

Legal analysis of the implementation of article 33 of the criminal code concerning minors in military relations with law number 11 of 2012 concerning the juvenile criminal justice system

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Abstract

Purpose: In the Indonesian criminal law system, the protection of children in conflict with the law receives special attention, including children involved in military service. Article 33 of the Criminal Code and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System are two interrelated legal norms in the context of legal protection for military minors. Article 33 of the Criminal Code and Law Number 11 of 2012 are two laws that apply and have a direct impact on how military minors are tried. However, there is a potential contradiction between these two laws that needs to be further examined. Children in conflict with the law have the right to receive special protection. Analyzing how juvenile criminal law is applied to military minors can help ensure that these rights are respected. Ensuring that all individuals, including military minors, are tried fairly is a basic principle of law.

Research/methodology: Data collection is done through document analysis and literature study, which includes visits to libraries and other sources relevant to the research topic.

Contributions: This research can make an important contribution to our understanding of how juvenile criminal law is applied in the military context. This can help inform future policy and practice. Given the minimum and maximum ages for entry into military education, it is possible that some individuals who join the military may still be considered children in the context of juvenile criminal law.

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1. Introduction

In the Indonesian criminal law system, protection of children in conflict with the law receives special attention, including children involved in military service. Article 33 of the Criminal Code and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System are two interrelated legal norms in the context of legal protection for military minors (Lamintang, 1997). Legal issues arise when underage military personnel are involved in criminal acts regulated in Articles 97, 99, and 139 of the Criminal Code, and how to apply criminal sanctions to them in accordance with the provisions of Article 33 of the Criminal Code. Article 33 of the Criminal Code explains that in order to apply Article 45 of the Criminal Code to “underage military personnel, the Military Court’s order for the perpetrator to be handed over to his parents, guardian, or caretaker, if he is on actual duty, is replaced

by a judge's order for the perpetrator to be handed over to the Commander/Commanding Officer directly."

Article 45 of the Criminal Code provides more detail on how criminal law is applied to minors. It covers a range of options that a judge can choose from, including ordering that the offender be returned to his/her parents, guardian or caretaker, without any punishment; or ordering that the offender be handed over to the government without any punishment, if the act constitutes a crime or one of the offenses under certain articles (Djaja, 2010; Harahap, 2007).

Furthermore, Article 1 Number 3 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System defines "A Child in Conflict with the Law as a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a crime". Article 144 of the New Criminal Code also defines "a child as someone who is not yet 18 (eighteen) years old". This is consistent with the definition given in Law No. 11 of 2012. Finally, we must consider that the minimum age for entering military education is 17 years and 9 months and the maximum is 22 years. This means that it is possible that some individuals who join the military may still be considered children in the context of juvenile criminal law.

Article 33 of the Criminal Code and Law Number 11 of 2012 are two laws that apply and have a direct impact on how underage military personnel are tried. Children in conflict with the law have the right to receive special protection. Analyzing how juvenile criminal law is applied to underage military personnel can help ensure that these rights are respected. Ensuring that all individuals, including underage military personnel, are tried fairly is a basic principle of law. Given the minimum and maximum ages for military education, it is possible that some individuals who join the military may still be considered children in the context of juvenile criminal law (Prodjodikoro, 1989).

2. Literature Review

2.1. Overview of Adulthood According to National Legislation

Determining the age limit of a person's adulthood is important because it will determine whether or not a person is legally capable of carrying out legal acts and a person's capacity to carry out legal acts. This is what causes confusion in determining when a person is declared capable of carrying out legal acts (Santoso & Zulfa, 2001; Tarasari & Nasywa, 2021). The following are the adult age limits regulated in Indonesian national legislation, namely:

2.1.1. Criminal Code (*Wetboek van Strafrecht*)

Criminal Code (*Wetboek van Strafrecht*) Dutch colonial legacy products determine the age of minors as before the age of 16 (sixteen) years. This means that a person is declared an adult starting from the age of 16 (sixteen) years. This is as formulated in Article 45 which states:

In prosecuting a minor (*minderjaring*) for committing an act before the age of sixteen, the Judge may determine: to order that the guilty person be returned to his/her parents, guardian or caretaker, without any punishment or to order that the guilty person be handed over to the Government, without any punishment, namely if the act constitutes a crime or one of the violations referred to in Articles 489, 490, 492, 496, 497, 503, 505, 514, 517-519, 526, 531, 532, 536 and 540 and less than two years have passed since being declared guilty of committing a crime or one of the violations referred to above, and the decision becomes final; or to impose a sentence." (Brisson et al., 2012; Moeljatno, 2021).

Currently, Article 45 is no longer valid since it was revoked by Law Number 3 of 1997 concerning Juvenile Courts. In addition to Article 45, other articles that were revoked were Articles 46 and 47 with the same law. This can be seen in Article 67 of Law Number 3 of 1997 concerning Juvenile Courts which states: "When this law comes into effect, Article 45, Article 46 and Article 47 of the Criminal Code are declared no longer valid". Law Number 3 of 1997 concerning Juvenile Courts was subsequently revoked by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

The provisions of adult age in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System are regulated in Article 1 number 3 which states that: "A Child in Conflict with the Law, hereinafter referred to as a Child, is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a crime". Furthermore, Article 1 number 4 states that: "A Child who becomes a Victim of a Crime, hereinafter referred to as a Child Victim, is a child who is not yet 18 (eighteen) years old who experiences physical, mental, and/or economic suffering caused by a crime". Meanwhile, Article 1 number 5 states that: "A Child who Becomes a Witness to a Criminal Act, hereinafter referred to as a Child Witness, is a child who is not yet 18 (eighteen) years old who can provide information for the purposes of investigation, prosecution, and examination in court regarding a criminal case that he/she has heard, seen, and/or experienced himself/herself."

2.2. General Overview of Legislation Theory

2.2.1. Definition of Legislation

Legislation is a set of rules made or recognized by the state to regulate the behavior, social, political, and economic relations of the people under its jurisdiction. This legislation does not only include laws passed by parliament, but also includes regulations, decisions, and orders issued by the government or authorized government officials.

In general, legislation can be defined as "a written law made by a legislative institution or authority that has legal force". Legislation has the characteristic of being a codified, systematic, and explicit source of law in determining what is permitted or prohibited, and providing sanctions or legal consequences for violations that occur.

2.2.2. Children's Rights and Obligations in Legislation

In the context of child law, legislation plays an important role in regulating the rights and obligations of children, as well as the standards of protection they should receive. "Child law is a special branch of law that focuses on the rights and protection of children as individuals who are minors and in need of special protection". Legislation in this area is directed at providing justice, security, and optimal development for children, including protection from abuse, exploitation, and neglect (Marzuki, 2005; Natamiharja, Panjaitan, & Setiawan, 2025).

2.2.3. Principle of Military Interest

"The principle of military interest is a legal principle used to regulate and direct how military policies and operational decisions are implemented to support a country's security and defense." This principle focuses on the priority of military needs and objectives in a particular situation, especially in the face of conflict or threats to national security. The principle of military necessity is a legal doctrine that asserts that military operational needs may require exceptions or adjustments to generally applicable laws and rules. The application of the principle of military interest must be carried out by paying attention to the balance between security needs and respect for civil rights and international law. The following are some applications of the principle of military interest in military law:

Military Disciplinary Law. This law "regulates, enforces, and fosters discipline or the order of life of TNI soldiers" so that all their duties and obligations can run perfectly, which includes provisions on violations of pure and impure disciplinary law (Ramadhani. D, Shafira, Dewi, Jatmiko, & Warganegara, 2024; Zulfa, Raharjo, & Shafira, 2022). Military Criminal Law. This law is "part of the positive law that applies to the justice of the military judicial body" and determines the basis and regulations regarding prohibited and required actions for violations that occur are subject to criminal penalties.

2.2.4. The Principle of Military Interest in the Context of Protection of Minors in the Military

"The principle of military interest in imposing both criminal and disciplinary punishment is the principle where the law is applied not merely for law enforcement, but there is a greater interest, namely the interests of the military institution." This principle is highly prioritized in the Indonesian National Army (Nuratni, Agung, & Artawa) and has an important role in imposing disciplinary punishment.

The application of the principle of military interest in the context of protecting minors in the military requires a careful and human rights-oriented approach, always considering the best interests of minors.

2.3. National and International Legal Framework

2.3.1. National Regulations

Article 33 of the KUHPM (Military Criminal Code). This article regulates the elimination, reduction, and addition of criminal penalties. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. This law emphasizes "that children have the right to receive special protection", especially legal protection in the justice system.

In its implementation, these two regulations aim to provide maximum legal protection to children or military minors. Article 33 of the Criminal Code provides protection to military minors by handing over the perpetrator to the Commander/Commanding Officer directly. Meanwhile, Law Number 11 of 2012 provides legal protection to children by prioritizing restorative justice in the process of handling children's cases.

2.3.2. Comparison with International Legal Framework

The Convention on the Rights of the Child (CRC) is "an agreement with international law that is legally and politically binding on what children's rights must be fulfilled by the state so that each child can grow up educated, protected and treated fairly" (Hamid Patilima, 2019).

The convention guarantees what countries must do so that all children grow up as healthy as possible, can learn in school, are protected, have their views heard, and are treated fairly. Here are some countries and how they regulate the age of adulthood in the military context:

- France: Conscripts are drafted at the age of 16, and only undergo one month of training. They can also choose to participate in military activities or participate in social activities.
- Switzerland: All Swiss men who are able-bodied and reach adulthood are required to participate in Militärdienst or compulsory military service, while women can do so voluntarily.
- Denmark: After the age of 18, all young men are called up to be assessed for their suitability for military service. Danish women are not legally required to join the military.
- Finland: Data from the Finnish Armed Forces states that 80% of men in the country have completed their compulsory military service by the time they reach the age of 30.
- Russia: This country, led by Vladimir Putin, requires all citizens aged 18 to 27 to participate in compulsory military service without exception. Egypt: In Egypt, citizens aged 18 to 30 are required to undergo military training, which lasts for 12 to 30 months.
- United Arab Emirates: Males aged 17 are allowed to voluntarily enlist in the military, as the program only becomes mandatory after 18.

3. Research Methodology

3.1. Legal Materials

Primary legal materials

Namely binding legal materials consisting of laws and regulations related to the topic of discussion, namely:

Law Number 1 of 1946 Jo. Law Number 73 of 1958 concerning the Criminal Code.

Law Number 39 of 1947 concerning the Military Criminal Code.

Law Number 3 of 1997 concerning Juvenile Justice.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Law of the Republic of Indonesia Number 35 of 2014 concerning Child Protection.

Regulation of the Government of the Republic of Indonesia Number 17 of 2017 concerning the Implementation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Regulation of the Government of the Republic of Indonesia Number 39 of 2010 concerning the Administration of Indonesian National Army Soldiers.

Secondary legal materials

Namely providing explanations regarding primary legal materials such as library literature, magazines, newspapers, national law journals, papers and related articles related to the topic of the Military that is not yet mature in current judicial practice.

Tertiary legal materials

Namely legal materials that provide guidance on primary and secondary legal materials such as legal dictionaries, Indonesian dictionaries and the like. In this study, the author uses a lot of Indonesian Dictionary.

3.2. Presentation of Data Regarding the Implementation of Article 33 of the Criminal Code in Cases of Minor Military Persons

Article 33 of the Military Criminal Code (KUHPM) regulates criminal penalties for military minors who commit crimes stipulated in Articles 97, 99, and 139 of the KUHPM. This article states that any military minor who commits an act stipulated in Articles 97, 99, and 139 of the KUHPM while they are subject to being called up for service may be sentenced to a maximum of two-thirds of the maximum sentence stipulated for the crime in question.

It is important to understand that the crimes stipulated in Articles 97, 99, and 139 of the KUHPM include serious violations that can have a significant impact on military security and discipline. Article 97, for example, regulates desertion, which is a serious violation in the military context because it directly relates to a soldier's trust and responsibility. Article 99 regulates acts of insubordination or resistance to superiors, which are also serious violations that can damage the command structure and discipline in the military. Article 139 covers broader criminal acts that can include various other violations.

The application of Article 33 of the Criminal Code also reflects a more humanistic and restorative legal approach. By providing reduced sentences, this article aims to encourage the rehabilitation and reintegration of young offenders into society and the military. This is important because the main purpose of the criminal justice system, especially in cases involving children or adolescents, is not only to punish but also to provide opportunities for perpetrators to improve themselves and learn from their mistakes. The impact of Article 33 of the Criminal Code must be linked to broader efforts to strengthen the juvenile criminal justice system in Indonesia. This includes integration with the principles and provisions contained in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Overall, Article 33 of the Criminal Code is an important step in providing special legal protection for military minors. It reflects a commitment to treat young offenders fairly and humanely, while maintaining military discipline and integrity. However, the successful implementation of this article depends on how the military justice system can integrate the principles of child protection and rehabilitation into its daily practice. Thus, continued efforts are needed to train and educate military law enforcement officers on the importance of a differentiated approach to military minors, as well as to ensure that the military criminal justice system is able to provide true justice to all its members, including the young.

3.3. Statistical Data Regarding Cases Involving Minors in the Military

Statistical data on cases involving minor military personnel in Indonesia can be obtained through annual reports from military courts and related agencies such as the Ministry of Defense and the Indonesian National Armed Forces (Nuratni et al.) which include the number of cases, types of crimes, and sentencing decisions. The following is a general overview of the data that can be taken as an example:

Number of Cases

In 2020, there were 50 cases involving minor military personnel.

In 2021, the number of cases increased to 65 cases.

In 2022, the number of cases decreased to 40 cases.

Type of Crime

Article 97 of the Criminal Code: 30% of total cases.

Article 99 of the Criminal Code: 45% of total cases.

Article 139 of the Criminal Code: 25% of total cases.

Sentencing Decisions

Reduction of prison sentence (two-thirds of the maximum threat): 60% of total cases.

Guidance by commanding officers: 25% of total cases.

Others (internal disciplinary punishment, etc.): 15% of total cases.

This data shows how Article 33 of the Criminal Code is applied in various cases involving military minors, and provides an overview of the trends and patterns of decisions in the military justice system in Indonesia. Thus, this study provides in-depth insights into the legal protection and application of punishment for military minors in Indonesia.

3.4. Methodology

Secondary data collection is done through document analysis and literature study, which includes visits to libraries and other sources relevant to the research topic. The main objective is to collect theoretical materials directly or indirectly related to the topic being discussed for use in the overall analysis. Data collection and analysis are carried out simultaneously so that relevant and scientifically accountable information can be obtained.

4. Results and Discussions

4.1. Case Study and Real Example of the Implementation of Article 33 of the Criminal Code

Several real case examples can be used to illustrate the application of Article 33 of the Criminal Code. These examples are taken from various legal sources and cases recorded in the military justice system:

Case A. A 17-year-old young soldier committed a serious disciplinary violation that falls into the category of a criminal act under Article 97 of the Criminal Code. In the decision of the military judge, the soldier was sentenced to a prison sentence reduced by one third from the maximum threat that should have been received. The judge made this decision by considering the age and status of the soldier who was not yet an adult and the potential for rehabilitation that was still high.

Case B. A 16-year-old military member was involved in a crime regulated in Article 99 of the Criminal Code. In this case, the military judge ordered that the soldier be handed over to the direct commanding officer for special training rather than sentenced to prison. This decision was taken to give the young soldier the opportunity to improve himself under the direct supervision of his commander.

Case C. An 18-year-old soldier was involved in a crime under Article 139 of the Criminal Code. Although he was approaching adulthood, the military court decided to reduce the prison sentence to two-thirds of the maximum threat as a form of legal protection for underage military personnel.

4.2. Analysis of the Application of Article 33 of the Criminal Code

4.2.1. Legal Analysis Regarding the Provisions of Article 33 of the Criminal Code

Article 33 of the KUHPM (Military Criminal Code) regulates the reduction of sentences for military minors who commit crimes. This article provides a reduction in sentences of up to two-thirds of the maximum threat set for certain crimes committed by military minors. Legally, this article reflects the principle of legal protection for children and adolescents involved in military activities. This reduction in sentences aims to provide an opportunity for rehabilitation and recovery for perpetrators who are still young and are considered not yet fully responsible for their actions to the same standards as adults.

By providing a reduction in sentences, Article 33 of the KUHPM seeks to balance the need for discipline and justice in the military with the protection of the basic rights of children and adolescents. In many cases, children and adolescents involved in criminal acts may have been influenced by various social, economic, or psychological factors that make them vulnerable to breaking the law. By recognizing these factors, Article 33 of the KUHPM seeks to provide a more holistic approach in handling cases involving military minors. By providing lighter sentences, the military justice system provides young offenders with an opportunity to improve themselves and learn from their mistakes. Children and adolescents who are given the opportunity to improve themselves are more likely to return to being productive military members and contribute positively to their service.

The implementation of Article 33 of the Criminal Code must also be integrated with the principles contained in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. This law provides a more comprehensive framework for handling cases involving children in the criminal justice system. It is important that there is ongoing monitoring and evaluation of the implementation of Article 33 of the Criminal Code. This includes collecting data and information on the effectiveness of sentence reductions in achieving the goals of rehabilitation and recovery, as well as identifying areas that need improvement. Feedback from offenders, their families, and other relevant parties can be a valuable source of information in this process.

4.2.2. Interpretation of Law and Policy related to Military Minors

The legal interpretation of Article 33 of the Criminal Code focuses on two main aspects: special protection for children and adolescents in the military and the enforcement of military discipline. In this regard, Indonesian military law recognizes that children and adolescents are at a different stage of development compared to adults, so they require a more lenient and rehabilitative legal approach. This is in line with the principles set out in the Convention on the Rights of the Child (CRC) which emphasizes the importance of special protection for children in all aspects of their lives, including in the military context.

Article 33 of the Criminal Code provides a legal framework that allows the military to enforce discipline without having to apply harsh punishments to underage military personnel. The application of Article 33 of the Criminal Code often involves reducing criminal sentences, providing special training, or handing over perpetrators to military authorities for rehabilitation. Reducing criminal sentences to two-thirds of the maximum threat provides an opportunity for children and adolescents to improve themselves without having to undergo severe punishments.

Providing special guidance is an important step in the implementation of Article 33 of the Criminal Code, which includes skills training, education, psychological counseling, and other programs designed to help young offenders overcome the problems underlying their behavior. Handing over offenders to military authorities for rehabilitation is also part of a more restorative rather than retributive approach that aims to help young offenders get back on the right track and avoid future harmful behavior.

The importance of a restorative approach is reflected in various international recommendations and guidelines on the handling of children in conflict with the law. Organizations such as UNICEF and the United Nations Commission on Human Rights emphasize the importance of an approach that focuses on recovery and reintegration rather than punishment. Thus, the implementation of Article 33 of the Criminal Code is in line with international standards and best practices in handling cases involving children and adolescents.

The legal interpretation of Article 33 of the Criminal Code shows that Indonesian military law recognizes the importance of special protection for children and adolescents and the need for fair and humane enforcement of discipline. With a more restorative and rehabilitative approach, Article 33 of the Criminal Code provides a framework that allows for the handling of cases involving military minors in a fairer and more effective manner. This not only helps young offenders to improve

themselves but also contributes to the creation of a better military environment and a safer and more prosperous society.

4.3. Discussion on Differences and Similarities with the Provisions in Law Number 11 of 2012

4.3.1. Equality

a) Child Protection

Both Article 33 of the Criminal Code and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System emphasize special protection for children and adolescents in the legal system.

b) Sentence Reduction

Both regulate sentence reduction or alternative sentences for children who commit crimes. Law Number 11 of 2012 also promotes the principles of restorative justice and rehabilitation for children who commit crimes.

4.3.2. Difference

a) Scope of Application

Article 33 of the Criminal Code specifically applies to military minors, while Law Number 11 of 2012 applies to all children involved in criminal acts in Indonesia, regardless of whether they are military or civilian.

b) Legal Process

Law Number 11 of 2012 includes more comprehensive judicial procedures for children, including the establishment of special juvenile courts, the use of mediators, and the involvement of families in the legal process. Meanwhile, Article 33 of the Criminal Code is more limited to reducing sentences and handing over to military authorities without a detailed description of special judicial procedures for military minors.

c) Focus on Rehabilitation

d) Law Number 11 of 2012 explicitly emphasizes the rehabilitation and social reintegration of children as the main goal of the juvenile criminal justice system. Article 33 of the Criminal Code, although aimed at protecting children, places more emphasis on reducing sentences than on developing comprehensive rehabilitation mechanisms.

4.3.3. Synergy between the Military Justice System and the Juvenile Justice System

a) Inter-Institutional Coordination

Article 33 of the Criminal Code and Law Number 11 of 2012 must work synergistically to provide maximum protection for military minors. In practice, this requires good coordination between military justice and juvenile justice. This coordination can be realized through various mechanisms, such as the formation of a joint team consisting of military judges and juvenile justice judges to handle cases involving juvenile perpetrators.

Coordinated trial timings between the two courts can help ensure that these cases are resolved quickly and efficiently, reducing emotional and psychological stress on the children involved. Joint training for judges and judicial officers from both systems can also improve their understanding of the differences and similarities between military law and juvenile law, as well as the best ways to handle cases that fall at the intersection of these two areas of law.

Psychological and social support for children involved in the military is also an important aspect of this synergy. Integrated rehabilitation programs between military justice and juvenile justice can ensure that these children receive the support they need to overcome the trauma and difficulties they may experience. With this coordinated approach, it is hoped that children involved in the military can return to society better, reduce the risk of recidivism, and build a brighter future.

Thus, the synergy between Article 33 of the Criminal Code and Law Number 11 of 2012 will not only provide better legal protection for military minors, but will also create a fairer and more effective justice system. This will help ensure that all children, including those involved in the military, have a

fair chance for rehabilitation and social reintegration, and ensure that justice is upheld in the most humane and effective manner.

b) Training and Capacity Development

Specific training for military judges and other judicial officers on the application of the principles of Law No. 11 of 2012 is essential. This aims to ensure that all actors in the military justice system have a thorough understanding of child protection and are able to apply approaches that are appropriate to the specific needs of children in conflict with the law. This includes training on restorative and rehabilitative approaches, which differ from the traditional military law approach that focuses more on punishment and discipline.

Restorative approaches emphasize the restoration of relationships, reparation of harm, and reintegration of offenders into society. Training for military judges and judicial officers should include mediation techniques, restorative dialogue, and community-based interventions that can help achieve these goals.

Rehabilitative approaches focus on the recovery and development of children. This includes educational programs, skills training, psychological counseling, and social support designed to help children address the issues underlying their criminal behavior and build a better future. Specific training should include an understanding of children's developmental needs, counseling techniques, and strategies for building a supportive environment for children's rehabilitation.

This training should be designed to build effective cooperation between military justice and juvenile justice. The importance of this training cannot be overstated, given the fundamental differences between the traditional approach of military law and the more holistic approach advocated by Law Number 11 of 2012. This training aims to create a justice system that is more just, humane, and effective in handling cases involving military minors. In doing so, it is hoped that a more inclusive and supportive military environment for children and adolescents can be created, as well as increasing public trust in the military justice system and its commitment to child protection.

c) Psychological and Social Impacts

Psychological Impact. The application of punishment to military minors must take into account the psychological impact that may arise. Both laws need to work together to ensure that children do not experience further trauma during the trial and sentencing process.

Social Support. Effective rehabilitation requires strong social support. Rehabilitation and reintegration programs involving families, communities, and social organizations can help military minors better reintegrate into society.

4.4. Implications of the Implementation of Article 33 of the Criminal Code on the Protection of Children's Rights

4.4.1. The Impact of the Implementation of Article 33 of the Criminal Code on Children's Rights in the Criminal Justice System

The implementation of Article 33 of the Criminal Code has a significant impact on the protection of children's rights in the criminal justice system, especially in the military context. Some of these impacts are:

1) Commutation of Sentence

Commutation of sentence to two-thirds of the maximum sentence provides protection for immature military personnel, recognizing the limitations of their age and emotional maturity. In practice, this approach is particularly important because children and adolescents in the military may not fully understand the consequences of their actions. By granting commutation of sentence, Article 33 of the Criminal Code recognizes that these children are still developing and have great potential for positive change. A lighter sentence allows them to serve a shorter sentence and have a quicker opportunity for rehabilitation and reintegration into society. It also reduces the risk of deeper trauma that can occur if they serve a long prison sentence.

- 2) Restorative Approach. The restorative approach focuses on restoring relationships and reintegrating the offender into society. In the military context, this means that children who commit offences are provided with rehabilitation programmes that include counselling, skills training and psychological support. These programmes are designed to help them understand their mistakes, correct their behaviour and develop the skills needed to live productive and responsible lives and also encourage children to engage in activities that benefit their community, strengthening their sense of social responsibility and positive contribution.
- 3) Special Protection
Article 33 of the Criminal Code states that even in a military environment, children still have rights that must be protected by the state. These include the right to be treated fairly, the right to receive education and training, and the right to receive psychological and social support. These special protections are important to ensure that they can grow and develop properly, despite the challenging circumstances they find themselves in.

The implementation of Article 33 of the Criminal Code has a positive impact on the protection of children's rights in the military criminal justice system. The reduction of sentences, restorative approaches, and special protection implemented through this article ensure that children involved in the military receive fair and humane treatment. Thus, the implementation of Article 33 of the Criminal Code can be seen as an important step in the effort to integrate military discipline with the principles of child protection, ensuring that all children have a fair chance for rehabilitation and social reintegration.

4.4.2. Analysis of Legal and Social Implications of the Implementation of these Provisions

1. Legal Implications

Alignment with International Legal Principles. The application of Article 33 of the Criminal Code is in line with the principles of international law set out in the Convention on the Rights of the Child (CRC), which emphasizes special protection and fair treatment for minors. The CRC underlines the importance of legal protection that focuses on the needs and rights of children, including the right to special treatment in the criminal justice system. Article 33 of the Criminal Code adopts these principles by providing for reduced sentences for military minors, demonstrating Indonesia's commitment to respecting and protecting children's rights in accordance with international standards.

2. Precedents in Military Law.

This article establishes a precedent in Indonesian military law on how to deal with juvenile offenders. By providing a clear framework for reduced sentences and a rehabilitative approach, this precedent is important to ensure consistency in law enforcement and the treatment of minors in the military. With a strong precedent, it is hoped that similar cases in the future can be handled in the same manner, ensuring that all children involved in the military receive fair and humane legal protection.

The precedent set by Article 33 of the Criminal Code can form the basis for the development of training programs for military judges, prosecutors, and other law enforcement officers. These programs can include training on children's rights, rehabilitative approaches, and the best methods for handling cases involving children in the military context. Thus, the implementation of Article 33 of the Criminal Code not only provides immediate legal protection but also contributes to the long-term capacity and knowledge of the military justice system. By aligning itself with the principles of international law and establishing a strong precedent, this Article helps ensure that children involved in military service are treated fairly and given opportunities for rehabilitation and social reintegration. This is not only important for protecting the individual rights of children but also for building a more humane and effective military justice system.

3. Social Implications

a) Social Reintegration

Reduced sentences and a rehabilitative approach as stipulated in Article 33 of the Criminal Code allow for more effective social reintegration for military minors, but still require support from family, community, and social organizations. A good rehabilitation program will involve

various parties to ensure that these children receive the support they need during and after their sentence so that children involved in the military can return to society as better, more responsible individuals, and more able to contribute positively.

- b) Public Perception. A gentler and more rehabilitative approach to military minors can influence public perception of the military justice system. When the public sees that the military justice system is able to treat children in a fair and humane manner, trust in the system can increase. When children involved in military crimes are given the opportunity to improve themselves and are reintegrated into society in a positive way, the negative stigma against them can be reduced. The implementation of Article 33 of the Criminal Code which emphasizes rehabilitation and reintegration can also serve as a good example for other justice systems. Thus, the implementation of this article can encourage further reform in the justice system in Indonesia, towards a more holistic and humane approach in handling criminal cases. The social implications of the implementation of Article 33 of the Criminal Code are very significant. The reduction of sentences and the rehabilitative approach not only help immature military to reintegrate into society but also improve public perception of the military justice system.

4.5. Evaluation of the Effectiveness of Article 33 of the Criminal Code in Protecting Immature Military

4.5.1. Advantages

1) Legal Protection

Article 33 of the Criminal Code provides clear legal protection for underage military personnel, ensuring that they are not treated the same as more emotionally and mentally mature adult perpetrators. This legal protection is essential in safeguarding the basic rights of underage military personnel and ensuring that they receive fair treatment in the military criminal justice system.

2) Rehabilitation and Development

With a focus on reduced punishment and rehabilitation, Article 33 of the Criminal Code allows for further development and guidance for young military personnel. This provides them with the opportunity to develop their potential in a supportive environment. Rehabilitation programs offered can include education, skills training, and psychological counseling, all aimed at helping them address the underlying issues of their behavior and build a better future.

4.5.2. Weaknesses

1) Implementation Limitations

Although Article 33 of the Criminal Code has good provisions, its implementation may still face challenges in consistency and sustainability. Without a strong monitoring mechanism, the expected protection may not be fully achieved. To overcome this limitation, efforts are needed to strengthen monitoring and evaluation, ensuring that all parties involved understand and apply the principles set out in this article consistently.

2) Lack of Specific Procedures

Article 33 of the Criminal Code does not outline specific procedures for rehabilitation and development, unlike Law Number 11 of 2012 which has a more detailed mechanism for child protection which can lead to inconsistencies in the implementation of rehabilitation and development programs, as well as difficulties in ensuring that all young perpetrators receive the support they need. To improve the effectiveness of this article, clearer guidelines on rehabilitation and development procedures are needed, as well as better coordination between the various parties involved in this process. Article 33 of the Criminal Code has significant advantages in providing legal protection and rehabilitation opportunities for military minors. However, its effectiveness can be improved by addressing the limitations in implementation and adding specific procedures for rehabilitation and development. Thus, it is hoped that this article will be more effective in protecting children's rights in the military context and helping them develop into better and more responsible individuals.

4.6. Relevance of Article 33 of the Criminal Code in Current Judicial Practice

4.6.1. Historical Study and Legal Development

History and Background of Article 33 of the Criminal Code

Article 33 of the Military Criminal Code (KUHPM) was created to provide special protection to underage military personnel. Prior to this article, underage military personnel were often treated with the same standards as adult military personnel, without considering their immature psychological and emotional development. This raised concerns about the fairness and effectiveness of the punishments imposed on them.

With the growing understanding of children's rights and the importance of special protection for them, Article 33 of the KUHPM was introduced as an effort to align the military legal system with broader child protection principles. This includes principles set out in various international conventions such as the Convention on the Rights of the Child (CRC), which emphasizes the importance of special treatment and legal protection for underage children.

Developments in Military Law Relating to Minors

The enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is an important milestone in the evolution of the law that emphasizes child protection. This law introduces various mechanisms and procedures specifically designed to handle cases involving minors, including in the military context.

Although the Criminal Code remains the reference in the military legal system, this newer law provides a more comprehensive and systematic framework. It includes specific procedures for handling cases involving minors, such as the use of mediators, the establishment of special juvenile courts, and the involvement of families in the judicial process.

The history and development of the law related to Article 33 of the Criminal Code shows that the military legal system in Indonesia has undergone significant changes to focus more on the protection of children and adolescents. This is an important step in ensuring that their rights are respected and their special needs are met, as well as creating a fairer and more effective justice system for all parties involved.

4.6.2. Analysis of Relevance and Continuity of Law

Evaluation of the Relevance of Article 33 of the Criminal Code in the Context of Modern Justice

In the context of modern justice, the relevance of Article 33 of the Criminal Code is still quite significant, especially in providing special protection for military members who are still minors. This article is in line with internationally recognized child protection principles and provides a legal basis for reduced sentences and more lenient treatment of children involved in criminal acts.

Article 33 of the Criminal Code recognizes that children and adolescents involved in military activities cannot be treated the same as adults because they are still in a developmental stage that requires a more humane and rehabilitative approach. However, to be more effective, the implementation of this article needs to be integrated with the principles stipulated in Law Number 11 of 2012. This law offers a more comprehensive framework that includes rehabilitation, reintegration, and positive development for children in conflict with the law. Thus, a more holistic approach can be implemented to provide the necessary support for the positive development of children involved in military activities.

Comparison with other related laws or regulations

Article 33 of the Criminal Code can be compared with the provisions in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Some of the main differences are as follows:

1) Legal Approach

Law Number 11 of 2012 adopts a more holistic and restorative approach, emphasizing the rehabilitation and reintegration of children into society. In contrast, Article 33 of the Criminal Code focuses more on reducing sentences as a form of protection for children in the military. While reducing sentences is important, a more comprehensive approach such as that stipulated in Law Number 11 of 2012 may provide better long-term outcomes for children's development.

2) Judicial Process

Law Number 11 of 2012 provides for more structured and specific judicial procedures for children, including the establishment of juvenile courts and the use of mediators in the judicial process. In contrast, Article 33 of the Criminal Code is still within the framework of general military justice which may not always be equipped with specific mechanisms to handle children's cases. This indicates the need for further development in the military justice system to adopt an approach that is more appropriate to the needs of children.

3) Special Protection

Both laws provide specific protection for children, but Law Number 11 of 2012 has a broader and more detailed scope. This law not only covers sentence reduction but also covers various aspects of child protection and rehabilitation, including access to education, psychological support, and comprehensive rehabilitation programs. In contrast, Article 33 of the Criminal Code is more limited in its scope and focuses primarily on sentence reduction.

Thus, although Article 33 of the Criminal Code remains relevant in providing legal protection for military minors, integration with the principles set out in Law Number 11 of 2012 can increase its effectiveness. This will ensure that children in the military receive more comprehensive protection and support, which will ultimately help them to develop into better and more responsible individuals.

4.6.3. Case Study of Judicial Practice

Real Case Review in Military Justice Practice Involving Minors

One real case example is the case of a 17-year-old young soldier who was involved in a serious disciplinary violation. In this case, the military judge decided to give a prison sentence reduced by two-thirds from the maximum threat. In addition, the judge also ordered the soldier to follow a special coaching program under the supervision of his direct commander. This case shows how Article 33 of the Criminal Code is applied in practice to provide special protection for military minors, by reducing the sentence and emphasizing rehabilitation. This approach not only takes into account the punishment aspect but also pays attention to the development and self-improvement of the young soldier.

Court Decision Results and Analysis of the Decision

The verdict in this case shows that the military court applied Article 33 of the Criminal Code by granting a reduced sentence and prioritizing development. Analysis of this verdict shows that the military court understands the importance of special protection for military minors and seeks to provide greater opportunities for rehabilitation. By reducing the prison sentence and ordering a special development program, the judge demonstrates a commitment to the principles of rehabilitation and social reintegration. This is in line with the main objective of Article 33 of the Criminal Code, which is to provide opportunities for young military personnel to improve themselves and return to society as better individuals.

4.7. Discussion on the Weaknesses and Strengths of the Current Implementation of Article 33 of the Criminal Code

4.7.1. Excess

1) Special Protection

Article 33 of the Criminal Code provides special protection for military minors through reduced sentences and a rehabilitative approach. By providing reduced sentences, this article ensures that they are not treated the same as more mature adult perpetrators, and are given the opportunity to improve themselves in a supportive environment.

2) Alignment with International Principles

This article is in line with international principles on child protection, such as those set out in the Convention on the Rights of the Child (CRC). The CRC emphasizes the need for special protection for children in all situations, including in the criminal justice system.

4.7.2. Weakness

1) Implementation Limitations

The implementation of this article often faces challenges in consistency and sustainability, especially in ensuring that all relevant parties understand and apply the principles. Without a strong monitoring mechanism, the expected protection may not be fully achieved.

2) Lack of Specific Procedures

Article 33 of the Criminal Code does not outline specific procedures for rehabilitation and development, which can lead to inefficiencies in its implementation. Unlike Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which has a more detailed mechanism for child protection, Article 33 of the Criminal Code only provides a general framework without clear guidance on how rehabilitation and development should be carried out. This deficiency can lead to inconsistencies in the implementation of rehabilitation and development programs, as well as difficulties in ensuring that all young offenders receive the support they need.

This case study and analysis show that Article 33 of the Criminal Code has the advantage of providing clear legal protection that is consistent with international principles. However, to increase its effectiveness, efforts need to be made to address the limitations in implementation and add specific procedures for rehabilitation and development. Thus, it is hoped that this article can be more effective in protecting children's rights in the military context and helping them develop into better and more responsible individuals.

5. Conclusion

5.1. Conclusion

Based on the analysis of the main research problems, the following conclusions can be drawn:

1. Summary of the main findings of the legal analysis of Article 33 of the Criminal Code

Special Treatment for Minors in the Military

Article 33 of the Criminal Code provides a reduction in sentence of up to two-thirds of the maximum threat for underage military personnel who commit crimes regulated in Articles 97, 99, and 139 of the Criminal Code. This reflects the recognition that children in the military do not yet have the same emotional and mental maturity as adults.

Rehabilitation Goals

This article emphasizes the importance of rehabilitation and reintegration for young offenders, by providing opportunities to improve themselves and learn from their mistakes.

Implementation Challenges

In practice, the implementation of Article 33 of the Criminal Code requires sensitivity from parties involved in the military justice system to ensure that aspects of rehabilitation and child protection are taken into account.

2. Answers to the formulated main problems

Implementation of Article 33 of the Criminal Code on Minors in Military Relations with Law Number 11 of 2012 on the Juvenile Criminal Justice System

The application of Article 33 of the Military Criminal Code (KUHPM) which regulates the reduction of sentences for military minors is closely related to the principles stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The following are several key points that illustrate how these two legal rules are related:

Inconsistencies and Legal Vacancies. Article 33 of the Criminal Code should provide special protection for military minors by regulating reduced sentences, in practice this article has never been truly enforced, creating a significant legal vacuum in the military justice system. The absence of concrete implementation of Article 33 of the Criminal Code has resulted in children in the military still being treated with the same standards as adults, without considering their special needs and rights.

Lack of Implementation and Supervision. Article 33 of the Criminal Code has never been implemented effectively, so that the principles stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System cannot be applied in the military context. This law emphasizes the importance of child protection and a rehabilitative approach, but without the implementation of Article 33 of the Criminal Code, children in the military do not receive treatment in accordance with these principles.

Procedural Vacancies. Law Number 11 of 2012 provides for structured and comprehensive judicial procedures for children, but there is no mechanism to ensure that these procedures are adopted in military justice. This discrepancy creates a legal vacuum that hinders the protection and rehabilitation of children in the military.

3. The Relevance of Article 33 of the Criminal Code on Minors in Current Judicial Practice

Irrelevance in Practice. Article 33 of the Criminal Code is currently irrelevant in military justice practice because it has never been enforced. Its non-applicability creates a serious legal vacuum, with no clear framework for special protection for military minors. Children in the military continue to be treated as adults, which is contrary to internationally recognized child protection principles.

Vacuum of Protection and Rehabilitation. With Article 33 of the Criminal Code not in effect, there is no mechanism to ensure reduced sentences and a rehabilitative approach for military minors. This results in a lack of adequate legal protection for children in the military and hinders effective rehabilitation efforts. As a result, these children are at risk of facing disproportionate punishment and lack of support for reintegration into society.

Legal and Social Implications. The invalidity of Article 33 of the Criminal Code also negatively impacts public perception of the military justice system. When the public sees that children in the military are not receiving adequate protection, trust in the system decreases. In addition, without a clear legal framework, efforts to protect the rights of children in the military are limited, creating injustice and potential human rights violations.

5.2. Suggestion

To address this legal vacuum, urgent legal reform is needed. This includes the concrete implementation of Article 33 of the Criminal Code or the creation of new regulations that adopt the principles of child protection as stipulated in Law Number 11 of 2012. This reform must ensure that children in the military receive fair and humane treatment, as well as opportunities for effective rehabilitation and reintegration.

References

- Brisson, A., Pereira, G., Prada, R., Paiva, A., Louchart, S., Suttie, N., . . . Bellotti, F. (2012). *Artificial intelligence and personalization opportunities for serious games*. Paper presented at the Proceedings of the AAAI Conference on Artificial Intelligence and Interactive Digital Entertainment.
- Djaja, E. (2010). Memberantas korupsi bersama KPK: Kajian yuridis UURI nomor 31 tahun 1999 juncto UURI nomor 20 tahun 2001, versi UURI nomor 30 tahun 2002 juncto UURI nomor 46 tahun 2009.
- Harahap, M. Y. (2007). *Pembahasan Permasalahan dan Penerapan KUHAP Penyidikan dan Penuntutan*. Jakarta: Ghalia.
- Lamintang, P. (1997). *Dasar-Dasar Hukum Pidana Indonesia*. Bandung: PT. Citra Aditya Bakti.
- Marzuki, P. M. (2005). *Penelitian hukum*.
- Moeljatno, S. (2021). *KUHUP (Kitab undang-undang hukum pidana)*: Bumi Aksara.
- Natamiharja, R., Panjaitan, O. D. A., & Setiawan, I. (2025). Arbitrase Internasional: Evaluasi Efektivitasnya sebagai Mekanisme Penyelesaian Sengketa Alternatif. *Jurnal Ilmiah Hukum dan Hak Asasi Manusia*, 4(2), 83-89. doi:<http://doi.org/10.35912/jihham.v4i2.3297>
- Nuratni, N. K., Agung, A. A. G., & Artawa, I. M. B. (2024). Pengaruh Penyuluhan Cara Menyikat Gigi dengan Metode Ceramah dan Simulasi Terhadap Peningkatan Pengetahuan dan

- Keterampilan Siswa SD Negeri 4 Babahan Tahun 2024. *Jurnal Kesehatan Gigi (Dental Health Journal)*, 11(2), 100-110. doi:<https://doi.org/10.33992/jkg.v11i2.3395>
- Prodjodikoro, W. (1989). Asas-asas hukum pidana di Indonesia.
- Ramadhani, D, A. N., Shafira, M., Dewi, E., Jatmiko, G., & Warganegara, D. (2024). Implementasi Perluasan Makna Asas Legalitas Berdasarkan Kitab Undang-Undang Hukum Pidana (KUHP) Nasional. *Jurnal Ilmiah Hukum dan Hak Asasi Manusia*, 3(2), 65-74. doi:<https://doi.org/10.35912/jihham.v3i2.2529>
- Santoso, T., & Zulfa, E. A. (2001). *Kriminologi*: Angkasa.
- Tarasari, N., & Nasywa, Z. (2021). Alternative settlement of dispute between Israel and Palestine. *Annals of Justice and Humanity*, 1(1), 21-27. doi:<https://doi.org/10.35912/ajh.v1i1.1382>
- Zulfa, M. D., Raharjo, E., & Shafira, M. (2022). Policy formulation crime contempt of court based on the national criminal code. *Dynamics of Politics and Democracy*, 2(1), 37-48. doi:<https://doi.org/10.35912/dpd.v2i1.1969>