

# IMPLEMENTATION OF DOUBLE TRACK SYSTEM IN THE JUVENILE-CRIME JURISDICTION PROCESS

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## ABSTRACT

*The Double Track System's implementation in the juvenile-crime justice process is viewed through three decisions of juvenile cases: (1) Kota Agung District Court Number 2/Pid.Sus-Anak/2014/PN.Kot in 2014, (2) Liwa District Court Number 12/Pid.sus/2014/PN.LW in 2014, and (3) Gunung Sugih District Court Number 8/Pid.Sus-Anak/2017/PN.Gns of 2017. These decisions follow the Law Number 11 of 2012 concerning the Juvenile Justice System (Law). Article 69 paragraph (1) and Article 71 Paragraph (1) point e of the Juvenile Justice System Law regulate 2 (two) years and 6 (six) months of imprisonment for children's perpetrators at the Children's Special Development Institutions or Lembaga Pembinaan Khusus Anak (LPKA). The Juvenile Justice System Law states that the juvenile criminal justice system recognizes the child's best interests, deprivation of independence, and criminal penalties as last treatment for juvenile crimes. Furthermore, Article 82 paragraph (1) point (a) to the Juvenile Justice System Law stipulates that child as crime perpetrators are possibly supervised under their parents/guardian's care. Thus, the sanctions' application in these court decisions against the case is aligned with the prevailing legal system of justice.*

**Keywords:** Double Track System, Juvenile Crime, Juvenile Justice System.

## INTRODUCTION

The development of human civilization has led to the birth of actions against new laws, which were previously unpredictable by the ability of human reason. On the other hand, requires appropriate legal means to take action against any acts against the law (Pitts, 2017). The Act against the law is another term for a criminal act, a criminal act, and in general, it is better known as a criminal sanction. Criminal sanctions are one of the actions that are not complimenting for society and can harm each individual's social life because they can disturb the peace and tranquility of human life (Lewerisa et al., 2020). The types of criminal sanctions are increasingly diverse, especially with the development of times and technology (Akbar, 2019). Especially about the child criminal sanctions, criminal law in Indonesia uses two types of criminal sanctions at once: crime (straf) and treatment (maatregels). Criminal sanctions focus on wrongdoing that a person has committed through the imposition of suffering so that the person concerned becomes

a deterrent. The focus of treatment (sanction) is more focused on helping the perpetrator to change. Criminal sanctions emphasize the element of retaliation (Werle, & Jessberger, 2020). Criminal sanctions are suffering deliberately imposed on an offender who commits a criminal act. Meanwhile, treatment sanction comes from the basic idea of protecting the community and fostering or treating the perpetrator with social goals (Chiao, 2018; Cryer et al., 2019).

Legal protection for children and adolescents who commit criminal acts has been provided in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and international legal instruments in the form of conventions issued by the General Assembly of the United Nations, such as the Beijing Rules. In Article 69 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Justice System, clearly states that children can be subject to criminal sanctions or be subject to sanctions in the form of treatment based on the law's provisions. The principle in this law is what we know as the principle of the Double Track System.

The double-track system is a sub-system of the criminal system. The criminal system can briefly be interpreted as a “*system of giving or imposing criminal*” (Zalewski, 2018). In a broader sense, the criminal system is the statutory rules relating to legal sanctions and criminal penalties (the statutory rules relating to penal sanctions and punishments). The criminal system in a narrow sense can be seen from only material criminal law, which includes: a) Type of crime (strafsoort), b) The duration of the criminal penalty (strafmaat), c) Criminal enforcement law (strafmodus/straf modaliteit) (Mallofik, 2017). The juvenile justice system also implements the principle of restorative justice in the double-track system concept by prioritizing juvenile criminal cases' settlement through restorative justice. If no consensus is reached, criminal acts' settlement goes to court (May et al., 2018). The existence of restorative justice in the criminal justice system in Indonesia is not new. Therefore, it is important to put restorative justice discourse on strengthening the role of victims in the criminal justice system because, in the Criminal Justice System practice, there is a tendency to ignore victims' interests.

Judges in Indonesia are more likely to implement alternative systems than the cumulative alternative system. It can be seen from the judges' decisions regarding criminal acts committed by children who tend to apply an alternative system, which is a prison sentence only. Table 1 describes the criminal acts committed by children according to the law on the Criminal Justice System for Children, of course, will be processed differently starting from the investigation stage to the guidance stage. The following criminal cases starting from 2014 to 2017 are as follows:

<b>Table 1</b> <b>CRIMINAL CASES FOR CHILDREN, 2014 to 2017</b>		
<b>No</b>	<b>Year</b>	<b>Number of cases</b>
1	2014	25 cases
2	2015	30 cases
3	2016	44 cases
4	2017	57 cases

There are 3 cases of children discussed by the author, namely the case of children who were sentenced to criminal sanctions in the Case Study of Decision Number Judges' decisions regarding criminal acts committed by children as follows:

1. The decision of the Kota Agung District Court Number 2/Pid.Sus-Anak/2014/PN.Kot Year 2014, which convicted the child offender for 3 (three) months in prison with a case of theft with violence.
2. The decision of Liwa District Court Number 12/Pid.sus/2014/PN.LW decided 2 (two) child offenders, each of which is sentenced to imprisonment of 7 (seven) months and 6 (six) months for theft in a burdensome state.
3. The decision of the Gunung Sugih District Court Number 8/Pid.Sus-Anak/2017/PN.Gns of 2017, which convicted the child offender who committed a criminal act of theft in a burdensome situation with criminal guidance in the Lampug Special Child Development Institutions Class IIA in the form of attending Job Training for 1 (one) year.
4. Based on data obtained from the Lampung Regional Police during January to August in 2017, there were 57 cases of children as perpetrators of criminal acts. Of the 57 cases of these children, 4 of them were resolved through diversion, 28 cases were transferred to the Public Prosecutor or Jaksa Penuntut Umum (JPU), 25 cases are still under investigation, and at present, there are 21 child perpetrators of criminal offenses who are in prison.
5. This study aims to determine and analyze the extent to which the implementation of the double-track system in juvenile courts is implemented. There are criminal sanctions against children of criminal offenses, which are crimes sanction and treatment that place the two sanctions in an equal position in the judicial policy. Besides, these studies also aims to determine and analyze what matters is the basis for judges' considerations in determining criminal sanctions or treatment against the child accused.

## RESEARCH METHOD

In writing this research, the writer uses the empirical juridical approach, namely the approach carried out by collecting primary data obtained directly from the research object through interviews with respondents and sources related to the research. The sources of this research consisted of Table 2 content:

<b>Table 2 PRIMARY DATA</b>		
<b>No</b>	<b>Status</b>	<b>Total</b>
1	Lampung Police investigators	1 (one) person
2	Prosecutors at the Lampung High Prosecutor's Office	1 (one) person
3	Judge at the Tanjungkarang High Court	1 (one) person
4	Bandar Lampung Child Protection Agency	1 (one) person
5	Lecturer in the Department of Criminal Law, Faculty of Law, Universitas Lampung	5 (five) people

## RESULT AND DISCUSSION

### The Implementation of Double-Track System in the Juvenile Justice Process

The double-track system model has existed since the enactment of Law Number 3 of 1997 concerning juvenile justice. Yet, its application has not been maximized (Wicaksono et al., 2015) since the enactment of Law Number 11 of 2012 concerning the Juvenile Justice System more prioritizing the settlement of cases of children through diversion as stipulated in Article 7 Paragraph (1) at the level of investigation, prosecution and examination of cases of children in district courts, diversion is required, Paragraph (2) Diversion as referred to in Paragraph (1) is carried out in the case of a criminal act that has been committed: a. By imprisonment under 7 (seven) years, and b. It is not a repetition of a criminal act (Ablisar, 2020; Ariani, 2014).

Yanto et al. (2020) argue that the double-track system is both sanction, a criminal sanction, and a treatment. The double-track system does not fully use one of these two sanctions. This double track system emphasizes that the positions of the two sanctions are equal, emphasizing the equality of criminal sanction and the treatment within the framework of the double-track system related to the fact that the elements of reproach/suffering through criminal sanctions and elements of guidance through sanctions are both implemented in the legal sanctions system criminal. This is why the double-track system demands equality between criminals and the treatment sanctions (Yanto et al., 2020). Meanwhile, Rochaeti & Sutanti (2018) state that the double-track system is about criminal law sanctions. The system is punishing the perpetrator with a prison sentence and giving the relatively educational treatment. In other words, criminal sanctions on the one hand and treatment that provide criminal offenses with social activities that are fostering and caring for children.

Besides, Amnawaty & Rifandy (2019) argue that the double-track system is a system for imposing criminal offenses for children as perpetrators of criminal offenses by placing them in special prisons for children and also give them treatment such as providing skills to children in social institutions or other institutions outside the correctional facility itself. In addition, Branson et al. (2017) argue that the double-track system in the criminal law system covers criminal (punishment), which is giving suffering and includes treatment that is relatively more educational. In other words, criminal sanctions, on the one hand, aim to provide a deterrent effect or learning to perpetrators of criminal acts, and treatment, on the other hand, aim to provide lessons through social activities that are fostering and caring for the perpetrators of criminal acts.

Based on the resource's interviews, Tri Andrisman stated that the double-track system applies to both child offenders and adult perpetrators. However, it is more prioritized for the perpetrator of a child because for the sake of a child's future so that it can be better. With the treatment, the child is fostered, educated, and given skills useful for the child's future. Adults who are subject to a double track system are like narcotics users who can be given corporal punishment and rehabilitation to cure the perpetrator so that they do not always understand the dependence on narcotics. This is in line with punishment because the imposition of criminal sanctions is not only for retaliation but also for future objectives.

Meanwhile, Diah Sulastri Dewi stated that the provision of criminal law to children is not appropriate because children still need education both from parents and formal education, therefore giving treatment to children is prioritized, such as solving criminal cases through diversion, even though criminal charges are given for children who reach 7 (seven years in prison), Diah continues to make efforts to keep the child get diversion attempt. For example, he

once sentenced a child who committed the crime of stealing a duck to a criminal sentence of 3 (three) months, and then after being released, the child was caught again for having committed the crime of theft a motorbike. This proves that the imposition of sanctions in the form of punishment against a child is ineffective. Therefore, it is necessary to provide other sanctions such as treatment or providing job training to children. After being free from punishment, the child already has skills that can be useful for him and others.

The author agrees with Diah that imposing sanctions on children in the form of imprisonment is not appropriate for children because children as perpetrators of criminal acts are not pure perpetrators but also as victims of criminal acts. Therefore, according to the author, it is more appropriate to be given treatment such as providing job training outside of prisons to be fostered and given the training to have useful skills, especially for daily life and the child's future.

Regarding the double-track system in the juvenile criminal justice process, based on the author's interview with Ferizal. Ferizal stated that the double-track system's implementation is applying Law Number 11 of 2012 concerning the juvenile criminal justice system. However, in reality, at the level of investigation since this law, investigators under Article 7 are obliged to seek diversion. During 2017, Lampung regional police investigators have implemented 4 child cases carried out by diversion efforts. Meanwhile, the double-track system implementation is related to the judge's decision when the case has reached the trial stage. The judge will use the double-track system or use the single-track system implementation. Lilik Septriyana stated that the implementation of the double-track system so far is at the level of prosecution. The resource person has never implemented a double-track system in the cases of children she is handling; she tends to use the single-track system model because the person concerned does not understand the double-track system's purpose.

Diah Sulastri Dewi said that she and other judges have currently implemented the implementation of the double-track system. However, the number is still small because many judges do not yet understand much about the double-track system, especially because there are not many special judges (judges who understand child psychology). Agreeing with Diah, Toni Fisher stated that the implementation of the double-track system in the juvenile criminal justice process is still rarely applied by law enforcers, this is because there are not many human resources available who understand the double-track system, besides that the supporting facilities and facilities are not yet available. To improve the quality of human resources of the law enforcement officers, specifically for children, to get special education following their fields. Tri Andrisman believes that if the implementation of the double-track system in juvenile criminal justice can run well, the main key is from the law enforcement apparatus themselves who must understand the double-track system since the time of the investigation process to the judge's decision, law enforcement officers must have a special understanding of children, in accordance with Article 1 point 7 to 12 of Law Number 11 of 2012 concerning Juvenile Justice System.

Based on the descriptions and results of interviews with some of the sources above, the authors argue that the implementation of the double-track system has been regulated in several applicable provisions in Indonesia, including in Law Number 35 of 2009 concerning Narcotics, Law Number 3 of 1997 regarding the Juvenile Court which has been updated with Law Number 11 of 2012 concerning the Juvenile Justice System. However, in practice, not all the law

enforcement officials know and understand the system, for example, the police as child investigators can determine whether a case can be proceeded to a court or not. However, most child cases are continued to court, so that there are still some court decisions that impose only criminal sanctions (imprisonment) without treatment or, in other words, tend to use a single-track system. With the double-track system, it can be more profitable for the perpetrator of a criminal act because a criminal sanction containing retaliation can deter the perpetrator. In contrast, treatment can provide education and improve himself so that the perpetrator does not repeat his actions. This is following the purpose of the crime, not only for retaliation but also for improving the perpetrator's future, especially to the child offenders

### **Inhibiting Factors for the Implementation of the Double Track System in the Juvenile Justice Process**

To enforce the law, in practice, sometimes there are conflicts between legal certainty and justice (Tobing, 2018). This is because the conception of justice is an abstract formula, while legal certainty is a normative procedure. Therefore, a policy or action that is not completely based on law can be justified as long as the policy or action is not against the law. In essence, enforcing the laws is not only includes law enforcement but also peace maintenance because law enforcement is a process of harmonizing the values of principles and real behavior patterns that aim to achieve peace (Soekanto, 2004).

In the interview conducted, Ferizal said that the legal factor that hinders law enforcement in Indonesia is that many criminal theories are still adopted. Indonesia still refers to the Criminal Code or Kitab Undang-Undang Hukum Pidana (KUHP), which still uses a single-track system and has not used the double-track system to enforce the law. However, the author disagrees with Ferizal's opinion, according to the author. In law enforcement against child offenders, it is better if law enforcers refer to Law Number 11 of 2012 concerning the Juvenile Justice System, which has adopted a double track system, following the principle of *lex specialis derogat legi generali*, namely specific laws overriding general laws.

Regarding the obstacles of implementing the double-track system, Lilik Septriyana said that the factors that hinder the implementation of the double-track system in the juvenile justice process could be seen from the legal factor itself do not all regulate the double-track system. There are still no instructions in its application. In the juvenile criminal justice process, there are still limited prosecutors who understand child psychology, so there is a need for prosecutors to understand child psychology to implement a double-track system in the juvenile criminal justice process.

Specifically, in response to this problem, Diah Sulastri Dewi and Toni Fisher both stated that law enforcement's inhibiting factor in implementing the double-track system, seen from legal factors, has been regulated double-track system itself in Law Number 11 of 2012 concerning Juvenile Justice System. However, in its implementation, it still faces obstacles, among others, because the human resources of the law enforcers themselves do not understand the double-track system, so there is still a need for socialization regarding the juvenile criminal justice system so that the implementation of the system is good and correct.

Above all, Tri Andrisman stated that the factor of law enforcement is the factor that most determines the implementation of the double-track system whether it can run well or not, because so far, not many law enforcers have mastered special laws for children, including Law Number 11 of 2012 concerning the Juvenile Justice System and also Law Number 35 of 2014 concerning Child Protection. Also, there are still insufficient investigators, prosecutors, and special judges for children.

Based on the results of interviews with resource person regarding legal factors inhibiting the implementation of the double-track system in the juvenile criminal justice process, from the results of the author's analysis, it can be said that the most dominant factor in implementing the double-track system is the law enforcement factor itself if the law enforcers themselves do not understand the system. Then the system will not be carried out properly. Based on Law Number 11 of 2012 concerning Juvenile Justice System, to become an investigator for the child perpetrators must meet certain requirements, namely having experience as an investigator, having interest, attention, dedication, and understanding of children's problems, and having attended technical training on juvenile justice. Apart from being an investigator, the public prosecutor also has the requirements to become a public prosecutor, including being experienced as a public prosecutor, having an interest, concern, dedication, understanding of child problems, and attending technical training on juvenile justice. Not so much different from the requirements for investigators and public prosecutors, judges also have requirements, namely having experience as a judge in the general court environment, having an interest, concern, dedication, and understanding of children's problems, and having attended technical training on juvenile justice.

## CONCLUSION

Based on the explanation above, it can be concluded that:

1. The implementation of the double-track system in the juvenile justice process in Indonesia, especially in the Province of Lampung, has not been carried out effectively, this is because the system is only known in Indonesian positive law as contained in Law No. 3 of 1997 and renewed by Law No. 11 of 2012 concerning the Juvenile Justice System, most law enforcers, including judges as the decision-makers, also do not understand the system, so that most of the judges' decisions still adhere to the single-track system.
2. The factors inhibiting law enforcement include law enforcement factors themselves, law enforcers who still do not understand the rule of law, inadequate supporting facilities, peoples, and cultural factors. While the factors are inhibiting the implementation of the double-track system in the juvenile criminal justice process, the most dominant of these five factors is the factor of law enforcers themselves who do not understand the rules regarding the double-track system, as well as inadequate supporting facilities for implementing the double-track system, such as there are not many special work training places and special prisons for children.

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