

CHAPTER I

INTRODUCTION

A. Background Of Study

Criminal Law scope not only covers criminal acts done by the adults but also by the children. Children are an essential component of a country's future, and their protection represents a key responsibility of the state. They hold rights that necessitate protection and fulfilment to facilitate their development into ethical, independent, and socially contributing individuals. Even though they are objects of protection, children may also have a conflict with existing law. When this happens, it becomes the state's responsibility to guarantee that the child's rights are upheld and justice is carried out in their best interests as already written in Law Number 39 of 1999 on Human Rights.

Looking into the term and definition of detention, both in the context of child criminal justice and the Indonesian Criminal Procedure Code Law Number 8 of 1981 on Criminal Procedure Code (hereinafter referred to as Criminal Procedure Code), is crucial to know as each presents a slightly different interpretation of the term "detention." Article 1 Number 21 of Criminal Procedure Code mentions "Detention is the confinement of a suspect or defendant to a certain place by an investigator or public prosecutor or a judge by his verdict, in matters and according to ways regulated by this law."

Additionally, a detention order issued by an investigator as intended in Article 20, shall be valid only for at most twenty days,¹ and the detention order issued by the public prosecutor as intended in Article 20, shall be valid only for at most twenty days.² While it differs with Law 11 of 2012 concerning Child Criminal Justice System (hereinafter referred to as Child Criminal Justice System Law) that mention the requirements of detention on Article 32 paragraph (1), “A child may not be detained if the child has received a guarantee from a parent/guardian and/or institution that the child will not run away, will not destroy or damage evidence, and/or will not repeat the crime.”

And paragraph (2) states:

A child may only be detained under the following conditions:

- a. The child is 14 (fourteen) years of age or older; and
- b. is suspected of committing a crime that carries a prison sentence of 7 (seven) years or more.

Also, the children were not detained in the same place as adult yet in the Lembaga Penempatan Anak Sementara (LPAS),³ and if it's not available, it's allowed to be carried out at Lembaga Penyelenggaraan Kesejahteraan Sosial (LPKS).⁴ Beside this, the period that is permissible for the needs of the

¹ Article 24 paragraph (1), Law Number 8 of 1981 concerning the Indonesia Criminal Procedure Code (KUHP).

² Article 25 paragraph (1), Law Number 8 of 1981 concerning the Indonesia Criminal Procedure Code (KUHP).

³ Article 33 paragraph (4), Law Number 11 of 2012 on the Child Criminal Justice System, art. 33(4).

⁴Article 33 paragraph (4), Law Number 11 of 2012 on the Child Criminal Justice System, art. 33(5).

investigation shall be carried out for a maximum of 7 (seven) days⁵ and 5 (five) days for the prosecution.⁶

Legally, children who are undergoing a period of detention have the right to receive a reduction in their sentence.⁷ It is linked also with the Child Criminal Justice System Law that refers to Criminal Procedure Code as the general procedural law. Therefore, in accordance with Criminal Procedure Code, the period of detention that has already been served by a person during the investigation, prosecution, or trial stages must be deducted from the total sentence imposed in the final court decision.⁸ Practically in certain cases specifically in the jurisdiction of Sleman, such as verdict Nomor 38/Pid.Sus-Anak/2024/PN Smn judges decided not to decrease the period since they are referring to the status “entrusted” not detained.

The term “entrusted” that mentioned in the verdict really matters. It has the legal implication on children because it results in a different legal treatment that does not fully protect the child’s rights as what happened in the verdict Nomor38/Pid.Sus-Anak/2024/PN Smn. In the first page of verdict its written “children not being detained” continue with “children entrusted at BPRSR DIY for the investigation process since 28 October 2024 until delegated to the Sleman District Attorney’s Office” and go on with “Public Prosecutor from 4 December 2024 until delegated to the Sleman District

⁵ Article 33 paragraph (1), Law Number 11 of 2012 on the Child Criminal Justice System.

⁶ Article 33 paragraph (4), Law Number 11 of 2012 on the Child Criminal Justice System.

⁷ Article 4 paragraph (1) letter a, Law Number 11 of 2012 on the Child Criminal Justice System.

⁸ Article 22 paragraph (4), Law Number 8 of 1981 concerning the Indonesia Criminal Procedure Code (KUHP).

Court.” As we may observe the gap between 28 October 2024 to 4 December 2024 in total 38 days. Also, in verdict Number 10/Pid.Sus-Anak/2024/PNSmn wrote that children were entrusted in BPRSR by investigators from 3 February 2024 until delegated to the prosecutor. Continuing with children detained in Wonosari Special Juvenile Rehabilitation Center from 29 April 2024 until 3 May 2024.

As we can see that there is a different implementation in which children explicitly stated that they were detained not entrusted. Including the gap of the day of detention in Wonosari Special Juvenile Rehabilitation Center is still in line with the limit time of detention mentioned in criminal justice system law, which only takes 4 days in the prosecution process. However, the gap from the investigation process to prosecutor takes 86 days in which this is beyond the law. From the court decisions examined, at least three cases were found where the placement period exceeded the time limit set by the regulations. While this number may seem small, it cannot be ignored. It can be said that this violation occurs repeatedly because the lack of legal standing to get the pre-trial hearing.

Within jurisdiction of Sleman, law enforcement authorities may decide to detain children who commit criminal acts at the Balai Perlindungan dan Rehabilitasi Sosial Remaja (BPRSR) Yogyakarta or Yogyakarta Youth Social Protection and Rehabilitation Center, taking into account legal considerations and the child’s individual circumstances. Including for the needs of the investigation and prosecution process. Referring to the Article

33 paragraph 5 Law Number 11 of 2012 of Child Criminal Justice System Law, “In the event that there is no LPAS, detention is possible carried out at the local LPKS.” There is a legal basis for the status “entrusted” to be used in both findings. as a tool to reach the goals of *ultimum remedium* substitute for formal detention, the Minister of Social Affairs Regulation No. 26 of 2018 acknowledges child placement at Child Development Institution as a legal action. The concern that emerges, therefore, is not whether entrusting is lawful but whether its implementation in practice remains within the boundaries set by the applicable regulations, and whether children’s rights are equally safeguarded regardless of the terminology used. These practices highlight the need to analyze how Minister of Social Affairs Regulation Number 26 of 2018 are actually implemented in the Sleman jurisdiction, particularly regarding the use of the status “entrusted” for children placed at BPRSR.

B. Problem Statement

Referring from the background explanation above, the following problem formulated are:

1. How is the practice of placement children in conflict with law with the status entrusted in BPRSR within the jurisdiction of Sleman?
2. What are the implications by the use of the phrase “entrusted” for children in conflict with the law who are placed at BPRSR Sleman?

C. Objective Research

1. To analyze the practice of placement children in conflict with law carried out in BPRSR within the jurisdiction of Sleman with the status of entrusted.
2. To analyze the legal consequences of the phrase “entrusting” for children placed in BPRSR Sleman in light of child protection.

D. Originality Of Research

Based on the researcher’s search through literature and electronic media, research with the title “**The Implementation of the ‘Entrusted’ Status for Children in Conflict with the Law placed at Youth Social Protection and Rehabilitation Center in the Jurisdiction of Sleman**” has not been conducted by other researchers. However, studies related to the process and children in the care of BPRSR have already been conducted but doesn’t specified in discussing the implementation of Minister of Social Affairs Regulation No. 26 of 2018 on Social Rehabilitation & Social Reintegration

Below is the comparison between other studies in the form of table:

No	Author Name and Research Title	Equality	Difference
1.	Kusuma Darumurti, R. A. (2017). <i>Pelaksanaan rehabilitasi terhadap anak</i>	Same object of research which is children detained in	This research discusses more about the stages

	<i>yang berhadapan dengan hukum oleh Lembaga Penyelenggaraan Kesejahteraan Sosial – Balai Perlindungan dan Rehabilitasi Sosial Remaja Yogyakarta. Program Studi S1 Ilmu Hukum, Fakultas Hukum, Universitas Islam Indonesia, Yogyakarta.</i>	Balai Perlindungan dan Rehabilitasi Sosial Remaja Yogyakarta.	of how the rehabilitation process carried out for ABH.
2.	Novari, A. P. (2018). <i>Peran Balai Perlindungan dan Rehabilitasi Sosial Remaja Yogyakarta dalam Pelaksanaan Putusan Pengadilan terhadap Anak.</i> Universitas Islam Indonesia.	Both discuss court verdict of children detained in Balai Perlindungan dan Rehabilitasi Sosial Remaja Yogyakarta.	This research tends to discuss the role of Balai Perlindungan dan Rehabilitasi Sosial Remaja Yogyakarta in enforcement of court decisions against children.
3.	Wati, U. R. (2018). <i>Praktik penitipan anak yang</i>	Both discuss the phrase “entrusted”	This paper found out about the

	<i>berkonflik dengan hukum di Balai Perlindungan dan Rehabilitasi Remaja (Studi kasus di daerah hukum Pengadilan Sleman).</i> Universitas Islam Indonesia.	in the practice of children detained in Balai Perlindungan dan Rehabilitasi Remaja in the jurisdiction of Sleman.	meaning of the phrase “entrusted” compared to detention.
4.	Andryanti, F. A. (2023). <i>Pelaksanaan sanksi pidana pelatihan kerja dalam sistem pemidanaan terhadap anak di Balai Perlindungan dan Rehabilitasi Sosial Remaja.</i> Universitas Islam Indonesia.	Discussing the children detained in Balai Perlindungan dan Rehabilitasi Remaja.	This paper research discusses job training practice in Balai Perlindungan dan Rehabilitasi Remaja.

E. Literature Review

1. Children in Conflict with Law

Based on the Law of Children Protection Number 35 Year 2014, children are defined as any person under 18 years old including a child who is still in the womb. While, referring to Law number 11 years 2012 of Child Criminal Justice System Law the definition of children was

divided into three types based on Article 1(2) “Children in Conflict with the Law are children who are in conflict with the law, children who are victims of crime, and children who are witnesses to crime.” Furthermore, each of these categories is defined in the subsequent paragraphs in detail. Article 1(3) “Children in Conflict with the Law, hereinafter referred to as Children, are children who are 12 (twelve) years of age but under 18 (eighteen) years of age who are suspected of committing a crime.”

Article 1(4) “Children who are Victims of Crime, hereinafter referred to as Child Victims, are children under 18 (eighteen) years of age who experience physical, mental, and/or economic loss caused by a criminal act.”

Last, Article 1(5) explain:

Children who are Witnesses to Criminal Acts, hereinafter referred to as Child Witnesses, are children under 18 (eighteen) years of age who can provide information for the purposes of investigation, prosecution, and examination in court regarding a criminal case they have heard, seen, and/or experienced.

In conclusion, the limitation age of children in conflict with law based on Law Number 35 of 2014 on Children Protection is under 18 years old, while Child Criminal Justice System Law limits the age of children in conflict law that has already reached 12 years old yet still under 18 years old. Besides, it categorizes children into three groups: children in conflict with the law, child victims, and child witnesses, each with specific legal definitions and implications. Children are both

prospective offenders and possible victims of judicial proceedings within the scope of the Child Criminal Justice System Law. Children who experience bodily, psychological, or financial injury as a result of a criminal act are classified as victims under Article 1(4) of Child Criminal Justice System Law. In a more general sense, children may also become victims of the judicial system itself if their rights are infringed upon while they are being held for example, if their detention time is longer than permitted or if they are not given adequate legal protection. Moreover, the emergence of criminal behavior in children is often not a isolated issue, but family factors also play a role. The study showed that prolonged conflict in the father-child relationship and a lack of maternal affection between the ages of 5 and 13 can increase a child's risk of becoming involved in criminal activity. This view aligns with Blackburn's assertion that environmental factors and family dynamics significantly influence the development of criminal behavior in children.⁹

2. Detention of Children in Conflict with Law

As a legal basis, the Criminal Procedure Code explicitly defines the concept of detention, mentioned in Article 1 number 21 "Detention is the confinement of a suspect or defendant to a certain place by an investigator or public prosecutor or a judge by his verdict, in matters

⁹ Ronald Blackburn, *The Psychology of Criminal Conduct* (Wilson, England, 1993), dikutip dalam Raj Anindya Kusuma Darumurti, *Pelaksanaan Rehabilitasi terhadap Anak yang Berhadapan dengan Hukum oleh Lembaga Penyelenggaraan Kesejahteraan Sosial–Balai Perlindungan dan Rehabilitasi Sosial Remaja Yogyakarta* (Skripsi Sarjana, Universitas Islam Indonesia, 2017), 2.

and according to ways regulated by this law.” Furthermore, a suspect is determined as a person who, based on preliminary evidence, is reasonably suspected of being the perpetrator of a crime due to their actions or circumstances.¹⁰ While the defendant is a suspect who is charged, questioned, and tried in court.¹¹ Detention may be carried out in several forms, namely:

- a. detention in a state penitentiary;
- b. house detention;
- c. town detention;¹²

The purpose of the detention itself is to guarantee the appropriate and continuous progression of the criminal justice system. When a suspect or defendant is strongly suspected of committing a crime based on sufficient evidence, a detention or further detention order is issued against them if there are circumstances that raise the possibility that they will flee, destroy or damage evidence, or commit the same crime again. This reflects the preventive purpose of detention, which is to safeguard the investigation, prosecution, and trial from risks that could hinder the pursuit of justice.

Unlike the adult criminal justice process, the Children Criminal Justice System emphasizes detention as the last choice and for the best

¹⁰ Article 1 Number 14 Law Number 8 of 1981 concerning the Indonesia Criminal Procedure Code (KUHP).

¹¹ Article 2 Number 15 of 1981 concerning the Indonesia Criminal Procedure Code (KUHP).

¹² Article 22 (1) Law Number 8 of 1981 concerning the Indonesia Criminal Procedure Code (KUHP).

interest of the child. On the other hand, expressly designates detention as a last resort or *ultimum remedium*, as stated in Article 3 letter e Law 11 of 2012, which prohibits the arrest, detention, or imprisonment of minors unless absolutely necessary. Furthermore, the extent of detention is restricted by Article 32 paragraphs (1) and (2), which stipulate a minimum age of 14 years, a minimum criminal penalty of seven years, and the absence of guarantees from parents or institutions. These clauses show that the main goals of detention under the Law 11 of 2012 aim to protect children's rights and best interests, as well as to avoid negative impacts on their development and growth in addition to ensuring the continuation of the legal process. Hadi Supeno also stated that criminal penalties is a last resort or *ultimum remedium*, realizing that children do not commit wrongdoings entirely consciously but are actually victims of the people around them and their social environment, imprisonment should only be carried out as a last resort.¹³

3. Youth Social Protection and Rehabilitation Center (BPRSR)

BPRSR of the Special Region of Yogyakarta is structurally a Unit Pelaksana Teknis Daerah (UPTD) under the DIY Social Service, but functionally it is also designated and operated as Child Development Institution, so that it has the authority to provide protection, training, and social rehabilitation services for children in conflict with the law in accordance with the provisions of the Law

¹³ H. Asbar, "Penerapan Sanksi Pidana Anak terhadap Asas *Ultimum Remedium* dalam Sistem Peradilan Pidana Anak di Gorontalo," *Mimbar Yustitia* 5, no. 1 (2021): 22–41.

Number 11 of 2012. LPKS itself is an institution or social service facility that provides social welfare services for children¹⁴ also as a place where children could be detained.¹⁵ BPRSR appointed as Lembaga Penyelenggaraan Kesejahteraan Sosial hereafter abbreviated as LPKS in 2015, by the Decree of the Minister of Social Affairs of the Republic of Indonesia No. 44/HUK/2015 concerning Social Welfare Institutions, as the implementer of social rehabilitation for children in conflict with the law. In addition, BPRSR has the task of providing technical assistance in the areas of protection, rehabilitation, social advocacy, reunification, and referral for youth with social problems and children in conflict with the law.¹⁶ This rehabilitation center provides positive activities such as activities with skill-based learning including, wood working, sewing, mechanics, and others.

F. Operational Definition

In terms of avoiding multi-interpretations in understanding of research discussion, these are the definitions of terms provided as follows:

1. Children in conflict with law here means, children who are 12 (twelve) years of age but under 18 (eighteen) years of age who are suspected of committing a crime.”¹⁷

¹⁴ Article 1 number 22 2012 Law 11 of 2012 on the Child Criminal Justice System.

¹⁵ Article 32 paragraph (5) Law 11 of 2012 on the Child Criminal Justice System.

¹⁶ Daerah Istimewa Yogyakarta, *Peraturan Gubernur Daerah Istimewa Yogyakarta Nomor 100 Tahun 2015*.

¹⁷ Article 1 paragraph 3 Law 11 of 2012 on the Child Criminal Justice System.

2. Youth Social Protection and Rehabilitation Center (BPRSRS) is an institution appointed as a Social Welfare Organizing Institution. BPRSRS has the task of providing technical assistance in the areas of protection, rehabilitation, social advocacy, reunification, and referral for youth with social problems and children in conflict with the law.¹⁸
3. Detention is the placement of a suspect or defendant in a certain place by an investigator, public prosecutor, or judge with their decision, in the circumstances and in the manner prescribed.¹⁹

G. Method Of Legal Research

To obtain the data and processing required in preparing this thesis, the author used the following legal research methods:

1. Types of Research

This research used empirical legal research. Empirical legal research is legal research that uses primary data obtained directly from the community through observation, interviews, or questionnaires.²⁰

2. Research Approach

The author employs a sociological approach to address the problems in this thesis. This method was selected in order to observe directly how the regulations pertaining to child detention are applied, how law enforcement officials utilize the terms “detained” or

¹⁸BPRSRS Dinsos DIY, “Balai Perlindungan dan Rehabilitasi Sosial Remaja”, <https://aristiapinta.wordpress.com/about/>, accessed on 20 November 2025.

¹⁹Article 1 paragraph (21) , Law Number 8 of 1981 concerning the Indonesia Criminal Procedure Code (KUHAP).

²⁰ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1986), 51.

“entrusted”, and how these actions impact the enforcement of children’s rights.

3. Research Object

The following object that will be explored by the author:

- a. Practice of detention towards children in conflict with law.
- b. Implication of term “entrusted” towards children in conflict with law.

4. Research Subject

The subjects of this research were parties in the Jurisdiction of Sleman, including:

- a. Police in the Jurisdiction of Sleman.
- b. Prosecutor from Sleman District Attorney.
- c. Judge from Sleman District Court.
- d. Employee at BPRSR Sleman.

5. Data Sources

The information required to analyze research data comes from the data sources that were used. Two data sources are used in this study, specifically:

- a. Primary data, namely data obtained directly with the subject research. Furthermore, in this paper the primary data will be used to interview the related sources including, police in the jurisdiction of Sleman, prosecutors from the Sleman District Attorney’s Office,

judges from the Sleman District Court, and employees at BPRSR Sleman.

b. Secondary data will be used to assist the primary data given. The secondary data used in this study are:

1) Primary legal materials, namely binding legal materials, consist of:

- a) Law Number 8 of 1981 on Criminal Procedure Code;
- b) Law Number 39 of 1999 on Human Rights;
- c) Law 11 of 2012 on Child Criminal Justice System.
- d) Minister of Social Affairs Regulation No. 26 of 2018 on
Social Rehabilitation & Social Reintegration

2) Secondary legal materials are materials used as complementary primary legal materials, in the form of books, literature, documents, and papers related to the object of research.

6. Data Collection

a. Literature Review

Literature Study, which entails examining legal study findings and relevant literature.

b. Document

Document, which involves examining a variety of official institutional documents pertaining to the study subject, such as laws, regulations and other papers

7. Analysis Data

The analysis method that will be used in this research is a qualitative-descriptive method, namely accumulating legal materials which are then linked with the research results by conducting speaks with the sources corresponding to this research, where this analysis can support to deliver findings that can answer the issues formulation related to the Implementation of the 'Entrusted' Status for Children in Conflict with the Law placed at Balai Perlindungan dan Rehabilitasi Sosial Remaja in the jurisdiction of Sleman.

H. Structure Of Writing

This research is structured by dividing into four chapters, as follows:

Chapter I Introduction consisting of Background of Study, Problem Formulation, Research Objectives. Originalities of Research, Operational Definitions, Literature Review, Research Methodology and Structure of Writing.

Chapter II The literature review contains a general overview of children based on law, Child Criminal Justice System, and Balai Perlindungan dan Rehabilitasi Sosial Remaja (BPRSR).

Chapter III Research Results and Discussion contain the results of research and discussion related to the Implementation of the 'Entrusted' Status for Children in Conflict with the Law placed at *Balai Perlindungan dan Rehabilitasi Sosial Remaja* in the Jurisdiction of Sleman

Chapter IV Conclusion contains the results of the conclusions of all research and suggestions that can be given regarding the focus of the study.