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THE 2ND INTERNATIONAL CONFERENCE AND CALL FOR PAPER



Our Speaker



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 Thammasat University



Prof. Yuzuru Shimada
 Nagoya University



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Assoc. Prof. Dr. Hj. Sri Kusriyah
 Sultan Agung Islamic University

*Democracy In Digital Era : Law,
 Governance, Sosial And Economic
 Perspective In Asia, Australia And
 Dutch*



September 23-24, 2020
 Imam Assafel Buiding, Faculty of Law, Unissula
 Kaligawe Rd KM 4 Semarang, Central Java

THE 2ND INTERNATIONAL CONFERENCE AND CALL FOR PAPER

THEME : DEMOCRACY IN DIGITAL ERA: LAW, GOVERNANCE, SOCIAL AND ECONOMIC PERSPECTIVE IN ASIA, AUSTRALIA AND DUTCH

Keywords: *Digital Media, Political and Governance Institutions, Electoral Processes, People Representation, Digital Disinformation, Democracy, Digital Economic, Social issue*



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Melissa Crouch
UNSW Australia



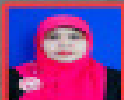
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This agenda aims to provide insights in theory and practice:

1. To exchange and discuss views on the most important issues on Democracy in Digital Era: Law, Governance, Social and Economic Perspective in Asia, Australia and Dutch and its consequences to Law in countries.
2. To discuss the challenges and practical aspect of Democracy and Governance in a Digital Era.

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KATA PENGANTAR

Bismillahirrohmanirrohim

Assalamu'alaikum Wr. Wb.

Puji syukur kehadiran Allah S.W.T, Tuhan Semesta Alam Yang Maha Esa. Alhamdulillah, sebagai ucapan syukur kehadiran Allah Subhanahu Wata'ala kami dapat menyelenggarakan The 6nd Proceeding International Conference And Call Paper dengan tema "*Democracy In Digital Era : Law, Governance, Sosial And Economic Perspective In Asia, Australia And Dutch*" terselenggara dengan baik. Pemilihan tema tersebut dipilih karena pada era searang ini kita dihadapkan dengan era industri 4.0, dimana para kandidat doktor dituntut untuk bisa menyesuaikan dengan perkembangan global dan meningkatkan kompetensi keilmuan serta kemampuan.

Pada seminar ini telah dipresentasikan hasil penelitian dosen dan mahasiswa yang diikuti oleh peneliti-peneliti dari berbagai universitas yang telah membahas berbagai keilmuan Hukum dan Humaniora.

Sesungguhnya keberhasilan dalam mencapai tujuan pendidikan yang dicita-citakan sangat tergantung pada sikap mental, partisipasi serta disiplin setiap unsur yang terlibat dalam proses belajar mengajar. Mudah-mudahan seminar Internasional yang sederhana ini dapat memberi sumbangsih dalam mencerdaskan bangsa Indonesia serta semoga Allah SWT selalu menyertakan ridho-Nya. Amin. Akhir kata, kami mengucapkan terima kasih kepada pimpinan Universitas Islam Sultan Agung, pimpinan fakultas Hukum Unissuala, pemakalah, editor dan serta pihak-pihak yang telah membantu terselenggaranya seminar ini dengan lancar tanpa hambatan suatu apapun.

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Criminal System Of Children As A Criminal Perspective Of Children's Criminal Judgment System

Feri vernando situngkir

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Abstract

This study describes the principle of legal protection for children as criminal offenders in the Law of the Republic of Indonesia Number 11 of 2012 concerning the Criminal Justice System for Children referring to the Convention on the Rights of the Child, and this has also covered a large part of it. the principle of child protection for criminals. The research method used in this research is normative legal research because it includes the scope of legal dogmatics that studies or examines legal rules. This research finds first, that the provisions for sanctions against children are in accordance with Law Number 35 of 2014 concerning amendments to the Nbo law. 23 of 2002 concerning Child Protection which states that imprisonment can be applied to children if there are no more recent efforts, and carried out separately from adult prisons. Second, child protection efforts are carried out by imposing restorative justice and diversion if they meet the requirements of Law Number 11 of 2012 concerning the Child Criminal Justice System.

Keywords : Criminal System, Criminal Justice System, Child Protection

A. Background

Deviation of behavior committed by adolescents in the sense of child delinquency (Juvenile Delinquency) is an act or action carried out by an immature person who deliberately violates the law and is aware by the child himself that his / her act can be subject to sanctions or punishment (criminal).

International law has established standards of treatment that countries should and / or can refer to in dealing with children in conflict with the law. International law requires states to provide legal protection and respect for children who come into contact with the law through the development of laws, procedures, powers, and institutions (institutions).¹

Article 1 point (1) Law Number 3 of 1997 concerning juvenile court states that a child is a person who in the case of a child has reached the age of 8 but has not yet reached 18 years of age and has not yet married. The provisions of this article are subject to exemption if a person has not reached 18 years but has been married / married, then the child is still considered an adult even though the age has not reached 18 years.²

1. Inter-Parliamentary Union & UNICEF, Improving the Protection of Children in Conflict with the Law in South Asia: A regional parliamentary guide on juvenile justice, UNICEF ROSA, 2006

2. Law Number 3 of 1997 concerning Juvenile Court, State Gazette of the Republic of Indonesia Number 3 of 1997.

According to Law No. 11 of 2012 concerning the Criminal Justice System for Children Article 1 Paragraph 3, a child in conflict with the law, hereinafter referred to as a child, is a child who has reached the age of 12 (twelve) years, but is not yet 18 (eighteen) years old. committing a criminal act.³

Article 27 paragraph (1) of the 1945 Constitution states that all citizens have the same position in law and government and are obliged to uphold the law and government and there is no exception. However, for a child as a criminal offender, special protection applies with the aim of protecting the child's interests and the child's future.⁴

It is also explained in article 1 paragraph (2) of Law Number 23 of 2002 concerning child protection, that "child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with their dignity. and human dignity, and receive protection from violence and discrimination."⁵

Every child has the right to freedom according to law. The arrest, detention, or sanction of imprisonment for children is only carried out if in accordance with the applicable law it can only be done as a last resort. Child legal protection is an effort to protect the law against various freedoms and human rights of children.⁶ Forms of legal protection for children, such as assistance from community officers, shorter detention periods compared to adults, facilities by law enforcement officers specifically for children, including separation of child prisoners from adult detention are one form of legal protection for children.

Criminal acts committed by children have always drawn criticism against law enforcers who are considered by many to not heed the procedures for handling children who have problems with the law, and there is an impression that they are often treated as adults in "small forms" who commit crimes.

The criminal system, which until now sometimes still treats children who are involved as perpetrators of criminal acts, like perpetrators of criminal acts committed by adults. Children are placed in a position as a criminal who deserves the same punishment as adults and applies in Indonesia.

Criminalization itself is more oriented towards individual perpetrators or commonly referred to as individual responsibility (Individual responsibility) where the perpetrator is seen as an individual who is able to take full responsibility for his actions. Meanwhile, children are individuals who are not fully aware of their actions or deeds, this is because children are immature individuals in thinking. Therefore, by treating the child the same as an adult, it is feared that the child will quickly imitate the treatment of those who are close to him.

Meanwhile, in Law No. 11 of 2012, the principles adopted in the Juvenile Justice System include: the best interests of the child; respect for children's opinions; Child survival and development; coaching and mentoring of children; deprivation of liberty and punishment as a last resort; and avoidance of retaliation.

Article 3 of the Law states, every child in the criminal justice process has the right to include: a. Treated humanely with attention to the needs according to age; b. Separated from adults; c. Doing recreational activities; d. Free from torture, punishment or other cruel, inhuman and degrading treatment of dignity and status; e. Not sentenced to death or life imprisonment; and f. Not arrested, detained or imprisoned, except as a last resort and for the shortest time.

The Juvenile Justice System is also obliged to prioritize the Restorative Justice approach, and it is

3. Law No. 11 of 2012 concerning the Criminal Justice System for Children, State Gazette of the Republic of Indonesia of 2012 Number 153

4. 1945 Constitution

5. Law Number 23 of 2002 concerning Child Protection, State Gazette of the Republic of Indonesia Number 109 of 2002

6. Barda Nawawi Arif, Beberapa Aspek Kebijaksanaan penegakan dan pengembangan Hukum pidana, PT Citra Aditya Bagti, Bandung 1998, p. 153

obligatory to seek diversion with the aim of achieving peace between the victim and the child; resolving cases of children outside the judicial process; resolving cases of children outside the judicial process; prevent children from being deprived of liberty; encourage the community to participate; and instill a sense of responsibility in children.

Based on the background that has been described, the main problem in this paper is how First, the implementation of the Child Criminal System is linked to Law Number 11 of 2012 concerning the Criminal Justice System for Children and in terms of Law Number 23 of 2002 concerning Child Protection? Second, efforts to protect children's rights as criminal offenders according to Law Number 11 of 2012 concerning the Child Criminal Justice System and in terms of Law Number 23 of 2002 concerning Child Protection.

B. Research methods

The research method used in this paper is the normative juridical method which is carried out through a literature study that examines secondary data in the form of laws and regulations relating to the criminal system of children, and child protection laws as well as research results, and other references.

This study uses a type of normative legal research because the provisions regarding sanctions against children in conflict with the law as an alternative means of criminal loss of independence have not been explicitly regulated regarding its implementation in the Juvenile Criminal Justice System Law and the existence of vague norms and norms conflict horizontally in its regulation. Secondary data is data obtained from library materials.⁷Secondary data in this study were obtained from primary and tertiary legal materials. The meaning of the three legal materials in this research includes books (including dictionaries) and various other sources such as: basic regulations and laws and regulations relating to children's rights to play and public green open spaces, articles, scientific magazines, letters news, and unpublished data / sources, materials from the internet, and other materials related to the title of this research.

C. Discussion

1. Purpose and Guidelines for Criminalization of Children

The best punishment for children in criminal justice is not imprisonment, but compensation according to the seriousness of the crime. "Compensation in question is a sanction given by the criminal justice system / court which requires the perpetrator to pay a sum of money or work, either directly or as a substitute".⁸Criminal law for children as regulated in Law no. 3 of 1997 regarding the Juvenile Court is considered not to provide protection for children in conflict with the law. Therefore there needs to be changes and reforms. The objectives and rationale of juvenile justice cannot be separated from the main objective of realizing child welfare which is basically an integral part of social welfare.

Talking about criminal matters certainly cannot be separated from talking about punishment. According to Prof. Soedarto said that:

"The word punishment is synonymous with the term" condemnation ". Punishment itself comes from the word "law", so it can be interpreted as establishing a law or deciding on the punishment (brechten). Determining this punishment has a very strong meaning, not only in the field of criminal law but also in other areas of law. Therefore, the term must be narrowed down to mean that is punishment in a criminal case which is often synonymous with conviction or giving or imposing punishment by a judge. "⁹

7. Ibid. P. 12

8. Burt Galaway and Joe Hudson. Offender Restitution in Theory and Actions, Lexington: Mass eath, 1978, p. 1.

9. Laminating. Op.cit, p. 49.

2. Application of Criminal Sanctions Against Children as Perpetrators of Crimes

Child criminal justice creates child welfare, so that children are tried separately. All activities carried out in the Juvenile Criminal Court, should be carried out by Child Investigators, Child Public Prosecutors, Child Judges or Child Prison officers, based on principles for the welfare of children. Judges impose crimes or actions intended to provide the best for, without sacrificing the interests of the community and upholding the rule of law. Criminal sanctions imposed on children are based on truth, justice and the welfare of the child.

Juvenile Criminal Justice, basically, is also to make corrections, rehabilitation, so that sooner or later, children can return to normal community life and not to end their hopes and future potential. Imposing a crime or action is an action that must be accounted for and can benefit the child. Every time the execution of a crime or action is taken not to cause victims, suffering, mental, physical and social harm. To prevent undesirable consequences that are detrimental in nature, it is necessary to pay attention to the ethical basis for the punishment, namely justice as the only basis for punishment, every act of punishment is judged not only based on the nature of justice, but also the nature of harmony it will achieve, because it is in harmony. is also reflected in justice,¹⁰

Judges may not impose cumulative sentences on the defendant, meaning that crimes and actions cannot be imposed at the same time. However, in the case of naughty children, the principal and additional crimes can be imposed at the same time, for example imprisonment or compensation. In imposing a crime or action, the judge must pay attention to the severity of the criminal act or the delinquency committed by the child. The judge is obliged to consider the condition of the child, the household condition, the parents / guardians / foster parents, the relationship of family members, the condition of the environment, and the Community Advisor's Report.¹¹ Gradually, the types of sanctions for children are regulated by the provisions of Article 22-32 of Law Number: 3 and can be in the form of crimes or actions. If it is further detailed, the said punishment is the main Criminal and Additional Criminal. The main criminal consists of imprisonment; Criminal Cage: V; Criminal fines; Additional Criminal Supervision Crime consists of confiscation of certain goods. Payment of compensation. Actions that can be imposed on a naughty child are: Returning to their parents, guardians, or foster parents; Submit to the State to take part in education, development and job training; Submit to the Ministry of Social Affairs, or social organizations engaged in education, coaching and job training.

In principle, identical to the General Criminal Law (*Ius Commune*), the Juvenile Court only recognizes the imposition of 1 (one) principal crime. Strictly speaking, the commutation of 2 (two) principal crimes was composed. Concretely, against a naughty child who commits a criminal act (Article 1 number 2 letter a Law 3/1997) Judges can impose one of the main crimes or actions while against children who commit acts that are declared prohibited by children, both according to statutory regulations and according to other legal regulations that live and apply in the community concerned (Article 1 paragraph (2) letter b Law 3/1997) Judges can only impose actions (Article 25 paragraph (1), (2) Law 3/1997. crimes or actions that can be imposed on the child, The judge shall pay attention to the severity of the criminal act or delinquency committed by the child concerned. The judge is also obliged to pay attention to the condition of the child, household, parent, guardian or foster parent, the relationship between family members and the environment. Likewise, the Judge is obliged to pay attention to the Community Advisor report.¹²

3. Determination of sanctions against children who become perpetrators of crimes

10. Maidin Gultom, *Perlindungan Anak dalam Sistem Peradilan Pidana Anak di Indonesia*. Bandung . Refika Aditama., 2008, p. 124

11. *Ibid.* p. 125

12. Lilik Mulyadi. *Pengadilan Anak di Indonesia dan Teori, Praktik dan Permasalahannya*. Bandung. Mandar Maju. 2005 p. 133 Juvenile Court Law Number 3 of 1997

Above, the definition of a child in conflict with the law has been described as stated in Article 1 point 2. However, the law does not explicitly define the definition of a criminal act or delinquency committed by a child.

In the explanation of the Republic of Indonesia Law Number 11 of 2012 concerning the Criminal Justice System for Children, Paragraph 8 of the General Section states that from cases that arise, there are times when children are in the status of witnesses and / or victims so that the Child Victims and / or Child Witnesses are also regulated in this Law. Specifically, sanctions against children are determined based on differences in the age of the child, namely children who are less than 12 (twelve) years old are only subject to action, while for children who have reached the age of 12 (twelve) to 18 (eighteen) years can be subject to action and criminal.

This formulation of Criminal Sanctions and Action Sanctions shows that Law No.11 / 2012 concerning the Juvenile Criminal Justice System has adopted what is known as the Double Track System. In other words, this law has explicitly regulated the types of criminal sanctions and sanctions for action at once. According to Muladi (2002)¹³, the use of a two-way system (Zweipurigkeit) is a consequence of adopting the Neo Classical School.¹⁴ The thought that the traditional approach as if it were a system of action was only imposed on people who cannot afford it should be abandoned. In the development of positive criminal law in Indonesia, it has been recognized that there are sanctions other than criminal sanctions, even though the Criminal Code adheres to a Single Track System which only regulates one type, namely sanctions (Article 10 of the Criminal Code). The threat of sanctions for action in Law 11/2012 indicates that there are other means besides penalties as a means of overcoming crime.

Actually at the practical level, the difference between crime and action is often somewhat vague, but at the basic idea level the two have fundamental differences. Both come from different basic ideas. Criminal sanctions are based on the basic idea of “Why are convicted?”; while sanctions for action start from the basic idea; “What is the punishment for?”. In other words, criminal sanctions are actually reactive to the perpetrator of the act. If the focus of criminal sanctions is on the act of one person through the imposition of suffering (so that the person becomes a deterrent); then the focus of action sanctions is directed at efforts to help him change.

It is clear that criminal sanctions emphasize the element of retaliation (reward). It is suffering that is deliberately given to an offender. Meanwhile, sanctions for action originate from the basic idea of protecting the community and guiding or caring for the maker. Or as stated by JE Jokers (1987), that criminal sanctions are focused on the crimes applied to the crimes committed, while the sanctions for action have a social purpose.¹⁵

Based on the objectives, criminal sanctions and action sanctions also start from different basic ideas. Criminal sanctions aim at giving special suffering (bijzonder leed) to the offender so that he feels the consequences of his actions. Apart from being aimed at the imposition of suffering to the perpetrator, criminal sanctions are also a form of condemnation of the perpetrators' actions. Thus, the difference in principle between criminal sanctions and action sanctions lies in the presence or absence of an element of reproach, not whether or not there is an element of suffering from an action sanction whose purpose is more educational. If viewed from the point of view of criminal theories, the sanctions for action are sanctions that

13. Muladi, Op. Cit, p. 156

14. In the Neo Classical flow, trying to take advantage of the advantages of the two previous schools (Classical and Modern schools) and leave the existing weaknesses. The principle of retaliation is corrected by a theory of error that relies on age, aptology, and environmental influences. The reasons for aggravating and aggravating punishment were developed; expert testimony (expert testimony) highlighted; the arrangement of the two track system (Double Track System).

15. J.E. Jonkers, 1987, Buku Pedoman Hukum Pidana Hindia Belanda, Bina Aksara, Jakarta, p. 350

do not retaliate. It is solely aimed at special prevention, namely protecting society from threats that can harm the interests of the community.

The difference in the orientation of the basic idea of the two types of sanctions is actually related to the philosophical understanding that underpins it, namely the philosophy of indeterminism as a source of ideas for criminal sanctions and the philosophy of determinism as a source of sanctions for action.¹⁶ Furthermore, it is related to sanctions for children in conflict with the law in the form of criminal sanctions, consisting of main and additional crimes. For basic crimes, there are 5 (five) types as stipulated in Article 71 paragraph (1), namely: warning crimes; criminal with conditions; coaching outside the institution; society service; or supervision; work training; coaching in institutions; jail.

Meanwhile, regarding additional penalties based on Article 71 paragraph (2), there are two types, namely: confiscation of profits obtained from criminal acts; or; fulfillment of customary obligations; If the material law is subject to cumulative punishment in the form of imprisonment and a fine, the criminal penalty is replaced by a criminal work training imposed on the child, it is prohibited to violate the dignity of the child.

Further provisions regarding the forms and procedures for the execution of the crime as referred to in paragraph (1), paragraph (2), and paragraph (3) shall be regulated by a Government Regulation. When compared with the provisions of Article 10 of the Criminal Code, which contains the principal crimes in the form of: capital punishment; imprisonment; criminal fine; V; criminal fine; criminal closure.

So specifically for the death penalty, the Juvenile Criminal Justice System Law does not require that a child who has committed delinquency is threatened and sentenced to the main punishment in the form of capital punishment. As it is known, examining Children in Conflict with the Law is motivated by the philosophy that it is solely for the benefit of the child. This means that children who are in fact the next generation of the nation do not want to be sentenced to death, because children really need guidance and protection in order to ensure growth that supports their physical, mental and social development. Therefore, if the death penalty is punishable, the efforts for guidance and protection will never be given while the age that a child will live is still very long. The same is the case with life imprisonment, which means that the punishment will be carried out throughout the child's life in the correctional facility. This is not wanted by the Law on the Criminal Justice System for Children.

In connection with the foregoing, the Law on the Criminal Justice System for Children affirms that for children who are in conflict with the law who have committed a criminal offense punishable by death or life imprisonment, the imprisonment that can be imposed on the child is a maximum of 10 (ten) years. ¹⁷

Of the five main crimes designated for children in conflict with the law, supervision is a new type of crime. What is meant by supervision punishment is a punishment specifically imposed on children, namely the supervision carried out by the Public Prosecutor on the behavior of the child in their daily life in the child's house, and the provision of guidance carried out by the Community Advisor.¹⁸ So, the punishment of supervision is not a sentence of imprisonment or imprisonment which is carried out in the child's house, but in the form of supervision of the convicted person for a certain period as determined by a court decision.

Regarding additional penalties, Article 10 of the Criminal Code formulates three types, namely: revocation of certain rights; confiscation of certain items and announcement of the judge's decision If the provisions on additional penalties in the Criminal Code are compared with the provisions in the Juvenile

16. M. Sholehuddin, Op. Cit, p. 32-33.

17. Nashriana, Op. Cit

18. See the explanation of Article 84 of Law Number 11 of 2012 on the Juvenile Criminal Justice System

Criminal Justice System Law, it shows that the Juvenile Criminal Justice System Law does not want children who commit delinquency to be subject to additional penalties in the form of revocation of certain rights, in addition to also the announcement of the judge's decision.

With regard to additional penalties in the form of revocation of certain rights,¹⁹ it should not be applied to children. Children whose rights are prioritized more than their existing obligations will be opposed to the rights that they should have as a child. As an example of his right to education, if this right is revoked, then automatically the child as the nation's next generation will become stupid, which is something that is not desired by all. Moreover, it is concerned with the State's Goal, namely to educate the nation's life in achieving the ultimate goal, namely the welfare of the community, including children.

With regard to additional penalties in the form of deprivation of profits from criminal acts, the Juvenile Criminal Justice System Law does not explain this further. This means that the applicable provisions are returned to the Criminal Code as general law. Article 39 of the Criminal Code states that:

- (1) Items belonging to the convicted person, which were obtained from a crime or deliberately used to commit a crime, can be confiscated;
- (2) If sentenced for committing a crime without intentionally or because of committing an offense, a sentence of seizure can also be imposed in certain cases as stipulated by law;
- (3) Confiscation can be carried out against the guilty person who is handed over to the government, but only limited to the goods that have been confiscated.

As a comparison, in *Wvs Nederland* which included a new chapter (Chapter VIII A) related to special provisions for children in 1961 based on Law Number 9 November 1961, S. 402 and then underwent several changes, most recently by Law No. 7 July 1994. 528, formulating that the types of confiscation of goods (Article 33a) are:

1. Items that are owned by the convicted person or that can be used by him as a means of committing a criminal act;
2. Items related to the commission of a criminal act;
3. Items used to commit or prepare for a criminal act;
4. Items used to damage the results of a crime investigation;
5. Goods produced or intended / expected;
6. *Right in brake* and right in personam related to items 1-5.²⁰

From what has been regulated in the Dutch Criminal Code, it appears that the provisions in the Dutch Criminal Code have specifically regulated the additional punishment of confiscation of certain items for children when compared to the provisions stipulated in the Juvenile Criminal Justice System Law.

Furthermore, regarding additional penalties in the form of fulfilling customary obligations, in the Law on the Criminal Justice System for Children what is meant by "customary obligations" are fines or actions that must be fulfilled based on local customary norms that still respect the dignity of the child and

19. In Article 35 paragraph (1) of the Criminal Code, the rights that can be revoked are:

1. the right to occupy certain positions;
2. the right to work for the Armed Forces;
3. the right to vote and be elected in elections held according to general regulations;
4. the right to become an advisor or proxy appointed by a judge, the right to become a guardian, supervisor, supervisor, or supervisor of his own children;
5. parental rights, guardianship rights, and custody of their own children;
6. the right to do certain jobs

20. Barda Nawawi Arief, Op. Cit, p. 14. See also Barda Nawawi Arief, *Beberapa Masalah Perbandingan Hukum Pidana*, Raja Grafindo Persada, Jakarta., p. 30.

do not endanger the physical and mental health of the child. .

In the draft KUHP 2005, apart from regulating basic crimes, it also regulates additional crimes and special crimes. With respect to additional penalties, it is planned to impose this compensation payment penalty, as well as additional additional penalties in the form of fulfillment of customary obligations and 3 (types) of additional crimes that are the same as the Criminal Code. This means that the Juvenile Criminal Justice System Law has previously issued provisions related to additional crimes in the form of compensation, it's just that there is no further explanation about this and the Government Regulation implied by the law has not been published.

The Juvenile Criminal Justice System Law also does not want children who have committed delinquency to be subject to additional punishment in the form of Announcement of Judge Decisions. This is indeed justified, because even though a child has been sentenced to a criminal offense which of course will affect his physical, social and mental development, will add to his suffering if it is added to the announcement of the verdict that has been passed by the judge which will then be known by the wider community including friends. -her friend. This is what is undesirable for a child, even though he has committed a crime.

The second type of punishment for children in conflict with the law is in the form of action. Based on Article 82 paragraph (1) of the Juvenile Criminal Justice System Law, there are three kinds of sanctions, namely: return to parents / guardians; surrender to someone; care in a mental hospital; treatment at LPKS; the obligation to attend formal education and / or training held by the government or private bodies; revocation of driving license; and / or corrections due to criminal acts.

If a child in conflict with the law, according to a court decision, is returned to the parent, guardian, or someone, it does not mean that the child is fully under the supervision of the parent, but the child in question is still under the supervision and guidance of a social adviser. With the law, if the judge is of the opinion that a parent, guardian, or someone is unable to provide better education and guidance, then the judge can determine that the child is placed in a Child Penitentiary (as a civilian) to attend education, guidance and work training. Job training is intended to provide skills in carpentry, agriculture, workshop, make-up, and so on.

In principle, education, coaching and work training are carried out by the Government at the Child Penitentiary or the Ministry of Social Affairs; however, in the interest of the child, the judge may determine that the child is handed over to social organizations, such as: Islamic boarding schools, social institutions and other social institutions with due observance of the child's religion.

Imposing legal sanctions in the form of: (a) returning to the parent / guardian; (b) delivery to someone; (c) care in a mental hospital; (d) treatment at LPKS; (e) the obligation to attend formal education and / or training held by the government or private bodies; (f) revocation of driving license; and / or (g) corrections due to criminal acts. referred to in paragraph (1) letter d, letter e, and letter f are subject to a maximum of 1 (one) year, in paragraph (1) can be filed by the Public Prosecutor in his prosecution, unless a criminal act is punishable by imprisonment of at least 7 (seven) year. (2) Further provisions regarding the actions referred to in paragraph (1) shall be regulated in a Government Regulation. (Article 82 paragraph (2, 3, 4) Law 11/2012). What is meant by surrender to someone is the handover to an adult who is deemed competent, of good behavior and responsible, by the judge and trusted by the child. Referred to as treatment at a mental hospital is an action given to a child who at the time of committing a criminal act suffers from a mental illness or mental illness, while what is meant by "repair due to a crime", for example, is repairing the damage caused by the criminal act and restoring the situation in accordance with before it occurred. criminal act.

The purpose of child protection contained in Law No. 23 of 2002 concerning Child Protection is to ensure the fulfillment of children's rights so that they can live, grow, develop and participate optimally in accordance with human nature and dignity, and receive protection from violence and discrimination for the sake of the realization of Indonesian children with quality, noble character, and prosper. The Child Penitentiary is one of the institutions used to educate children who are serving imprisonment. In providing legal protection to children who are being deprived of their liberty (children who are serving a sentence), what can be done is to fulfill the rights of the children who are currently serving the sentence. Based on an interview with Mr Ketut Kawidana,

D. Closing

1. Conclusion

- a) The policy of the criminal system against children of criminal offenders in Indonesia in the perspective of Law of the Republic of Indonesia Number 11 of 2012 concerning the Criminal Justice System for Children can be carried out by means of Penal or Non-Penal.
- b) The Penal System Policy by means of Penal in Law Number 11 of 2012 is carried out by implementing criminal legal measures, namely through the process of investigation, prosecution, trial in court, and guidance in the Institution. The policy of overcoming crime by means of penal means in Law Number 11 of 2012 can only be applied to Offenders who are 12 (twelve) years old but have not reached the age of 18 (eighteen) years, but children who can be detained for their actions is a child who is 14 (fourteen) years old and the act constitutes an act which is punishable by imprisonment of 7 years or more.

2. Suggestion

- a) The policy on the criminalization system for children who are perpetrators of crime is an important part of legal protection for children, therefore the government must take systematic efforts in handling the problem of children who are perpetrators of crimes. Involving parties related to the child's psychiatric, social services, and education offices.
- b) Efforts that must be put forward in handling the problem of children as perpetrators of criminal acts are to prioritize aspects of children's problems in the future, therefore the restorative justice system takes precedence. But it must also be seen in the deterrent aspect of children, by providing opportunities for children's growth and development properly.

REFERENCES

- Abdussalam, *Hukum Perlindungan Anak*, Restu Agung, Jakarta, 2007
- Abdul Hakim, *Garuda Nusantara* dalam bukunya Maidin Gultom, *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia*, Refika Aditama, Bandung, 2008.
- Barda Nawawi Arif, *Beberapa Aspek Kebijaksanaan penegakan dan pengembangan Hukum pidana*, PT Citra Aditya Bagti, Bandung 1998.
- Burt Galaway and Joe Hudson, *Offender Restituron in Theory and Actions Lexington: Mass eath*, 1978.
- Inter-Parliamentary Union & UNICEF, *Improving the Protection of Children in Conflict with the Law in South Asia: A regional parliamentary guide on juvenile justice*, UNICEF ROSA, 2006.
- J.E. Jonkers, *Buku Pedoman Hukum Pidana Hindia Belanda*, Bina Aksara, Jakarta 1987.
- Lilik Mulyadi, *Pengadilan Anak di Indonesia dan Teori, Praktik dan Permasalahannya*. Bandung. Mandar Maju.2005 hlm. 133 Undang-undang Pengadilan Anak Nomor 3 Tahun 1997.
- Maidin Gultom, *Perlindungan Anak dalam Sistem Peradilan Pidana Anak diIndonesia*. Bandung. Refika Aditama. Cetakan I, 2008.
- Maidin Gultom, *Perlindungan Hukum Terhadap Anak*. Bandung PT Refika Aditama2010.
- Soemitro, Ronny Hanitijo, *Metodologi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta, 1994.
- Shanty Dellyana, *Wanita Dan Anak Di Mata Hukum*, Liberty, Yogyakarta, 1988,