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Volume 4, Issue 2, December 2021: 148-163 This work is licensed under a Creative Commons Attribution 4.0 International License. The Regulation of Straf Minima for Minors as Manus Ministra in The Crime of Terrorism I Made Wiryadarma<sup>1</sup>, Dewi Bunga<sup>2</sup> <sup>1</sup>Faculty of Law, Universitas Pendidikan Nasional, Indonesia <sup>2</sup>Faculty of Dharma Duta, Universitas Hindu Negeri I Gusti Bagus Sugriwa, Indonesia email correspondence: wiryadarma@undiknas.ac.id

**ABSTRACT** In cases of terrorism involving minors, it must be understood that they are victims.

Terrorism eradication regulations, which do not provide the possibility for diversion for children as manus ministra, need to consider the condition of the minors' psychological growth, which, of course, still has the potential to be of good value if properly nurtured. This study aims to determine the arrangement of the straf minima of minors as manus ministra in the crime of terrorism. The research method used is juridical normative or literature research related to normative legal substances, to find the truth based on scientific logic from a normative perspective by examining library materials or secondary data consisting of primary legal materials and secondary legal materials.

The results of this study show that there are differences in the imposition of criminal sanctions for criminal acts of terrorism committed by a minor, namely Articles 19 and 24 of the Law on the Eradication of Criminal Acts of Terrorism. The Law on Combating Criminal Acts of Terrorism does not apply to minors who are involved in terrorism. Which means that the general straf minima contained in the Criminal Code are used, namely for imprisonment to be imposed for at least 1 day. Article 19 and Article 24 of the Law on Combating Criminal Acts of Terrorism also abolish the provisions of the death penalty and life imprisonment for a person who is not yet 18 years old. Keywords: Straft Minima; Manus Ministra; Terrorism Crime.

Date of Submission: August 19, 2021 Date of Publication: December 20, 2021 DOI: <http://dx.doi.org/10.33096/substantivejustice.v4i2.144> INTRODUCTION The protection of Indonesian children or minors, means protecting the potential of human resources and developing Indonesian people as a whole, towards a just and prosperous society, spiritual material based on Pancasila and the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution).<sup>1</sup> Minors are subjects that cannot be separated from the components that determine the survival of humans, the nation and the state. As this 1 Nashrina. (2012).

Perlindungan Hukum Pidana Bagi Anak Di Indonesia. Jakarta. PT Raja Grafindo Persada. pp. 1. Volume 4, Issue 2, December 2021: 148 163 The Regulation of Straf Minima... | 149 important role makes minors' rights emphasized in Article 28 B of the 1945 Constitution of the Republic of Indonesia, which is the spirit of the Indonesian nation, namely the state guarantees every child their right to survival, growth and development and is entitled to protection from violence and discrimination. Philosophically, minors are nothing but part of the younger generation who will later become the successor and continue the struggle of the nation in the future.<sup>2</sup>

Likewise, children are expected to obtain prosperity, namely the assurance of their growth and development in a good spiritual, physical, and social manner in the order of life and livelihood in the midst of society. Basically, children cannot protect themselves from various actions that can cause them psychological and physical harm.<sup>3</sup> Children are very vulnerable to becoming victims or perpetrators of criminal acts. It is undeniable that the inability of children to think in an adult manner makes them inseparable subjects of criminal acts.

Law Number 11 of 2012 concerning the Criminal Justice System for Children (hereinafter referred to as UU SPPA) classifies minors into 3 types of children who faced with law, namely children who are in conflict with the law, children who are victims of criminal acts and children who are witnesses of criminal acts.<sup>4</sup> In Indonesia, the forms of crimes committed by minors are increasingly evolving, not only crimes related to theft and murder. Crime has developed along with the development of human civilization.<sup>5</sup> One form of crime that is of global concern is terrorism. Terrorism is a crime against humanity. Terrorism is usually committed by adults, but there is a new mode where minors are involved in it.

Terrorism is any act that uses violence or threats of violence to create an atmosphere of terror or widespread fear, which can cause mass victims and/or cause damage or destruction to strategic vital objects, the environment, public facilities, or security

disturbances.<sup>6</sup> In relation to the involvement of minors in the crime of terrorism, minors as *manus ministra* (a tool for committing a crime) who are victims of networks, doctrine, propaganda, invitations by adults and their closest people, such as parents and families whose children do not know or understand what they were doing. The terrorists in Indonesia carry out a recruitment system.<sup>2</sup> Kahesti, Y. Z. (2018). Pemenuhan Hak Anak di Bidang Pendidikan pada Lembaga Pemasarakatan Kelas IIA Kota Balikpapan.

Jurnal *Magister Hukum Udayana (Udayana Master Law Journal)*, 7(3), 343-359. pp. 344. DOI: <https://doi.org/10.24843/JMHU.2018.v07.i03.p06>.<sup>3</sup> Yudaningsih, L. P., & Rahayu, S. (2013). Reformasi Perlindungan Hukum terhadap Anak sebagai Pelaku Tindak Pidana dalam Peradilan Pidana di Indonesia. *Inovatif: Jurnal Ilmu Hukum*, 6(2). pp. 106. Retrieved from <https://online-journal.unja.ac.id/jimih/article/view/2121>.<sup>4</sup> Wahyuni, S. (2011). Implementasi Ide Diversi dalam Pembaharuan Sistem Peradilan Pidana Anak di Indonesia. Yogyakarta. Genta Publishing. pp.172. <sup>5</sup> The Number of reported crimes by Province of 2019 can be seen in Police Headquarters Operations Control Bureau, <https://www.bps.go.id>.

<sup>6</sup> Law of The Republic of Indonesia Number 5 of 2018 concerning Eradication of Criminal Acts of Terrorism. State Gazette of the Republic Indonesia Number 92 of 2018. Supplement to the Gazette of The Republic of Indonesia, Number 6216. Article 1 Paragraph (2) Volume 4, Issue 2, December 2021: 148 163 150 | The Regulation of Straf Minima... through a belief to foster reliable terrorists.<sup>7</sup> Recruitment to become terrorist members by parents against their own children is certainly not a good thing for children, nowadays it is clear that parents provide negative education to their children which causes children to commit delinquency and even become involved in criminal acts that make children have to deal with the law.

The importance of legal protection for the minors of the perpetrators of terrorism is due to the involvement of a figure categorized as a minor in a terrorist network where the parents are members of a radical network.<sup>8</sup> In cases of terrorism involving minors, it must be understood that they are victims. They are not the intellectual actors of terrorism or victims of promises and lures from adults. They are also not healthy and capable children, psychosocially, because their brain performance has been fed and exposed to radical values that are misguided and improperly indoctrinated.

Therefore, it is necessary to understand the need for legal protection for minors as perpetrators of crimes of terrorism. Not only for investigators, public prosecutors, and judges, but also involving child psychologists, psychiatrists, clerics, and even humanists at every stage of the examination of the case.<sup>9</sup> In Indonesia, the involvement of minors in the crime of terrorism is a worrying phenomenon that threatens children's growth

and development, both in terms of life, society, personality, religious understanding, and nationalism.

For this reason, the handling of minors in the crime of terrorism must not be in the same position as adults who have committed similar crimes. The involvement of minors in the crime of terrorism becomes a problem because the age of the child determines how they should be treated afterwards, especially when the crime of terrorism is an extraordinary crime. Minors cannot be treated the same as adults, so the concept of criminal responsibility that is applied to adults cannot also be applied to minors.

Law Number 11 of 2012 concerning the Criminal Justice System for Children specifically regulates minors and sets the age limit for minors to be held responsible for crimes, juvenile court proceedings, efforts to diversify, and others. To this date, the crime of terrorism committed by minors is regulated by Law Number 5 of 2018 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism (hereinafter referred to as the Law on Combating the Crime of Terrorism). The Law on Combating the Crime of Terrorism does not regulate protection or law enforcement if the perpetrator of the criminal act of terrorism is a minor.

Based on this, the authors see the absence of norms in the regulation of sanctions and legal 7 Purwanto, W. H. (2004). *Terorisme, Ancaman Tiada Akhir: Bahaya Dan Strategi Pemberantasan Terorisme Di Indonesia*. Jakarta. Grafindo Khazanah Ilmu. pp.15-8  
Mahyani, A. (2019). *Perlindungan Hukum Anak Sebagai Pelaku Terorisme*. *Jurnal Hukum Magnum Opus*, 2(1), 47-54. pp. 50. DOI: <https://doi.org/10.30996/jhmo.v2i2.2180>.  
9 Setiawan, E. (June, 23 2019). *Anak Sebagai Pelaku Terorisme Mestinya Diatur Sanksi Pidana Khusus*. [ruangobrol.id](http://ruangobrol.id)  
<https://ruangobrol.id/2019/07/23/ulasan/anak-sebagai-pelaku-terorisme-mestinya-diat-ur-sanksi-pidana-khusus>.

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protection for minors who are perpetrators of terrorism. However, legal protection for minors in conflict with the law or as perpetrators of general crimes is strictly regulated in the UU SPPA. Children may be involved in criminal acts of terrorism, especially if their parents are perpetrators. Parents deliberately invite children to carry out suicide bombings or place explosives in places determined by their parents, or other adults.

Imposition of imprisonment for children involved in terrorism activities can be seen in the Klaten District Court Decision Number: 19/Pid.Sus/2011/PN.Klt, in which children who are perpetrators of terrorism are sentenced to two years.<sup>10</sup> Article 16 A stated that:

"every person who commits a criminal act of terrorism involving a minor, the penalty is added by 1/3 (one third)". That is, this applies to adults who commit terrorism involving minors. On the other hand, if there is a minor as the perpetrator, then it can refer to Law Number 11 of 2012 concerning the Criminal Justice System of Children. In the case of minors, diversion may be mandatory as a form of restorative justice.

Article 6 of UU SPPA regulates that: Diversion aims to: 1. achieve peace between the victim and the minors; 2. resolve cases of minors outside the judicial process; 3. prevent the minor from being deprived of liberty; 4. encourage the community to participate; and 5. instill a sense of responsibility to the minors. This means that this diversion step aims to achieve peace between the victim and the minors, resolve cases of minors outside the judicial process, prevent minors from being deprived of freedom, encourage the community to participate and instill a sense of responsibility in minors. Furthermore, Article 7 UU SPPA states: 1) At the level of investigation, prosecution and examination of cases of minors in district courts, it is mandatory for Diversion to be endeavored.

2) Diversion as referred to in paragraph (1) shall be implemented in the event of a criminal act that is committed: 1. Is threatened with imprisonment of less than 7 (seven) years; and 2. Is not a repetition of a criminal act. This means that cases that can be subject to diversion are criminal acts with the threat of imprisonment under 7 years and not a repeat offense. Meanwhile Article 9 states, the lower the criminal threat, the higher the priority for diversion.<sup>11</sup> This means that minors as perpetrators of the crime of terrorism are still snared by the Law on the Eradication of the Crime of Terrorism, so 10 Prastiyo, W. E., & Setiabudhi, I. K. R. (2021).

Children Involvement in Terrorism Activities; As a Perpetrator or a Victim? (A Study in the Circle of Violence). Padjadjaran Journal of Law, 8(2), 212-229. pp. 214. DOI: <https://doi.org/10.22304/pjih.v8n2.a3>. 11 Ibid Volume 4, Issue 2, December 2021: 148 163 152 | The Regulation of Straf Minima... this has not shown restorative justice, considering that children who commit terrorism are actually victims of deviant culture. For minors as perpetrators, the straf minima (minimum criminal limit) should be regulated specifically for criminal sanctions covering trial procedures and the rights of children as terrorists.

Terrorism eradication regulations, which do not provide the possibility for diversion for children as manus ministra, need to consider the condition of the child's psychological growth, which of course, on the other hand, still has the potential to be of good value if it is properly nurtured. The purpose of this research is to provide theoretical contributions, especially the development of theories, principles, and concepts of criminal law and to understand the regulation of the straf minima for minors as manusa

ministra in the crime of terrorism.

**METHOD** This paper is based on the results of normative legal research or also known as doctrinal legal research, namely research that aims to examine legal norms or rules.<sup>12</sup> This study uses a statutory approach and a conceptual approach. These two approaches are used to build arguments in answering the legal issues raised in this study. The statutory approach is used to determine the hierarchy, principles, and normative meanings implied in statutory regulations. The conceptual approach used in analyzing legal problems in research departs from the existence of an empty norm. To discuss the problems raised in this study, legal materials were used, both in the form of primary and secondary legal materials.

The primary legal materials used include Law Number 8 of 1981 concerning the Criminal Procedure Code. Secondary legal materials include legal literature relevant to the legal issues discussed. In addition, non-legal materials are used to support this writing, such as news in print and online media. The collection of research materials above is carried out through literature searches in libraries and the internet using recording techniques that mimic the working model of the card system.

The collected research materials are then processed and analyzed qualitatively with techniques of reasoning and legal argumentation, such as legal construction and legal interpretation. Furthermore, the overall research results are presented descriptively in the form of a narrative description. **ANALYSIS AND DISCUSSION** A. Terrorism Involving Children and The Possibility of Settlement with Restorative Justice Children are subjects that cannot be separated from the components that determine the survival of humans, the nation and the state.

As this important role makes children's rights emphasized in Article 28 B of the 1945 Constitution of the Republic of Indonesia which is the spirit of the Indonesian Nation, namely the state guarantees every child to have their 12 Trisnawijayanti, A., & Sugama, I. (2020). Mediasi Penal Sebagai Penyelesaian Perkara Alternatif Dalam Malpraktik Di Bidang Kedokteran. *Kertha Wicara : Journal Ilmu Hukum*, 9(3), 1-16. pp. 5. Retrieved from <https://ojs.unud.ac.id/index.php/kerthawicara/article/view/57582>. Volume 4, Issue 2, December 2021: 148-163 The Regulation of Straf Minima... | 153 right to survival, growth and development and the right to protection from violence and discrimination.

Philosophically, the child is nothing but a part of the younger generation who will later become the successor who continue the struggle of the nation in the future.<sup>13</sup> Basically, children cannot protect themselves from various actions that can cause physical and psychological harm.<sup>14</sup> "No child can be arbitrarily deprived of liberty and / or subject to



cruel and inhuman or degrading torture or punishment, the death penalty or life sentence" this is affirmed in the Convention **on the Rights of the Child**.<sup>15</sup> Therefore, protection of children must be placed on the priority scale of the country, because children cannot protect themselves and children need protection from misapplication of laws and regulations that can cause physical, psychological and social harm. Hence, it is necessary to protect the law for children so that the welfare of children can be achieved.<sup>16</sup> Children are very vulnerable to becoming victims and perpetrators of criminal acts.

It is undeniable that the inability of children to think in an adult manner makes them inseparable subjects from criminal acts. Various criminal acts involving children, namely **drugs, obscenity, theft and even terrorism**, hence this is a reality that **minor to extraordinary crimes** make **children both the perpetrator and the victim**. **Law Number 11 of 2012 concerning the Criminal Justice System for Children** (hereinafter referred to as SPPA Law) classifies children into 3 types of children who are faced with the law, namely children who are in conflict with the law, children **who are victims of criminal acts** and children who are witnesses of criminal act.<sup>17</sup> The word terrorism comes from the Latin *Terre* (which means trembling) and *Deterre* (which means fear).

Meanwhile, according to the popular scientific dictionary, terrorism is a matter related to acts of disturbance in society to achieve goals (in the political field); the systematic and planned use of violence and threats to create fear and disrupt existing systems of power. The definition of terrorism in article 1 point 2 **of the Law on the Eradication of the Crime of Terrorism** states that terrorism is an act that uses **violence or threats of violence** that creates an atmosphere of terror or widespread fear, which can cause mass casualties and / or cause damage or destruction to strategic vital objects, environmental, public facilities, or international facilities with motives of ideology, politics, or security disturbances. <sup>13</sup> Kahesti, Y. Z. Loc.Cit, pp. 344.

<sup>14</sup> **Yudaningsih, L. P., & Rahayu, S.** Loc.Cit. pp.106. <sup>15</sup> Wahyuni,S. 2011. Loc.Cit, pp. 172. <sup>16</sup> Tusan, A., & Sauca, P. (2017). **Perlindungan Hukum Terhadap Anak Akibat Perceraian Orang Tua.** **Jurnal Magister Hukum Udayana (Udayana Master Law Journal)**, 6(2), 200-203. pp. 201. DOI: <http://dx.doi.org/10.24843/JMHU.2017.v06.i02.p05>. <sup>17</sup> Pratama Putra, I., & Yusa, I. (2020). **Perlindungan Hukum Bagi Anak Pelaku Tindak Pidana Terorisme Perspektif Perundang-Undangan.** *Kertha Wicara: Journal Ilmu Hukum*, 9(6), 1-12. pp. 2. Retrieved from <https://ojs.unud.ac.id/index.php/kerthawicara/article/view/59325>.

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According to Gibbs, quoted by Yamin, to further understand the definition of terrorism,

namely by knowing the actions committed by the perpetrators, as follows:<sup>18</sup> 1. An act that is performed or demonstrated with the intention of changing or maintaining at least a norm in an area or a population. 2. Having confidentiality, hidden about the whereabouts of participants, the identity of members, and hiding places. 3. Not permanently residing in a certain area. 4. It is not an ordinary war because they hide their identity, the location of the attack, and their threats and their movements. 5.

There are participants who have thoughts or ideologies that are in line with the terror drafter, and contribute to fighting for the norms that the group considers correct without taking into account the damage or the consequences. Restorative justice is a legal breakthrough that must be used in every case of minor in conflict with the law. In the Handbook on Restorative Justice Programs published by the United Nations, Restorative justice is an approach to problem solving that, in its various forms, involves the victim, the offender, their social networks, justice agencies and community.<sup>19</sup> In the concept of restorative justice, handling crimes that occur is not only the responsibility of the state but also the responsibility of the community.

The involvement of community members is needed to help correct mistakes and irregularities that occur around the community concerned. Giving appreciation and respect to the victim by obliging the perpetrator to recover or as a result of the crime he has committed. The recovery carried out by the perpetrator can be in the form of compensation, social work, making improvements or certain activities in accordance with a joint decision that has been agreed by all parties in the meeting.

Regarding the principle of restorative justice according to Law Number 11 of 2012 concerning the Criminal Justice System for Children regulates that "the settlement of criminal cases involves the perpetrator, the victim, the family of the perpetrator / victim and other related parties to jointly seek a fair solution by emphasizing recovery to its original state and not retaliation. The restorative justice framework rests on three basic principles: 1. The focus should be on the damage done; 2. Mistakes or dangers result in liability; and 3. Involvement and participation by all parties.<sup>20</sup> 18 Yamin. M. (2012). Tindak Pidana Khusus. Bandung. Pustaka Setia. pp. 293. 19 United Nations. (2006). Handbook on Restorative Justice Programmes. New York.

United Nations Publication. pp. 6. 20 Beckett, K. & Kartman, M. (2016). Violence, Mass Incarceration and Restorative Justice: Promising Possibilities, USA. University of Washington. pp. 4. Volume 4, Issue 2, December 2021: 148-163 The Regulation of Straf Minima... | 155 The axis of the restorative justice emphasizes the human aspects of both parties, namely the perpetrator and the victim, and the improvement of social relations between the two, or in other words, victim-offender mediation is more important than



retributive justice. Through the principle of diversion, the restorative approach emphasizes the empathy of the perpetrator to the victim, because empathy is a bridge to the recovery of the perpetrator- victim.

Equally important is the willingness of victims to forgive the perpetrators as an important component of this recovery process. The stages that are usually carried out by the police in applying the principle of restorative justice to minor crimes committed by children are: 1 . Giving informal warnings, which is carried out by the police by giving verbal warnings to children by giving advice to children as perpetrators of criminal acts.

Usually, this verbal warning is carried out against minor crimes such as beatings and fights; 2 . Giving a formal warning in the form of a warning obliging the perpetrator to make a statement that he will not repeat his actions, and 3 . At the stage together sit down to find a solution (restorative justice) if the agreement is successful based on negotiations, it is usually done on a letter of agreement and a statement letter.<sup>21</sup> B. The Regulation of Straft Minima for Minors as Manus Ministra in the Crime of Terrorism The eradication of criminal acts of terrorism in Indonesia is a proactive policy and anticipatory steps based on caution and is long-term in nature because the Indonesian people are multi-ethnic and diverse and inhabit hundreds of thousands of islands scattered throughout the archipelago as well as some are located adjacent to other countries.

Furthermore, with the characteristics of Indonesian society, all components of the Indonesian nation are obliged to maintain and increase vigilance in facing all forms of activities that constitute a criminal act of international terrorism.<sup>22</sup> The involvement of children in this terrorism network shows that the community, especially parents, do not submit guidelines and do not nurture, nurture, educate and protect children and do not provide character education and inculcate good character values for children, develop attitudes and actions towards children in a way that is not good.<sup>23</sup> The Differential Association theory proposed by Edwin H. Sutherland assumes that there is no behavior that is inherited based on inheritance <sup>21</sup> Meyrina, S.

A., (2017). Restorative Justice dalam Peradilan Anak Berdasarkan Undang-Undang No. 11 Tahun 2012. *Jurnal Penelitian Hukum De Jure*, 17(1), 92-107. pp.144. DOI: <http://dx.doi.org/10.30641/dejure.2017.V17.92-107>. <sup>22</sup> Firmansyah, H. (2011). Upaya Penanggulangan Tindak Pidana Terorisme di Indonesia. *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, 23(2), 376-393. pp. 384. DOI: <https://doi.org/10.22146/jmh.16193>. <sup>23</sup> Adnan, Y., & Ningsih, R. U. (2020). Analisis Peraturan Menteri Pemberdayaan Perempuan dan Perlindungan Anak RI Nomor 7 Tahun 2019 Tentang Pedoman Perlindungan Anak Dari Radikalisme Dan Tindak Pidana

Terorisme. Jurnal Syntax Transformation, 1(4), 68-78. pp. 69. DOI: <https://doi.org/10.46799/jurnal-syntax-transformation.v1i4.50> Volume 4, Issue 2, December 2021: 148-163 | The Regulation of Straf Minima... from his parents. The pattern of evil behavior is not inherited, but is learned through close association.

Evil behavior is learned in groups through interaction and communication, and what is learned in groups is the techniques for committing crimes and the reasons that support evil deeds.<sup>24</sup> Children who become terrorists are not because of the genetics of their parents, but because of the doctrines and behavior patterns of parents that are observed by children every day. Provisions regarding special protection for children that can be given to minors involved in terrorism are contained in Articles 59, 59A, 64 and 69B of Law Number 17 of 2011<sup>6</sup> concerning Amendments to Law Number 23 of 2002 concerning Child Protection (hereinafter called Child Protection Law). The provision which states that minors are victims of terrorist networks are contained in Article 59 paragraph (2) letter k. Special Protection for Minors as Victims of terrorism networks through: a.

Education on ideology and the value of nationalism; b. Counseling about the dangers of terrorism; c. Social rehabilitation; and d. Social assistance. So far, government policies have not seriously dealt with minors as perpetrators of terrorism or children in terrorism networks. Meanwhile, Article 59 paragraph (1), (2) letter k of the Child Protection Law, instructs them to provide protection and special treatment for them.<sup>25</sup> In terms of handling minors who are involved in the crime of terrorism, what the government has done so far, from the process of arrest, investigation to detention, cannot be said to be good.

The fundamental problem in handling minors who commit terrorism crime is that there are violations of children's rights. The procedures and processes for handling minors who committed terrorism crimes have not been fully based on the SPPA Law, both by Counterterrorism Special Detachment 88 (Densus 88) when carrying out arrests and investigations, Judges and Prosecutors during the trial process and placing detention, Correctional Institutions (Lapas) in providing guidance, and National Counter Terrorism Agency (BNPT) in carrying out deradicalisation.

This happens because in the Law on the Eradication of the Crime of Terrorism there is no article that specifically addresses minors.<sup>26</sup> In this case, minors are still positioned as the guilty party for committing terror crimes. Therefore, the handling is positioned the same as adults who commit similar crimes. Whereas it should also be seen that the involvement of minors in terrorism crimes is the 24 Guntara, D. (2018). Tinjauan Kriminologi Terhadap Pelaku Tindak Pidana Terorisme Di Indonesia Dalam Perspektif

Teori Differential Association. *Justisi Jurnal Ilmu Hukum*, 3(1), 106-119. DOI: <https://doi.org/10.36805/jjih.v3i1.553> 25 Mahyani, A. (2019).

Perlindungan Hukum Anak Sebagai Pelaku Terorisme. *Jurnal Hukum Magnum Opus*, 2(1), 47-54. pp. 50. DOI: <https://doi.org/10.30996/jhmo.v2i2.2180>. 26 Maknunah, K. (2016). *Penanganan Anak Dalam Tindak Pidana Terorisme*. Jakarta. C-Save Indonesia, pp. 5. Volume 4, Issue 2, December 2021: 148-163. *The Regulation of Straf Minima... | 157* victim of networks, doctrine, propaganda, enticement by adults. It seems that this has not been taken into consideration so that it is not the position of the minor that can be seen in the handling of this case but the effort to repay the terror crimes committed by the minor.

The settlement of criminal acts will confront children as perpetrators, against the state, as parties whose legal rules have been violated. In fact, children who commit crimes are only victims of indoctrination by their parents or others, and not perpetrators in the true sense. This is because children who commit crimes of terror must overcome because of the inability of reason (mind), or morals and mental stability in the child.<sup>27</sup> Children who are involved in a crime are actually victims of crime, not perpetrators of crime.

A child like this is just a *manus ministra* (a tool to commit crimes) who doesn't really understand what is being done.<sup>28</sup> Viewing children as perpetrators of terrorism from a social ecological perspective will have implications for the policies taken in dealing with problems. The social ecology view tends to view children as terrorist actors who are victims of their social environment.

Discomfort in the family, community rejection, peer calls and the influence of terrorist-controlled media are the reasons for children to join terrorist networks. <sup>29</sup> Several reasons that cause minors involvement in terrorism crimes are, inter alia:<sup>30</sup> 1. The mental condition of the child is still unstable so that it is easier for the child to be indoctrinated with things that are radical in nature. 2. The condition of the child who is motivated by a youthful spirit and full of enthusiasm and then used wrongly by irresponsible people. 3.

The victims of the terrorists never thought that the child would commit such a cruel and brutal crime, so he could not help anticipating it. 4. The actors of these terror acts have understood the legal construction of child criminal liability, both internationally and nationally. Additionally, the handling of minors who are in other terrorism networks has not fully run according to the mandate of the Child Protection Law. Article 69B states that special protection for children victims of terrorist networks.

The legislative product emphasizes that a child must be treated humanely, and if there is a criminal act, law enforcement officers must treat it like a child. Not tortured, not subjected to cruel treatment, not imprisoned, received social support, parents, and trusted people. 31 27 Fad, M. F. (2019). Analisis Model Diversi Melalui Restorative Justice Pada Anak Pelaku Tindak Pidana Terorisme Dalam Perspektif Maqashid Syariah. *Al-Daulah: Jurnal Hukum dan Perundangan Islam*, 9(1), 52-89. pp. 54. DOI: <https://doi.org/10.15642/ad.2019.9.1.52-89> 28 Purwastuti, L. (2011). Perlindungan Hukum Terhadap Anak Dalam Kejahatan Terorisme. *Jurnal Ilmu Hukum Jambi*, 2(3), 34-44. pp. 38. Retrieved from <https://media.neliti.com/media/publications/43269-ID-perlindungan-hukum-terhadap-anak-dalam-kejahatan-terorisme.pdf>.

29 Setiawan, H. H., Wardianti, A., Yusuf, I., & Azikin, A. (2020). Anak Sebagai Pelaku Terorisme Dalam Perspektif Ekologi Sosial. *Sosio Informa*, 6(3), 252-263. pp. 259. DOI: <https://doi.org/10.33007/inf.v6i3.2400> 30 Purwastuti, L. Op.cit., pp. 37. 31 Arifin, S. (2020). Perlindungan Hukum Terhadap Anak Dalam Tindak Pidana Terorisme. *Jurnal Panorama Hukum*, 5(1), 49-62. pp. 55. DOI: <https://doi.org/10.21067/jph.v5i1.4317>. Volume 4, Issue 2, December 2021: 148 163 158 | The Regulation of Straf Minima... However, the condition of children as terrorists is a real phenomenon.

Terrorists using women and children abandon the classic method of suicide by adult men, are symptomatic in the world of terror, especially those who are influenced by the Islamic State group. This phenomenon is common in Syria and Iraq where children aged 9 to 10 years have been prepared to carry out suicide bombings, as well as in Indonesia there are children aged 13 years who have been exposed to this radical idea and then act at the age of 15 to 15 years. 16 years. The proactive role of women and girls saw a shift in ISIS' position on the status of women in combat roles, which occurred between 2015 and 2018.

The group itself was weakened by attacks by armed forces and increasing military defeats that allowed women to take on a more active role by openly stated that 'it is obligatory for women to take up arms'. Since the establishment of the caliphate, women have been members of the Al- Khansaa brigade and have been actively involved in online propaganda and recruitment, caring for other women and girls.<sup>32</sup> The involvement of children in criminal acts of terrorism and positioning children as perpetrators of crimes does not mean that the treatment of child perpetrators is the same as that of adult perpetrators.

The process of arresting minors should not be confused with the pattern of catching adults, where the arrest process is accompanied by a complete weaponry. Then the

process of investigating these minors must also be carried out differently from the investigation of adult perpetrators. Regarding the judicial process, the Judge in imposing criminal sanctions on minors who commit terrorism crimes, apart from having to pay attention to Articles 19 and 24 of the Law on the Eradication of the Crime of Terrorism.<sup>33</sup> The regulation of criminal acts of terrorism committed by minors is contained in the Law on the Eradication of the Crime of Terrorism.

The regulation of the criminal act of terrorism for minors is not distinguished from the regulation of criminal acts of terrorism for adults, but the provisions for criminal sanctions that are accepted by minors as perpetrators of terrorism are different from those accepted by adults as perpetrators of terrorism. The criminal sanctions listed in the Law on the Eradication of the Crime of Terrorism include:<sup>34</sup> 1. Death penalty or life imprisonment or certain imprisonment with minimum and maximum limits) 2. Life imprisonment 3. Prison sentence (with minimum and maximum limits) 4. Death penalty or life imprisonment. 32 Hahamu, S. (2020).

Pemenuhan Hak Anak Sebagai Pelaku Tindak Pidana Terorisme. *Lex Et Societatis*, 8(3), 28- 38. pp. 34-35. DOI: <https://doi.org/10.35796/les.v8i3.29498>. 33 Puspitasari, I. (2020). Perlindungan Hukum Terhadap Anak Dalam Pelaku Tindak Pidana Kejahatan Terorisme. *Jurnal Meta-Yuridis*, 3(2). pp. 23-24. DOI: <https://doi.org/10.26877/jm-y.v3i2.5841>. 34 Sugiarto, A. (2020). Tinjauan Yuridis Anak Sebagai Pelaku Tindak Pidana Terorisme Tentang Sistem Peradilan Pidana Anak. *Jurnal Syntax Transformation*, 1(9), 569-574. pp. 572-573. DOI: <https://doi.org/10.46799/jurnal.syntaxtransformation.v1i9.148> Volume 4, Issue 2, December 2021: 148 163 The Regulation of Straf Minima...

| 159 The difference between the provisions for criminal acts of terrorism committed by adults and minors who commit crimes of terrorism lies in the provisions for the criminal sanctions to be imposed as stated in article 19 and article 24 of Law No. 15 of 2003 concerning the Eradication of the Crime of Terrorism. Article 19 and article 24 state that the imposition of a special minimum sentence stated in articles 6,8,9,10,11,12,13,15,16,20,21,22 of the Law on the Eradication of Crime of Terrorism does not apply to minors involved in terrorism.

Which means that the general straf minima enshrined in the Criminal Code is used, namely for imprisonment to be imposed at least 1 day. In the criminal justice system, punishment is not an end in itself nor is it the only way to achieve the goals of the criminal or the objectives of the criminal justice system. There are many ways that can be taken, can use criminal law or by means of outside criminal law or outside the court.

From an economic point of view, the criminal justice system is not only inefficient, but also imprisonment which is not really necessary should not be applied.<sup>35</sup> Article 19 and Article 24 of the Law on Eradication of the Crime of Terrorism also abolishes the provisions of the death penalty and life imprisonment for a person who is under 18 years old. From this article it can be concluded that for minors who are involved (perpetrators) of terrorism crimes, there is no special straf minima as stated in articles 6, 8, 9, 10, 11, 12, 13, 15, 16, 20, 21, 22 of the Law on the Eradication of the Crime of Terrorism.

Thus, a child perpetrator of terrorism cannot be sentenced to death and cannot be sentenced to life imprisonment or the provisions of the death penalty and life imprisonment as stated in the Law on the Eradication of the Crime of Terrorism do not apply to minors as terrorists. The elimination of the straf minima specifically for criminal sanctions that are threatened against terrorists who are minors and the absence of trial procedures and rights for terrorists who are minors in the Law on the Eradication of the Crime of Terrorism for minors above means that other provisions outside the Eradication of the Crime of Terrorism Law are applicable to regulate the imposition of criminal sanctions and trial procedures for minors as perpetrators of terrorism crimes.

This provision is Law No. 11 of 2012 concerning the Criminal Justice System for Children and Law No. 17 of 2016 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. The younger generation is currently the target of terrorist networks for two reasons. First, this age group is most familiar with the internet, which is currently the main media for propaganda for terrorism networks. Second, the younger generation is a generation that is still relatively unstable when compared to other age groups, such as the adult age group. These two reasons may be the reasons why young people are the main targets in relation to 35 Winarni, L. N.

(2016). Kebijakan Hukum Pidana Non Penal Dalam Penanggulangan Kejahatan Radikalisme Berbentuk Terorisme. DiH: Jurnal Ilmu Hukum, 12(23), 56-63. DOI: <https://doi.org/10.30996/dih.v12i23.894> Volume 4, Issue 2, December 2021: 148 163 160 | The Regulation of Straf Minima... the recruitment of terrorism networks.<sup>36</sup> Terrorist groups also exploit family networks to recruit child soldiers. To tackle child terrorism, the Philippine government provides a rehabilitation program for child offenders. The government also involves NGOs to conduct madrasas (religious schools) to educate students on moderate aspects of Islam.<sup>37</sup> CONCLUSION There are differences in the imposition of criminal sanctions for terrorism crimes committed by a minor, which are contained in the provisions of Articles 19 and 24 of the Law on the Eradication of Terrorism.



The difference in the criminal sanctions that will be imposed as stated in article 19 and article 24 of the Law on the Eradication of the Crime of Terrorism regulates a special minimum sentence. The articles 6, 8, 9, 10, 11, 12, 13, 15, 16, 20, 21, and 22 of the Law on the Eradication of the Crime of Terrorism do not apply to minors who are involved in terrorism. This means that the general straf minima contained in the Criminal Code are used, namely for imprisonment to be imposed for at least 1 day.

Article 19 and Article 24 of the Law on the Eradication of the Crime of Terrorism also abolish the provisions of the death penalty and life imprisonment for a person who is under 18 years old. From this article, it can be concluded that for minors who are involved (perpetrators) in terrorism crimes, there is no special straf minima as stated in articles 6, 8, 9, 10, 11, 12, 13, 15, 16, 20, 21, and 22 of the Law on the Eradication of the Crime of Terrorism.

Hence, a child perpetrator of a terrorism crime cannot be sentenced to death and life imprisonment because the provisions of the death penalty and life imprisonment as stated in the Law on the Eradication of the Crime of Terrorism do not apply to minors as terrorists. The elimination of the straf minima specifically for criminal sanctions that are imposed on minors as terrorists and the failure to regulate trial procedures and rights for minors of terrorists in the Law on the Eradication of the Crime of Terrorism means that other provisions outside the Law on the Eradication of the Crime of Terrorism are applicable to regulate the imposition of criminal sanctions and trial procedures for minors who are perpetrators of terrorism crimes. REFERENCE Adnan, Y.,

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