has the belief that the defendant is guilty of committing a criminal offense as charged by the Public Prosecutor. By looking at the three types of decisions that can be imposed by judges as well known and regulated in the provisions of the Criminal Procedure Code, it is clear that this has a fundamental difference with the concept of judicial pardon which authorizes judges to impose pardon decisions on defendants, where in the concept of pardon judges have different qualifications with the three types of decisions as mentioned above. The concept of judicial pardon cannot be aligned with a release decision this is because the judicial pardon decision is imposed on a defendant who is proven to have committed the charged act and the act is a criminal act, but the judge is given the authority to consider the severity or circumstances of the perpetrator at the time of committing the crime so that the judge can impose forgiveness on him.

Along with the development of criminal law regulation in Indonesia, nowadays the Government of Indonesia through the provisions of the National Criminal Code has provided basic rules for the possibility of applying the concept of forgiveness

by the judge to the defendant by considering the severity of the act, the personal circumstances of the perpetrator, or the circumstances at the time of the criminal offense by considering the aspects of justice and humanity. The concept of judge forgiveness in the National Criminal Code is reflected in the provisions of Article 54 of the National Criminal Code, as stated in Article 54 of the National Criminal Code as follows:

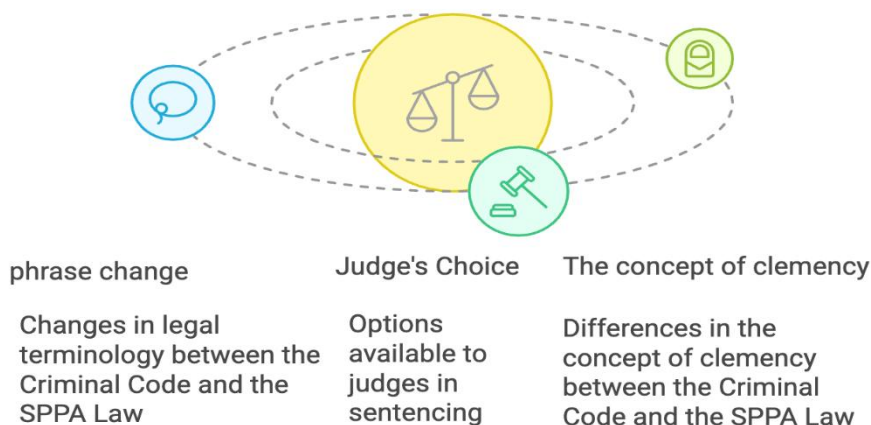
1. In the punishment shall be considered:
 - 1) the form of guilt of the perpetrator of the criminal offense
 - 2) the motive and purpose of committing the criminal offense
 - 3) the inner attitude of the perpetrator of the criminal offense
 - 4) the criminal offense was committed premeditatedly or unpremeditatedly
 - 5) the manner in which the criminal offense was committed
 - 6) the attitude and actions of the perpetrator after committing the criminal offense.
 - 7) the life history, social circumstances, and economic circumstances of the perpetrator of the criminal offense
 - 8) the effect of the punishment on the future of the perpetrator of the criminal offense.
 - 9) the effect of the criminal offense on the victim or the victim's family
 - 10) forgiveness from the victim and/or the victim's family
 - 11) the values of law and justice that live in society.
2. The severity of the offense, the personal circumstances of the perpetrator, or the circumstances at the time of the commission of the offense as well as those that occur later may be used as a basis for consideration not to impose punishment or not to impose measures by taking into account the aspects of justice and humanity.

By looking at the provisions of Article 54 paragraph 2 of the National Criminal Code as mentioned above, it can be understood that through the applicability of the article, the judge is given the authority to consider several elements as listed in the provisions of Article 54 paragraph 2 to the defendant and if the consideration of the judge feels that the imposition of punishment to the defendant is contrary to the values of justice and humanity, then based on the article the judge may not impose punishment or action against the defendant even though the act charged by the Public Prosecutor has been proven. The process of not imposing punishment or action to the defendant who is proven to commit a criminal offense based on considerations of justice and humanity as well as the severity of the act, the personal circumstances of the perpetrator, and the circumstances at the time the criminal offense was committed can be categorized as an effort of forgiveness given by the judge to the defendant. So that with the existence of this judicial pardon institution, the defendant may not undergo punishment or action as demanded by the Public Prosecutor. The application of Judicial pardon is also one of the efforts in overcoming the phenomenon of over capacity in correctional institutions (Alhakim, 2023).

The provision is also outlined in article 70 of the SPPA Law, which there are slight differences in the phrases and elements, where in the National Criminal Code there is the phrase perpetrator, but in the SPPA Law it is changed to Child. likewise also with the phrase "can be used as the basis consideration for not imposing punishment or not imposing measures" in the National Criminal Code explicitly states not imposing measures, while in the SPPA Law the phrase becomes "can be used as the basis for the judge's consideration for not imposing punishment or imposing measures". This requires analysis where with the phrase the judge has two options, namely not imposing punishment or imposing measures. This is

different from the concept of Judicial Pardon adopted in the National Criminal Code.

Figure 1
Comparative Law in the Criminal Justice System



The figure illustrates three important aspects that are the focus of the differences and developments between the Criminal Code (KUHP) and the Law on Juvenile Justice System (UU SPPA). These three aspects are symbolized in the form of an orbit surrounding the symbol of the scales of justice, indicating that all of these changes still pivot on the principle of justice. First, "Phrase Change" shows that there is a shift or adjustment in legal terminology, where the SPPA Law uses terms that are more child-friendly and in accordance with the spirit of child protection, different from the terms in the Criminal Code which tend to be repressive. Second, "Judge's Choice" emphasizes that judges now have more options in sentencing juvenile offenders, including non-criminal options, such as diversion, coaching, or social services, which emphasize aspects of guidance rather than retribution. Third, "The Concept of Clemency" highlights the difference in the concept of clemency between the Criminal Code and the SPPA Law, where in the context of children, the granting of clemency is more carefully considered and protects the best interests of the child. Overall, this picture conveys that legal reform in the juvenile criminal justice system lies not only in substantive rules, but also in an approach that is more just, humane, and in favor of the future of children.

3.2 Ratio Legis Judicial Pardon in Juvenile Justice System Law.

The basis for the application of the concept of Judicial Pardon in the provisions of criminal law in Indonesia today cannot be separated from the Political Law or policy direction to be achieved by the Government through the establishment of Law Number 1 of 2023 concerning the Criminal Code, if examined in the Considerant weighing the National Criminal Code, it is clearly illustrated that the material of the National Criminal Code is intended to create a balance between the interests of the public or the state and the interests of individuals, which also regulates the protection of the perpetrators and victims of criminal acts, this is in line with what is stated in the Considering Consideration letter c which essentially reads "that the material of the national criminal law must also regulate the balance between public or state interests and individual interests, between the protection of the perpetrators of criminal acts and the victims of criminal acts.

Then if we refer back to the academic paper on the preparation of the National Criminal Code, we can find the basic view on the application of the concept of judge forgiveness in the provisions of Article 54 paragraph 2 of the National Criminal

Code, where the existence of the principle of Judicial Pardon is motivated by the idea or the following ideas:

1. Avoiding the rigidity / absolutism of punishment
2. As an element of providing a safety valve (veiligheids klep)
3. As a form of judicial correction of the principle legality
4. As an effort to implement / integrating the value or paradigm wisdom in Pancasila.
5. As a form of implementation of the purpose of punishment into the terms of punishment (considering that in granting forgiveness judges must consider the purpose of punishment).
6. So the requirements or justification for punishment are not only based on the existence of criminal offense or the principle of legality and guilt, but also on the purpose of punishment.

Apart from the provisions of the National Criminal Code, Normatively, the arrangement of judge forgiveness as stipulated in the provisions of Article 54 paragraph 2 of the National Criminal Code is not a new thing known in criminal justice in Indonesia. The concept of judge's forgiveness has long been recognized in Indonesia namely in the juvenile criminal justice system. Law Number 11 Year 2012 on Juvenile Criminal Justice System has previously regulated the concept of judicial pardon as illustrated in the provisions of Article 70 of the Law on Juvenile Criminal Justice System. Basically, the applicability of the concept of judicial pardon in the provisions of the National Criminal Code and Law SPPA has the same philosophical basis, namely the judge has the authority to give consideration to decide pardon to the defendant who has basically been proven to have committed a crime, but based on the consideration of the severity of the act as well as considerations of justice and humanity, pardon can be imposed on him by not imposing punishment.

Figure 2
The Concept of Judicial Forgiveness



This image presents a visual representation in the form of a silhouette of a human head divided into four colored parts, each representing an important component in understanding the concept of judicial forgiveness in the justice system, especially in the context of juvenile criminal justice. The first section, at the top of the head in blue, entitled "philosophical foundations", illustrates that judicial forgiveness is not only practical in nature, but is rooted in deep philosophical principles that emphasize the values of justice, morality and humanity. Furthermore, the green section titled "Judge's consideration" explains that in practice, judges consider various factors such as the offender's background, social condition, and potential recovery when deciding on granting

forgiveness. Then, in the bright green section, there is the "Justice and humanity" aspect, which underlines that judicial forgiveness decisions are also based on ethical considerations, namely treating the perpetrator as a human being who deserves a second chance, especially children. Finally, the yellow section at the bottom of the head entitled "juvenile criminal justice system" shows that the historical and legal context specifically concerning children in criminal justice is an integral part of the application of judicial forgiveness, which emphasizes a corrective approach rather than punishment. This picture as a whole conveys that judicial forgiveness is not only a matter of formal law, but also a matter of value, empathy, and social responsibility in fostering the future of children with problems with the law.

Law No. 11/2012 on the Juvenile Criminal Justice System through the provisions of Article 70, authorizes judges not to impose punishment or action by considering the severity of the act, the personal circumstances of the child, or the circumstances at the time the act was committed or occurred, as well as with considerations of justice and humanity. The full text of Article 70 of the SPPA Law is as follows:

"The severity of the offense, the personal circumstances of the Child, or the circumstances at the time of the offense or that occur later may be used as the basis for the judge's consideration not to impose punishment or impose measures by considering the aspects of justice and humanity".

When looking at the provisions of Article 70 of the SPPA Law as mentioned above, there is no phrase or statement expressly related to the term "forgiveness of the judge", but the provisions of Article 70 of the SPPA Law clearly contain a progressive step related to Judicial Pardon, this can be seen in the formulation of the article contained where the judge is given an authority to decide not to impose punishment on the child if in his consideration the judge feels that if imposing punishment will not reflect justice and humanity. The authority not to impose punishment on the child is what reflects the existence of the concept of forgiveness of judges in the provisions of the SPPA Law. The enactment of the provisions of Article 70 of the SPPA Law is not separated from the legal politics of the formation of the SPPA Law in general, where the provisions of the SPPA Law were born to provide protection for children specifically in the justice system process, this is based also on the provisions of the Convention on the rights of the child which has regulated the principle of legal protection for children who are in conflict with the law. So that in criminal offenses committed by children, as much as possible not to impose punishment, this is considering that for certain crimes, sometimes the imposition of punishment is not always considered appropriate to improve the circumstances and conditions of the perpetrator, especially in children who are basically still in infancy (Arief & Ambarsari, 2018).

In principle, the limitation of punishment for children means that punishment for children is not solely to punish, but rather aims to educate and improve the behavior of children. The application of diversion and judicial pardon is actually one of the efforts to avoid children from the process in the criminal justice system as well as avoiding children from punishment which has a negative impact on children. Punishment that is generally carried out in correctional institutions does not make the perpetrator better, because the initial purpose of the existence of correctional institutions is to provide a deterrent effect, but on the contrary there is currently excess capacity as well as the fact that offenders who have been convicted also re-offend after leaving the correctional institution (residive) (Purwani & Dewi, 2021).

Considering that the deprivation of freedom to children is a "measure of the last resort" then the imposition of punishment to children must be placed as a last

resort, so that the provisions of the SPPA Law have actually shown that there are other means besides punishment as a means of overcoming crime (Widodo, 2016). This can be seen with the obligation to carry out diversion first to children at every level of examination both from the investigation process to the trial process, as well as regulating the authority of judges not to impose punishment on children if in their consideration the imposition of punishment will harm the child. Of course the application of the juvenile criminal justice system must be implemented and applied in accordance with the provisions of the principles as stated in the SPPA Law, which include the following:

1. Protection;
2. Justice;
3. Without Discrimination
4. The best interests of the child;
5. Respect for the child's opinion;
6. The survival and development of the child;
7. Guidance and mentoring of the child;
8. Proportionality;
9. Deprivation of liberty and punishment as a last resort;
10. Avoidance of retaliation.

Given that the deprivation of independence and punishment is placed as a last resort, the concept of forgiveness of judges is important to be outlined in the provisions of the SPPA Law as a basis for the realization of the principle that the imposition of punishment on children is the last resort or method that can be chosen in examining and deciding criminal cases committed by children. Of course, the presence of the SPPA Law cannot be separated from the constitutional mandate which illustrates that children have a strategic role which has been expressly stated that the state guarantees the right of every child to survival, growth, and development and to protection from violence and discrimination. So it is clear that the best interests of children need to be upheld by basing on human values and justice for children.

Avoiding children from the deprivation of independence is also one way to avoid children from the adverse effects of correctional institutions (prisons), various factors both external and internal are very influential on the development of prisoners children in prison. Facilities and infrastructure that exist in children's correctional institutions and correctional centers are one important thing, where currently not all districts / cities have special children's prisons, thus causing some child prisoners to be entrusted in adult prisons, this of course greatly affects the development of children. In addition, food / drink, education and training, health, security and a sense of security, religion and communication with family and society are things that are important for child development, and these things will be difficult to obtain when the child becomes a prisoner in prison, so that as far as possible the child returns to the parents and community. Hazairin argues that actually in Indonesia there is no need for the application of imprisonment, this is because prison has many shortcomings, in line with that Herman Bianchi extremist argues that the institution of prisons and prisons should be abolished because of the many dark sides that arise from the institution of imprisonment (Rosidi, 2021).

By looking at the provisions of Article 70 of the SPPA Law as mentioned above illustrates that judges are allowed not to impose punishment either punishment or action to children if based on their considerations in several things including

1. the actions committed by children are included in minor crimes. In this first element, the lightness of the act actually refers to a minor crime, and when returning to the provisions of the principle of imposing punishment for children

is the last resort, it becomes reasonable that there needs to be a solution or effort to prioritize the best interests of the child, whether it is through a diversion settlement or through a judge's forgiveness.

2. Consideration of the child's personal circumstances at the time of committing the criminal act. In this case, consideration is placed on the individual aspect of the child who committed the criminal offense, which can be seen by tracing the child's background or the child's origins to his family and life in the community. Where in determining this can also be done with the help of experts in the field of psychology or characterology, this is considering that the perpetrator is still a child so it is necessary to pay attention to the personal circumstances of the child.
3. Consideration of certain circumstances at the time of committing the act by the child. This element actually looks at the conditions that followed the child at the time of committing a criminal offense and in this element also needs to be explored whether the child in committing a form of repetition of a criminal offense or not, as well as whether the criminal act committed by the child is the result of prior planning or not, and also needs to be considered related to the losses suffered by the victim due to the occurrence of a criminal offense committed by the child.
4. Consideration of the value of justice and consideration of human values. In consideration of the value of justice and humanity actually has a meaning and a very broad meaning, where justice is one of the objectives of the law in addition to the value of certainty and expediency, so that ideally the law should contain justice, certainty, and expediency, so that this provides certainty for the community especially for children who are dealing with the law. Therefore, the consideration of the value of justice and humanity has an important role in convincing judges to not impose punishment on children who have been proven to have committed a criminal offense.

The four forms of consideration that can be used by judges in deciding forgiveness for children who commit criminal offenses, clearly mean that punishment for children can only be applied as the last resort based on the value of humanity and justice for children. If the act committed by the child is very light which should be if the child is sentenced to either punishment or action will be contrary to a sense of justice that does not create a balance between the act and the punishment obtained, then through article 70 of the SPPA Law, the judge is given the right not to impose punishment on the child. Judicial pardon can be imposed as long as the judge is of the view that the weight of the defendant's guilt is sufficient, without having to determine further with a certain time sentence, factually this can only be given in certain cases and is a trivial case (Suryawan, 2021).

Judicial Pardon which can also be said as one of the restorative justice processes is in line with the objectives put forward by the formulators of the SPPA Law, where the juvenile criminal justice with restorative justice has objectives, among others:

1. seek peace between the victim and the child;
2. prioritize settlement outside the judicial process;
3. keep the child away from the negative influence of the judicial process;
4. instill a sense of responsibility in children.
5. to realize the welfare of the child.
6. prevent children from deprivation of independence;
7. encourage the community to participate;
8. avoiding negative stigma;
9. improving children's life skills.

If we look at the above objectives, then this is also in accordance with the objectives of the Judicial pardon decision for those in conflict with the law. The applicability of the provisions of Article 70 of the SPPA Law is also in line with what has been regulated in The Beijing Rules, Resolution No. 40/33, 1985 which has the principle that loss of liberty cannot be imposed unless convicted of an act that is serious and involves violence against another person or upon conviction of committing other serious violations of the law and unless there is no other adequate response.

The issuance of the provisions of Article 70 of the SPPA Law contains philosophical values, namely for the creation of a just and civilized humanity, which recognizes the equality of degrees and upholds the values of justice and humanity, which is in line with the provisions of Article 70 of the SPPA Law where judges can consider the severity of the child's actions, the circumstances in which the child committed them, Humanity and Justice for children. When examining the concept of justice as stated by Ulpianus, where justice will be achieved when giving rights to someone who is entitled to receive them (*justitia est constant et perpetua voluntas ius suum cuique*) (Nindyo Pramono et al., 2017), then when looking at one of the rights owned and must be fulfilled against children in conflict with the law is "not arrested, detained, or imprisoned unless it is as a last resort and in a short time" so that it is clear that the presence of article 70 of the SPPA Law which gives judges the right to consider granting forgiveness for minor acts committed by children contains the value of justice as stated by Ulpianus, where with the existence of a judge's forgiveness institution it is hoped that the child's right to imposition of punishment as a last resort will be realized, with this, of course the judge's forgiveness can prioritize the best interests of the child in obtaining justice on the basis of humanitarian considerations.

4. Conclusion

The applicability of Article 70 of the SPPA Law as the basis for the application of the concept of Judicial Pardon or Forgiveness given by the judge to children by considering several aspects including, 1) the act committed by the child is included in minor criminal offense. 2) consideration of the personal circumstances of the child at the time of committing the criminal act, 3) consideration of certain circumstances at the time of the act committed by the child, 4) consideration of the value of justice 5) consideration of the value of humanity. So that the meaning that can be extracted from the provisions of Article 70 of the SPPA Law is, the punishment of children can only be applied as the last resort by basing the value of humanity and justice for children by basing on the philosophical values contained in Pancasila and the 1945 Constitution, and based on the applicability of The Beijing Rules, besides that it also avoids children from deprivation of independence, where placing children in correctional institutions has various negative impacts on the development of children as well as affecting the future of children.

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