

The Concept of Recidivism for Juvenile Criminal Offenders in Law Number 1 of 2023 on the Indonesian Criminal Code



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ABSTRACT: The Juvenile Criminal Justice System (JCJS) in Indonesia is inextricably linked to the country's Criminal Law Policy. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System represents a significant reform effort in Indonesia by introducing the concept of diversion to address juvenile delinquency. Diversion allows for the resolution of juvenile cases outside the formal criminal justice process, under certain conditions, to avoid stigmatization and promote restorative justice. This study employs a normative juridical approach through legal comparison. The research specification is descriptive, utilizing secondary data sources and types. Data collection is based on literature/documents, and the data analysis technique used is qualitative analysis. The JCJS Law in Indonesia needs clearer and more comprehensive regulations regarding recidivism. Furthermore, the JCJS Law tends to focus more on the recovery and reintegration of juveniles, with insufficient emphasis on preventing recidivism. There is a conceptual change in recidivism within the Indonesian Criminal Code. The Dutch Criminal Code (*Wetboek van Strafrecht*), which has traditionally applied a special recidivism concept with an intermediate system, will be changed to an "*Algemene Recidive*" system. Article 112 of the Indonesian Criminal Code stipulates the obligation to seek diversion for juveniles.

KEYWORDS: Criminal Law; Recidive; Juvenile Criminal Justice System.

I. INTRODUCTION

Fundamentally, the Juvenile Criminal Justice System (JCJS) in Indonesia is inseparable from the country's Legal Policy and Criminal Law Policy. In this regard, Soedarto argues that implementing criminal law policy involves making choices to achieve effective and just criminal legislation. He also emphasizes that criminal law policy should be aligned with the current and future conditions and situations (Soedarto, 1981). Thus, as part of legal policy, criminal law policy involves the formulation of sound criminal legislation (Soedarto, 1981). Marc Ancel states that modern criminal science consists of three components: Criminology, Criminal Law, and Penal Policy. Penal Policy is both a science and an art with the practical aim of enabling positive legal regulations to be better formulated, providing guidance not only to lawmakers but also to courts and those enforcing court decisions. In Indonesia, the government has reformed the juvenile criminal justice system as stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which replaced Law Number 3 of 1997 concerning Juvenile Courts. Law Number 11 of 2012 was enacted and promulgated on July 30, 2012, and came into effect two years after its promulgation. According to Article 1, point 1 of Law Number 11 of 2012, "The Juvenile Criminal Justice System is the entire process of resolving cases involving juveniles in conflict with the law, from the investigation stage to guidance after serving a sentence." A notable feature of the JCJS is that law enforcers can terminate the judicial process at any stage once certain conditions are met and recognized by the authority to do so (Prakoso, 2016).

Law Number 11 of 2012 introduces several new elements, one of which is diversion. Article 1, Paragraph 7 of Law Number 11 of 2012 explains that: "Diversion is the transfer of the resolution of juvenile cases from the criminal justice process to a process outside the criminal justice system." Diversion involves resolving juvenile cases outside the criminal justice process, as regulated in Article 7 of the JCJS Law, which stipulates that diversion efforts are undertaken at the investigation, prosecution, and examination stages of juvenile cases in district courts, with the following conditions:

1. The offense is punishable by imprisonment of less than seven years, and
2. The offense is different from a repeat offense.

Based on this, the explanation of Article 7 (b) of the JCJS Law regarding recidivism states that "repeated offenses committed by juveniles, whether similar or dissimilar offenses, including those resolved through diversion." Recidivism refers to the repetition of criminal acts by someone who has previously been convicted with legal force (*intraecht*). Unlike the Criminal Code, the JCJS Law embodies the spirit of restorative justice by implementing diversion as stipulated in Article 1, Paragraph 6, and further supported by

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Article 2(i), which states that the juvenile criminal justice system is based on the principle that punishment and deprivation of liberty are measures of last resort. Therefore, the juvenile criminal justice system should be conducted with the spirit of diversion. Diversion in the JCJS Law is a distinguishing feature from previous regulations (Law Number 3 of 1997). In Indonesia, the concept of diversion has been recognized since the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. However, the term "diversion" has long been known in several countries, such as in the United States and Australia before 1960. Diversion, in grammatical terms, means "transfer." At the same time, its general meaning is the transfer of the resolution of juvenile cases from the formal criminal justice process to a process outside the criminal justice system, with or without conditions. Generally, the diversion process aims to achieve reconciliation between the victim and the juvenile (offender), resolve juvenile cases outside the court process, prevent the deprivation of liberty for juveniles, encourage community participation, and instill a sense of responsibility in juveniles. Thus, diversion aims to avoid and distance juveniles from the judicial process to prevent stigmatization and allow them to reintegrate into their social environment (Jalilah, 2024). This drives the idea of diversion, especially through the concept of *Restorative Justice*, becoming a crucial consideration in resolving juvenile criminal cases.

According to the National Commission for Child Protection (*Komisi Nasional Perlindungan Anak/Komnas PA*) in 2011, as reported on January 19, 2012, *Komnas PA* received 1,851 complaints involving children in conflict with the law throughout 2011. Approximately 52% of these cases were theft, followed by violence, rape, drugs, and assault. Around 89.8% ended in criminal convictions (Jalilah, 2024). A notable juvenile case in Malang in 2019 involved a 15-year-old recidivist. Ipda Yulistiana Sri Iriani, Head of the Women and Children's Service Unit (*Kepala Unit Pelayanan Perempuan dan Anak*) of the Malang Police Criminal Investigation Unit stated, "Before we detained him for stealing chickens and attempting to steal food from his uncle, DS had frequently been caught stealing. In mid-2018, DS was imprisoned for stealing an electric drill." Additionally, DS stole a motorcycle in a rice field area, claiming he needed money for food and cigarettes. This case highlights the influence of the environment on DS's repeated offenses, indicating the need for guidance from both law enforcement and family (Ashaq Lupito, 2019). Sociologically, a juvenile's criminal behavior is influenced by their development, including their environment and mindset. As stipulated in Indonesia's positive law, criminal law provides definitions for actions qualifying as juvenile offenses, including both violations and crimes. These include actions governed by juvenile court laws and those prohibited by other regulations, which form the living law within society (Nandang Sambas, 2010).

In this context, child protection prioritizes understanding the rights of children that must be safeguarded, as children are inherently weaker and, in legal terms, viewed as legal subjects instilled with responsibilities akin to those of a normal legal subject. The definition of a child in criminal law introduces positive legal aspects towards the normalization of a child's behavior from deviant actions (crimes and violations) to shape their personality and responsibility, ultimately ensuring the child's right to proper welfare and a better future. Additionally, the implementation of diversion must be motivated by the desire to avoid negative impacts on a child's psyche and development due to their involvement with the criminal justice system. Law enforcement officers' implementation of diversion is based on their discretionary authority. Moreover, child protection through diversion policies can be implemented at all levels of the justice system, starting from community efforts to prevent crimes before they occur. If a child does commit an offense, it may not be necessary to process the case through the police. The application of diversion provisions is mandatory because diversion ensures the protection of children's fundamental rights, preventing the stigma of being labeled as "delinquent." Crimes allegedly involving a child as the perpetrator can be handled without resorting to legal proceedings by employing diversion.

Problem Statement

Based on the previously discussed background, several issues arise as follows:

1. How do the regulations regarding recidivism differ between The Dutch Criminal Code (*Wetboek van Strafrecht*) and Law No. 11 of 2012 on the Juvenile Justice System?
2. What is the concept of reforming the sentencing system for recidivist juvenile offenders in Law number 1 of 2023 on the Indonesian Criminal Code (*KUHP Nasional*)?

II. RESEARCH METHODS

According to Soerjono Soekanto, legal research is a scientific activity based on specific methods, systematics, and thoughts aimed at studying one or more legal phenomena through analysis (Soekanto, 2010). The approach method used in this legal writing is a normative juridical method (legal research). The specification used in this legal research is descriptive research, which aims to describe or explain concretely the object or problem being studied. The type of data used in this research is secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The data collection method used in this research is library research. The data analysis method used is qualitative analysis, where all data obtained are systematically arranged and then analyzed qualitatively to achieve clarity on the issues to be discussed.

III. DISCUSSION

A. Differences in the Regulation of Recidivism between the *Wetboek van Strafrecht (WvS)* and Law No. 11 of 2012 on the Juvenile Justice System

The term recidivism originates from the French word derived from two Latin words, "re" and "cado," where "re" means "again" and "cado" means "fall." Thus, recidivism refers to a tendency to repeatedly violate the law by committing crimes multiple times. Recidivism involves repeatedly committing similar or the same criminal acts (Gerson W. Bawengan, 1979). Aruan Sakidjo and Bambang Poernomo explain recidivism as the behavior of an individual who repeats criminal acts after being sentenced with a final and binding court decision for previous crimes. An individual who frequently commits crimes and has been sentenced multiple times is called a recidivist. Recidivism refers to the act of repeating criminal offenses, while a recidivist is someone who engages in repeat offenses (Mahrus Ali, 2011).

In Indonesia, the concept of recidivism is known as the "repetition of criminal acts," with its regulations scattered across several articles in the Dutch Criminal Code (*Wetboek van Strafrecht*). Indonesia adheres to an intermediate system, where different types of repeat offenses are regulated under Articles 486, 487, and 488 of the Dutch Criminal Code (*WvS*) (Prianter Jaya Hairi, 2019). The classification of repeated criminal acts is based on the legal interests violated. Generally, repeat offenses are categorized into two types: general recidivism and specific recidivism. Additionally, criminal law doctrine recognizes accidental recidivism and habitual recidivism (Ni Made Wahyuni Paramitha Et.al., 2021).

The Dutch Criminal Code (*WvS*) distinguishes recidivism into two types:

1. Repeat offenders of crimes can be categorized into two types:
 - a. Specific types of crimes, where a repeat offender commits an offense defined under Book II of The Dutch Criminal Code (*WvS*). In this category, the repetition must involve the same type of crime as previously adjudicated by a judge with legal force (*inkracht*).
 - b. Grouped types of crimes, where the repetition of criminal acts by a repeat offender does not necessarily need to be the same crime as previously adjudicated. However, the offense must exhibit similar characteristics or belong to the same category as the previous crime (Prianter Jaya Hairi, 2019). For instance, if a repeat offender were previously convicted and sentenced by a judge for embezzlement in office but later committed another offense of embezzlement in office, it would fall under this category.
2. Repeat offenders of violations differ significantly from repeat offenders of crimes, primarily in their placement within The Dutch Criminal Code (*WvS*). Crimes are regulated under Book II of The Dutch Criminal Code (*WvS*), while violations are governed under Chapter III of The Dutch Criminal Code (*WvS*). Repeat offenders of violations are those who commit repeated similar violations within a specific timeframe after the previous violation has obtained legal force (*intracht*). the timeframe for such repetitions is as follows (Ni Made Wahyuni Paramitha Et.al., 2021):
 - a. 1 (one) year for repeated violations of Article 501, 512, 516, 517, and 530 of the Dutch Criminal Code (*WvS*);
 - b. Two years for repeated violations of Articles 501, 512, 516, 517, and 530 of the Dutch Criminal Code (*WvS*). The aggravation for recidivists under Articles 536, 492(2), 540(2), and 541(2) of the Dutch Criminal Code (*WvS*) should appropriately follow the specific provisions within these articles. However, generally, fines can also be converted into imprisonment or aggravated fines.

Based on the points above, recidivism is an event of repeating criminal acts due to the habitual behavior of a recidivist (Rendy Airlangga Et.al., 2023). A perpetrator who repeats a criminal act, thereby influencing the severity of the punishment directly or indirectly, is commonly known as a recidivist (Aruan Sakidjo & Bambang Poernomo, 1990). However, the definition of recidivism is not specifically regulated in Book I of the Criminal Code (*WvS*). The term recidivism can be found in various doctrines or definitions proposed based on the opinions of legal experts. Recidivism refers to the repetition of a criminal act by the same perpetrator who has previously been convicted, with a final and binding verdict occurring within a certain period.

In this context, several specific requirements must be met to be considered recidivism as follows (Farid, 2007):

1. The perpetrator is the same as in the previous criminal act;
2. The previous criminal act has been adjudicated with a final and binding verdict;
3. The repetition of the criminal act occurs within a certain period.

The conditions for applying recidivism to a criminal act must also be viewed based on the repetition of the type of criminal act, namely:

1. General repetition, which refers to the repetition of any criminal act;
2. Special repetition, which refers to the repetition of a similar criminal act;
3. The perpetrator has served all or part of the sentence imposed by the court;
4. The repetition of the criminal act does not exceed five years since the convict served part or all of the imposed penalty.

Book I of the Dutch Criminal Code (*WvS*) contains general rules and does not imply a specific definition of recidivism. Recidivism is only regulated in Books II and III of the Dutch Criminal Code (*WvS*) and is dispersed as *lex specialis* in various legal instruments in Indonesia outside the Criminal Code, particularly in various laws such as Law Number 5 of 1997 concerning

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Psychotropics (Psychotropics Law), Law Number 35 of 2009 concerning Narcotics (Narcotics Law), and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (*Undang-Undang Sistem Peradilan Pidana Anak*).

The diversity of rules related to recidivism with different aggravating systems causes the current recidivism system to be quite complex. This complexity affects its implementation in the field, ultimately causing confusion among law enforcement officials. Although legal observers rarely discuss the recidivism system, its application is also hindered by multiple interpretations, where some parties adhere to an intermediate recidivism system and others to a special recidivism system. The concept of justice is one of the main studies in legal science; the importance of justice in legal science makes justice the "heart" of legal studies (Marpi, 2021). The real presence of justice in the criminal justice system impacts various complex aspects, sometimes giving the impression that the legal process must conflict with the meaning of justice (Liam J. Leonard, 2022).

Additionally, the varying regulations regarding the repetition of criminal acts in each law outside the Criminal Code will also result in the difficulty of a harmonized and consistent recidivism concept. Several views support or question the existence of these non-uniform provisions. Human rights are highly upheld in Indonesia, including the guarantee of protection and fulfillment of children's rights as stated in the 1945 Constitution and several other legislative provisions based on the General Explanation of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (General Explanation of Law 35/2014). Article 1, paragraph 2 of Law Number 23 of 2002 reads, "Child Protection is all activities to guarantee and protect children and their rights to live, grow, develop, and participate optimally in accordance with human dignity and values, and to receive protection from violence and discrimination." Then, Article 1, paragraph 3 of Law Number 11 of 2012 reads, "A child is a person who is 12 years old but not yet 18 years old and is suspected of suffering physical, mental, and economic harm caused by a criminal act."

Indonesia recognizes the juvenile criminal justice system as legal protection for children. The Juvenile Criminal Justice System focuses on the protection and rehabilitation of child offenders, considering that children still have limitations compared to adults. Children require long-term protection from the state and society regarding their future. The importance of child protection is due to children being the future generation of the nation. Additionally, children are inherently weak. In this context, the Juvenile Criminal Justice System acts as an intervention against the general criminal justice system for child offenders. However, its implementation needs to meet the expected outcomes, necessitating regulations on restorative justice and diversion aimed at avoiding and distancing children from the judicial process.

Based on the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), diversion means the delegation of authority to law enforcement officials to take discretionary actions in resolving violations by children without formal proceedings, such as stopping criminal proceedings or handing them over to the community and other forms of social service activities. Diversion can be applied at all stages of the examination, intending to reduce the negative effects of children's participation in the judicial process (Rico Nur Cahyo & Irma Cahyaningtyas, 2021).

Article 5, paragraph (1) of the Juvenile Criminal Justice System Law (*SPPA Law*) indicates an obligation to prioritize a restorative justice approach. According to Muladi, restorative justice is a peaceful process involving parties affected by a criminal event, including the victims who suffer losses, with the aim of restoring and treating them as well as possible (Muladi, 2019). Mark and Ralph define restorative justice as a concept traditionally recognized by communities to resolve issues throughout history. This concept, born from traditional community values, is considered a progressive step (Muhammad Fatahillah Akbar, 2022).

Keadilan restoratif dalam pidana anak sejatinya adalah suatu proses diversi, yakni adanya keterlibatan semua pihak yang terdampak. Restorative justice in juvenile criminal cases is essentially a diversion process involving all parties involved in a particular criminal act to collaboratively address the issues arising from the crime and create obligations to make things better by involving victims, children, and the community in finding solutions. This aims at revitalization rather than retribution. In addition, imposing criminal sanctions is necessary. However, in the era of criminal law development, it is deemed irrelevant to be the primary effort (premium medium) in every criminal law matter (Nurul Isnina Syawalia Arifah Nasution, 2021). Accordingly, the idea of restorative justice represents a noble identity of Indonesian law.

According to John Braithwaite in his book "Restorative Justice and Responsive Regulation" published in 2002, restorative justice plays a crucial role in rehabilitating or healing offenders, rather than implementing a series of retributions to make the offenders suffer (Rendy Airlangga Et.al., 2023). Thus, the development of restorative justice aims to strengthen corrective penal objectives and prevent the recurrence of criminal acts (Goldi, 2020). Regarding diversion efforts, another condition is stipulated in Article 7, paragraph (2), letter b of the Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which is the absence of repeated criminal acts. This article explains that repeated criminal acts refer to crimes committed by children, whether similar or not, including those resolved through diversion.

Based on this, it can be said that Law Number 11 of 2012 on the Juvenile Criminal Justice System has not fully provided child protection and limited children's rights to resolve cases outside the court, even though the diversion process aims to remove children from the criminal justice system. This is evidenced by data recorded by the Indonesian Child Protection Commission, which states that there were 54 cases of Children in Conflict with the Law (ABH) throughout 2022.

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Based on these points, the author identifies several weaknesses in the regulation of recidivism in the Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, as follows:

1. Unclear Definition of Recidivism:

The Law Number 11 of 2012 concerning the Juvenile Criminal Justice System does not provide a clear definition of recidivism, which can lead to multiple interpretations and uncertainties in its application.

2. Limited Diversion Provisions:

Article 7, paragraph (2), letter b of the Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that diversion cannot be applied to children who commit repeated crimes. This provision is considered too narrow and rigid, as it needs to take into account other factors that may be considered for diversion.

3. Lack of Emphasis on Recidivism Prevention:

The Law Number 11 of 2012 concerning the Juvenile Criminal Justice System focuses more on the recovery and reintegration of children and less on efforts to prevent recidivism. This could result in children who have completed the juvenile justice process committing crimes again in the future.

4. Lack of Interagency Coordination:

Handling recidivism by children requires coordination among various agencies, such as law enforcement, social services, and child rehabilitation institutions. However, this interagency coordination is not yet optimal, resulting in ineffective handling of recidivism.

Essentially, there are three aspects to understand regarding criminal law:

1. Criminal Law as a Remedy Criminal law should be positioned as a remedy within society concerning existing crimes; (Barton-Crosby, 2022)

2. Law Enforcement Officers as "Doctors" Law enforcement officers should carry out their duties like "doctors" addressing societal issues;

3. Broader Context of Criminal Law Criminal law should be placed in a broader context, realistically addressing social and community aspects (Afandi, 2022). This aims to ensure that criminal acts within society are not merely seen as evil deeds but are also related to the existing social and community realities (Desideria Nyinaq & Harkirtan Kaur, 2021).

Explanation of Article 7, paragraph (2), letter b of the Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that repeated crimes in this provision refer to crimes committed by children, whether similar or dissimilar. Repetition of crimes under the Criminal Code is not generally regulated in Book I but is specifically regulated for certain groups of crimes in Books II and III. The recidivism system that imposes harsher penalties applies only to the repetition of certain types of crimes within a specific period. Differences in the types of crimes previously adjudicated with a final and binding verdict, thereby qualifying as recidivism, particularly regarding the types of crimes committed, whether regulated within the Criminal Code or outside the Criminal Code. Specifically, the Law Number 11 of 2012 concerning the Juvenile Criminal Justice System results in varied interpretations among law enforcement officers concerning the recidivism system for juvenile offenders.

As previously mentioned, the Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (*SPPA Law*) has not fully protected children and has imposed limitations on children's rights to resolve cases outside the court. This is despite the fact that the diversion process aims to remove children from the criminal justice system. This situation contradicts the principle of child protection itself, namely 'The Best Interest of the Child,' which essentially focuses on prioritizing the best interests of the child. This principle serves as a crucial reminder to all child protection instruments that there are significant considerations when making decisions regarding the future of juvenile offenders

B. Reform of the Sentencing System for Recidivist Juvenile Offenders in Law Number 1 of 2023 on the Indonesian Criminal Code (KUHP Nasional)

Recidivism is actually just one of several concepts or grounds for increased penalties in the Criminal Code. There are many opinions regarding the general basis for increased penalties in the Criminal Code. According to Leden Marpaung in his book "Principles-Theory and Practice of Criminal Law," the Criminal Code allows for increased penalties in cases of concurs and recidivism (Marpaung, 2012). onkers has also mentioned the general grounds for increased penalties (*strafverhogingsgronden*) in three categories: first, the status as a civil servant (Article 52); second, recidivism; and third, combined or concurrent offenses (Farid, 2007).

The provisions regarding recidivism in Law Number 1 of 2023 concerning the Indonesian Criminal Code (*KUHP Nasional*) are set out in Article 23, Paragraph (1) as follows:

"Recidivism occurs if any person:

a. commits another crime within 5 (five) years after serving all or part of the primary sentence imposed or after the primary sentence has been pardoned;

b. at the time of committing the crime, the obligation to serve the previously imposed primary sentence has not expired."

Article 58 of the Indonesian Criminal Code states that:

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"Aggravating factors include:

- a. Officials who commit crimes that violate specific duties of their position or commit crimes by abusing the authority, opportunity, or means given to them due to their position;
- b. the use of the national flag, national anthem, or state emblem of Indonesia when committing a crime or
- c. recidivism."

The provisions in the Indonesian Criminal Code are not significantly different from those applied in the Dutch Criminal Code (*WvS*), where increased penalties are imposed for crimes related to the abuse of authority by civil servants, extended to state officials and law enforcement officers, the use of national symbols during the commission of crimes (including the flag, national anthem, and state emblem), and recidivism.

The form of increased penalties is regulated in a separate article, namely Article 59 of the Indonesian Criminal Code, which states that: "Increased penalties may be added by one-third (1/3) of the maximum penalty threat." For example, for a crime punishable by a maximum of 6 years imprisonment, the increased penalty adds 2 years (one-third of the threat), resulting in a total of 8 years. However, this provision is limited by Article 71, Paragraph (2), letter c, which essentially states that recidivism is one reason a person may only be given a fine if the judge considers imposing only a fine for a crime punishable by less than 5 years imprisonment.

Article 112 of the Indonesian Criminal Code stipulates that diversion must be pursued for juveniles who commit crimes punishable by less than 7 (seven) years imprisonment and are not repeat offenders: "Juveniles who commit crimes punishable by less than 7 (seven) years imprisonment and are not repeat offenders must be diverted." This article reinforces the provisions of the Juvenile Criminal Justice System Law (*SPPA Law*) with the addition of the phrase "must" in the text. Article 133, Paragraph (3) of the Indonesian Criminal Code states that: "Children under the age of 14 (fourteen) years cannot be sentenced and can only be subject to measures." Article 113, Paragraph (3) provides that for fines increased due to recidivism, the additional penalties of asset confiscation or claims still apply, even if the authority to prosecute the earlier crime has lapsed due to expiration or diversion in the Juvenile Criminal Justice System.

From the provisions related to recidivism in the Indonesian Criminal Code, several conclusions can be drawn:

1. The recidivism system in the Indonesian Criminal Code follows the "Algemene Recidive" system or general recidivism system, meaning there is no longer differentiation of crime types or recidivism groupings.
2. The period during which a person can be subjected to increased penalties for recidivism is "5 (five) years" from serving all or part of the primary sentence imposed or after the primary sentence has been pardoned, or when the obligation to serve the previously imposed primary sentence has not expired.
3. Increased penalties amount to one-third (1/3) of the maximum penalty threat.
4. Imposing only fines is not allowed for recidivists of crimes punishable by less than 5 years imprisonment.
5. There is no obligation to pursue diversion for juvenile offenders.

In this context, the Indonesian Criminal Code (*KUHP Nasional*) simplifies the recidivism system compared to the Dutch Criminal Code (*WvS*). The simplification of the recidivism system or concept in the Indonesian Criminal Code aims to make it easier for law enforcement officers to implement the recidivism system. The Indonesian Criminal Code introduces a system of increased penalties for offenders who commit repeat general offenses within five years after serving all or part of the primary sentence imposed, after the primary sentence has been pardoned, or while still serving the previous sentence at the time of committing the repeat offense. In such cases, an additional one-third of the maximum penalty is added. For the recidivism system of offenses outside the Criminal Code, which are *lex specialis* in nature, synchronization with the general recidivism system in the Criminal Code is necessary. This is needed to avoid overlapping and confusion among law enforcement officers in the field. With the new recidivism concept, future law enforcement officers are expected to be more observant and strict in applying increased penalties to recidivists.

IV. CONCLUSION

Based on the previous discussion, the author draws the following conclusions in this paper:

1. The Dutch Criminal Code (*WvS*) does not generally regulate recidivism in Book I. However, recidivism is specifically regulated for certain types of offenses in Books II and III. The recidivism system, which imposes increased penalties, only applies to repeat offenses of specific types committed within a certain period. On the other hand, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (*Undang-Undang Sistem Peradilan Pidana Anak*) regulates the resolution of cases involving children in conflict with the law (ABH) through restorative justice and diversion. However, in relation to diversion efforts, there is another condition for diversion as stipulated in Article 7, Paragraph (2), Letter B of the Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which states that diversion cannot be carried out for repeat offenses. This article explains that recidivism in this provision refers to offenses committed by children, whether they are of the same type or different types, including those resolved through diversion. The regulation of recidivism in the Law Number 11 of 2012 concerning the Juvenile Criminal Justice System still has some weaknesses that need improvement, including:

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The Law Number 11 of 2012 concerning the Juvenile Criminal Justice System does not provide a clear definition of recidivism, leading to multiple interpretations and uncertainty in its application. The limited diversion provision in Article 7, Paragraph (2), letter b of the Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which states that diversion cannot be carried out for children who commit repeat offenses, is considered too narrow and rigid as it does not consider other factors that may be relevant for diversion. The Law Number 11 of 2012 concerning the Juvenile Criminal Justice System focuses more on the recovery and reintegration of children and less on preventing recidivism, which may result in children who have completed the juvenile justice process committing offenses again in the future.

2. There have been changes in the concept of recidivism in the Indonesian Criminal Code (*KUHP Nasional*). Whereas the Dutch Criminal Code (*WvS*), which previously applied a specific recidivism concept with an intermediate system, will be changed to the "Algemene Recidive" or general recidivism system, which means no longer distinguishing between types of repeated crimes or groups of repeated crimes. Article 112 of the Indonesian Criminal Code stipulates the obligation of diversion efforts towards children as follows: "A child who commits a criminal act punishable by imprisonment of less than 7 (seven) years and is not a repeat offender must be diverted." The existence of this article reaffirms the provisions in the Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (*SPPA Law*) with the addition of the word "must" in the article's text. Furthermore, Article 133 paragraph (3) of the Indonesian Criminal Code states that: "Children under the age of 14 (fourteen) cannot be punished and can only be subject to measures." Article 113 paragraph (3) regulates that in the case of fines that are increased due to recidivism, the imposition of aggravation in the form of additional penalties for confiscating goods or claims remains applicable, even if the prosecutorial authority over the earlier committed crimes is extinguished due to reasons such as expiration or diversion in the Juvenile Justice System.

V. RECOMMENDATIONS

Based on the conclusions drawn, the following recommendations are proposed by the author:

1. Harmonization of Recidivism Rules and Implementation of Restorative Justice It is advisable for the government to harmonize recidivism rules and implement restorative justice to minimize recidivism and protect children's rights. This is necessary because the recidivism system in Indonesia is considered complex and only partially effective in preventing repeated offenses.
2. Improvement of Recidivism Regulations in the Child Criminal Justice System Act (*SPPA Law*) The government is encouraged to improve recidivism regulations in the UU SPPA, which currently have several weaknesses. Enhancing these regulations can increase the effectiveness of preventing recidivism among children.

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