



# THE 3<sup>rd</sup> INTERNATIONAL CONFERENCE AND CALL FOR PAPER

“Legal Development in Various Countries”



**IMAM AS SYAFEI BUILDING**  
Faculty of Law, Sultan Agung Islamic University  
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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## **The 3<sup>rd</sup> PROCEEDING**

“Legal Development in Various Countries”

Reviewer:

Prof. Dr. H. Gunarto, S.H., S.E., Akt., M.Hum

Dr. Hj. Anis Mashdurohatun, S.H., M.Hum

Prof. Henning Glaser

Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM

Prof. Shimada Yuzuru

Prof. Associate Dr. Dr. Ahmad Zaharudin Sani

Editor:

Dr. Amin Purnawan., S.H., CN., M.Hum

Dr. Hj. Widayati., S.H., M.H

Dr. Hj. Sri Endah Wahyuningsih, S.H., M.Hum

Dr. H. Ahmad Khisni., S.H., M.H

M. Abdul Hadi., SE

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## INFORMATION OF THE CONFERENCE AND CALL PAPER

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**UNISSULA**  
SULTAN AGUNG ISLAMIC UNIVERSITY

**Welcome to Participants on International Conference**

**“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”**

*This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. And focusing on the development of law in both developed and developing countries and its role in shaping a good future.*

**KEYNOTE SPEAKER:**  
**Prof. Henning Glaser**  
Thammasat University, Thailand

**IMAM AS SYAFEI BUILDING**  
Faculty of Law, Sultan Agung Islamic University  
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

**SPEAKERS :**

1. Prof. Shimada Yuzuru  
Nagoya University, Japan
2. Prof. Dr. Ruzian Markom  
Universitas Kebangsaan Malaysia, Malaysia
3. Prof. Dr. I Gusti Ayu Rachmi, S.H., M.M  
Sebelas Maret University, Indonesia
4. Assoc Prof. Dr. Ahmad Zaharuddin S.  
Universitas Utara Malaysia, Malaysia
5. Dr. Anis Mashdurohatus, S.H., M.Hum  
Sultan Agung Islamic University, Indonesia

Prof. Shimada Yuzuru Prof. Dr. Ruzian Markom Prof. Dr. I Gusti Ayu Rachmi, S.H., M.M  
Assoc Prof. Dr. Ahmad Zaharuddin S., LL.M Dr. Anis Mashdurohatus, S.H., M.Hum

Indonesia, September 05<sup>th</sup> 2017

Organized by : Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang-Indonesia

**WORLD CLASS ISLAMIC UNIVERSITY**  
**UNISSULA**  
SULTAN AGUNG ISLAMIC UNIVERSITY

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Faculty of Law, Sorbonne University
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Universitas Kebangsaan Malaysia, Malaysia
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Universitas Utara Malaysia, Malaysia
6. Dr. Anis Mashdurohatus, S.H., M.Hum  
Sultan Agung Islamic University, Indonesia

Prof. Henning Glaser Prof. Shimada Yuzuru Dr. Hilaire Tegnau, LL.M. Prof. Dr. Ruzian Markom  
Prof. Dr. I Gusti Ayu Rachmi, S.H., M.M Assoc Prof. Dr. Ahmad Zaharuddin S., LL.M Dr. Anis Mashdurohatus, S.H., M.Hum

**5**  
September  
2017

**FACULTY OF LAW**  
Sultan Agung Islamic University

Organized by : **Faculty of Law UNISSULA**  
Semarang-Indonesia

This Conference And Call Paper was held by the Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on:

Day: Tuesday

Date : September 5<sup>th</sup> 2017

Time : 08:00 - 15:00 pm

Place : Imam AsSyafei Building 3<sup>rd</sup> Floor

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

Jl. Raya Kaligawe Km. 4 PO. BOX.1054 Telp. (024) 6583584 Fax.(024)6582455  
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“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”**

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## PREFACE

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Assalamu'alaikum, Wr. Wb

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnan, Ph.D from Sorbone University, Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM from Sebelas Maret University, Dr. Zaharudin from Universiti Utara Malaysia, and Dr. Anis Mashdurohatun, S.H., M.Hum from Sultan Agung Islamic University.**

This is our third International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner to be discussed as guidelines to exchange and discuss views on the most important recent on Legal Development happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fourth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, September 5<sup>th</sup> 2017

**Chairman of the Committee,**



**Dr. Anis Mashdurohatun, S.H., M.Hum**  
**NIDN : 06-02105-7002**

## **GREETING FROM THE DEAN OF FACULTY OF LAW**

---

*As-salamu'alaikum Wr. Wb.*

Thank to Allah SWT is an absolute act that we must say after conducting the International Conference and Call for Paper by theme: “**Legal Development in Various Countries**” which is held by Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on September 5<sup>th</sup> 2017.

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. In the end, as in contract theories, no monist view of legal development possesses the explanatory power needed to understand how law has come to be and where it may take us in the future. What we do have is a foundation built on at least two millennia of legal history. The intellectual starting point for this project is Nathan Isaacs' unfinished work on a cycle theory of legal development. His view of legal development takes issue with Henry Sumner Maine's thesis that development in advanced legal systems is progressive in nature. And, more importantly for the current undertaking, that this progression is linear in nature. Instead, Isaacs' review of thousands of years of Jewish legal development indicated that legal development perpetually progressed in cycles.

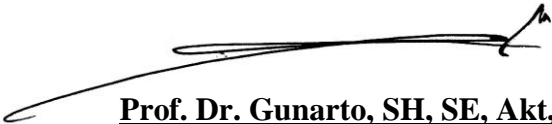
Therefore, to discuss more about legal development or law reform, Faculty of Law, Sultan Agung Islamic University is confidence to conduct a conference by the theme “**Legal Development in Various Countries**” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who have contributed in this event, so that this international seminar ran well.

*Wassalamu'alaikum Wr. Wb.*

Semarang, September 5<sup>th</sup> 2017

Dean,



**Prof. Dr. Gunarto, SH, SE, Akt, M.Hum**  
NIDN.062004670

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# Guidance to the Children Who Repeat Criminal Actions based on Justice Value

**Achmad Arifulloh**

[achmadarifulloh@unissula.ac.id](mailto:achmadarifulloh@unissula.ac.id)

Students of Doctoral Program in Law Science, UNISSULA

**Teguh Prasetyo**

[prof.teguh.prasetyo@gmail.com](mailto:prof.teguh.prasetyo@gmail.com)

Lecturers at Faculty of Law UNISSULA, UKSW Salatiga/ DKPP Republik Indonesia

**Sri Endah Wahyuningsih**

[Endah.w@unissula.ac.id](mailto:Endah.w@unissula.ac.id)

Lecturers at Faculty of Law UNISSULA, Semarang

## ABSTRACT

The phenomenon of child involvement in unlawful behavior depicts many children who are involved in child mischief cases. Children who are under the auspices of the Child Special Coaching Institution are victims of family and community life in today's modern era. The repetition of criminal acts by a child, even once he/she was a prisoner in a Penitentiary is caused by the existing guidance pattern in the Penal Institution does not bring a positive impression to the perpetrator of the crime or to the environment in which he/she returns. The authors formulated the problem, namely: How is child fostering to the children who repeat criminal actions based on justice values of dignity? This research is based on constructivism paradigm. The research type is descriptive analytical and used empirical juridical approach method. Primary data collection method was gained by observation and interview. Secondary Data Collection Method used primary legal material; secondary law materials; tertiary legal material. The data analysis used was descriptive qualitative. Results and Discussion: the weaknesses in the guidance of criminal child are: First, the factor of the Correctional Student, the provision of guidance to the Correctional Student is done so that the Correctional Student does not repeat his/her mistake and can improve her/himself better. Second is the facilities factor in Child Special Education Institution. Third is human resources Factors. Human Resources (HR) is one of the important factors that cannot be separated from an organization, both institutions and companies. Fourth is the community factor. Society is an important component in determining the success of coaching. Therefore, the correctional prisoners who have been out are depended on the association or education of the parents and the community. If the association and upbringing obtained is poor, it will open a chance the child will

become a recidivist. The guidance of children who perform repetition of crime based on the value of justice with dignity is the guidance of children who perform repetition of crime is said as an effort to bring justice to dignity, effort to humanize; especially dignified justice for children, because they have not been able to think about the negative consequences, either in themselves or in society.

**Keywords: Child, Crime Repetition, Child Guidance, Dignified Justice**

## **BACKGROUND**

The child is a trust and a gift of God that we must always guard, since the child has dignity and rights as human beings who should be upheld<sup>1</sup>. On the side of life, the child is the future of the nation and the next generation of the nation, so that every child has right to survive, grow and develop, participate and be entitled to protection from acts of violation and discrimination.

Child as part of the young generation is an important and decisive early link in the effort to prepare and realize the future of nation and state. However, if the child does not get attention from the immediate environment, then it is easy for him to perform acts deviate from the legal norms prevailing in the community. Moreover, the act is limited to juvenile delinquency until finally leading to criminal acts that require serious legal handling, specifically protection of the rights of children in the criminal justice process.

The punishment system, nowadays, still treats the children involved as perpetrators of criminal acts committed by adults. The child is placed in a position as a worthy criminal to obtain the same punishment as an adult. Criminalization itself is more oriented to individual perpetrators or commonly referred to as individual responsibility in which the offender is viewed as an individual capable of taking full responsibility for the actions he/she performs. While the child is an individual who has not been able to fully realize the actions or deeds done, this is because the child is an immature individual. Therefore, by treating the child as an adult it is feared the child will quickly imitate the treatment of those who are nearby.<sup>2</sup>

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<sup>1</sup>Gosita, Arif, *Masalah Perlindungan Anak*, Akademi Presindo Jakarta, 1989, page.17.

<sup>2</sup>Harkristuti Harkrisnowo, *Tantangan Agenda Hak-hak Anak*, Newsletter, Komisi Hukum Nasional, Jakarta, 2002, page.20.

The phenomenon of child involvement in unlawful behavior depicts many children who are involved in child mischief cases. Children who are under the auspices of the Institute for Special Coaching Children are victims of family and community life in today's modern era. Many children who become victims of mischief or promiscuity are as a result of the association, many children who violate the applied norms and rules of law become a convict and they are in the fostering of the Institute for Special Education for Children.

The same repetition of criminal acts by a child, even once he/she was a prisoner in a Penitentiary is caused by the existing guidance pattern in the Penal Institution does not bring a positive impression to the perpetrator of the crime or to the environment in which they return, the community does not accept their presence fully.

## **PROBLEM STATEMENT**

From the background of the above problems, the authors formulated the problem, namely: How is Fostering on children who do repetition on criminal actions based on justice value of dignity?

## **RESEARCH METHODS**

### **1. Research Paradigm**

This research is based on the paradigm of constructivism, the paradigm where the truth of a social reality is seen as the result of social construction, and the truth of a social reality is relative.

### **2. Type of Research**

The type of research conducted is descriptive analytical. Analytical descriptive research is a study that attempts to describe the condition/reality both now and in the past from the research conducted then studied and analyzed comprehensively.

### 3. Approach Method

The approach method used in this research was empirical juridical approach method. It is based on the view of SoetandyoWignjosoebroto, empirical legal research is a study in the form of empirical studies to find theories about the process of working law in society.<sup>3</sup>

### 4. Data Collection Method

The data collections done by the author were:

#### a. Primary Data Collection Method

1) Observation

2) Interview

#### b. Secondary Data Collection Method

1) Primary legal materials were legal materials that have general binding power (legislation) for the parties (contracts, conventions, legal documents and judges' decisions).

2) Secondary legal materials, namely legal materials that provide explanations of primary legal materials (books of law, law journals, legal reports and print and electronic media).

3) Tertiary legal materials are legal materials that provide explanation of primary and secondary legal materials (draft law, legal dictionary, and encyclopedia).

### 5. Data Analysis

The data analysis used by the researcher were descriptive qualitative. Qualitative analysis in this case is the work done by working with data, organizing the data, sorting it into manageable units, synthesizing it, finding and finding patterns, finding what is important and what is learned, and deciding what can be told to others<sup>4</sup>. Researchers analyzed them by combining every problem that exists in the Guidance to Children who commit Criminal Act by linking the demands of the value of dignified justice.

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<sup>3</sup>Soetandyo Wignjosoebroto, 2002, *Hukum, Paradigma, Metode dan Dinamika Masalahnya*, Huma, Jakarta, h, 147. Lihat juga Joko Purwono, 1993, *Metode Penelitian Hukum*, Departemen Pendidikan dan Kebudayaan RI, UNS, Surakarta, page, 17-18.

<sup>4</sup>Lexi J. Moleong, 2007, *Metode Penelitian Kualitatif*, Remaja Rosdakarya, Bandung, page. 248.



## RESEARCH RESULT AND DISCUSSION

The recidivist is a person who results from a social phenomenon that arises from his or her evil behavior and becomes a habit of the offender. In the guidance of the inmate, one of his aims is to suppress the rate of recidivism after they return to the community. Apart from the mistakes in applying prisoner guidance there are many factors that support the occurrence of repetition of criminal acts among others from the community environment where they return.

Child as a young generation is one of the human resources that have a strategic role for the development and future of the nation. What is meant by a child according to Law Number 35 Year 2014 on Amendment to Law Number 23 Year 2002 on Child Protection is a person who is not yet 18 (eighteen) years of age, including a child who is still in the womb.

Young children need guidance and protection in order to ensure physical, mental and social growth. In carrying out child coaching is needed support from the community, especially the country.

The success of the ChildSpecial Coaching Institution in realizing the ultimate goal of punishment can be seen from the success of the guidance that has been implemented (qualitatively) and can also be known from the percentage of Correctional Students who become recidivists in the Institute for Special Coaching Children (quantitatively). Qualitatively the Institute for Special Coaching of Children it has been able to realize the purpose of punishment because the Institute for Special Education of Children has implemented coaching. Quantitatively, the success of coaching is difficult to measure (numbers).

Guidance program at KutoarjoInstitute for Special Coaching Children, there is a personality coaching that creates correctionalstudents with good personality and character, so that it is useful for the nation and religion. Meanwhile, the development of self-independence coaching (entrepreneurship) creates Skilled Educative Practitioners and trains work such as livestock, farming, painting, and agate.

Capacity in LPKA (ChildSpecial Coaching Institution)Kutoarjo is 65 children, but usually filled by inmates 70 to 90 children even filled almost 100 children. The rising crime

rate in children resulted in the LPKA being overfilled. Moreover, the Penitentiary Prisoners who became the recidivists eventually returned to the LPKA.

The weaknesses in the guidance on the criminal child are: The guidance done by the penitentiary against the child doing the repetition of crime is often equated the pattern of guidance and placement in prison.

Whereas the guidance should be more devoted to the children, such as extra coaching, it is more supervision and different placement with prisoners of non-residual status. Since, if it is combined between the recidivist and non-recidivist, it is feared that the new students will be influenced by the old correctional student/recidivist. The new students will imitate or do the same thing as correctional student who has committed the repetition of a criminal offense.

The pattern of fostering of children who repeat criminal acts in the ChildSpecialCoaching Institution (LPKA) is not distinguished from the normal preterm learner training. This certainly does not have a meaningful effect on the child who does the repetition of the crime, because each classification of the correctional students is different the need for special coaching Children who do repetition of criminal acts. They certainly feel used to all the same coaching before.

The unification of these two classifications of the prisoner's class, the effect that will arise instead of reducing the level of crime in the form of repetition, but with this unification will more quickly stimulate the children of perpetrators of repeat offenses to do the same because there is no difference with ordinary prisoners.

Implementation of guidance conducted by LPKA to Children who do crime still not maximal, because in carrying out the coaching, LPKA still experience barrier in the process of development, so that implementation of coaching which is expected to run well even become obstructed and not run properly.

These obstacles can be in the form of a legislative system that currently no longer corresponds with the nature and value that grows and develops in the community. From its own law enforcement officers who are perceived to be not optimal in conducting coaching, from facilities in LPKA which are still less. From society and culture is perceived not to support the implementation of its guidance. These obstacles are the obstacles in the process of

coaching so that the coaching is less than optimal and resulted in children who do repeat offenses in LPKA.

The child who does the repetition of criminal acts that still exist in the ChildSpecial Coaching Institution(LPKA) proves that with the incorporation of this guidance is not reduce or make someone turn to not repeat his actions, but instead they are provoked to find friends and do more dangerous deeds from the initial act.

Because it is, as if, in a penitentiary is facilitated to gather fellow bad people with various criminal backgrounds, and from here the repetition of crime begins, so that after exit they can commit a higher crime.

The number of child prisoners in LPKA Class I Kutoarjo is uncertain, because every day there is possible inmates coming in and out. From the Report of LPKA Class I Kutoarjo, there are some correctional students who have the status as a recidivist. From 76 students, there are 4 children who have done repetition of crime. The several crimes that often occur repetition is a criminal act of theft.

The success of coaching if it is only seen qualitatively felt less. It means, if there is only one source or data to be a reference, it will be very difficult whether or not it is true. Therefore, quantitative data is also needed in the form of number of Correctional Practitioners who become recidivists. If the percentage of Correctional Practitioners who become recidivist is low, it can be said done has been successful and vice versa if the percentage of children recidivist is high, it is said that the coaching implemented has failed.

Based on Law Number 12 of 1995 on Correction institution, the guidance for child prisoners is carried out in accordance with the concept of socialization in order to provide guidance to prison students to realize their mistakes, to improve themselves, and not to repeat later crimes in the hope that the child may be accepted back in the community and can run the status and role as responsible and active citizens in national development.

In the context of system reform and criminal execution, the term imprisonment system has been changed to a penitentiary system, and the prison term was changed to a penitentiary. Similarly, in the case of the treatment of prisoners it changes from retaliation to coaching. Since the guidance of prisoners is based on the penitentiary system aims to make the inmates a good and responsible citizen, to realize mistakes and not to commit unlawful acts.

In the prisoner's guidance system, the prisoner's treatment is applied as both subject and object. The subjects here as equality as human beings, they are equal as God's creatures, equally as specific beings, capable of thinking and capable of making decisions. As an object because basically there is difference of position in coaching, difference in coaching and not as human being<sup>5</sup>. Difference in coaching, one example is with the classification of inmates. The classification of inmates facilitates the process of coaching because oftentimes coaching is not from the builder but the inmates themselves or a group of inmates.

In Indonesia there is a classification of correctional institutions, namely general prisons and special prisons such as Women's prisons, Child prisons, Narcotics Prison and prisons for serious crimes such as those in Nusakambangan Cilacap. But not in all regions in Indonesia have a special prison. Usually areas that do not have special prisons for example for child prisoners will be deposited in prison for children in other closest area.

Reduced number of children who entered in the Penitentiary Children also became one of the goals of the Law on Child Criminal Justice System. Thus, the children who enter the Child Correctional Institution are those whose cases cannot be divested.

The role of Child Correctional Institutions is very important for fostering and integrating children back into the community, since the criminal purpose for children is to provide protection for children, because the protection and welfare of children is the basic right of every child. Child protection and welfare are given to all children, both normal and in a distorted manner.

Thus, children who are lost and guilty of committing violations of the law are still nurtured and given services, care and education and guidance so as to be useful citizens both for themselves, the community, the nation and the nation.

The ideal concept of guidance of children who perform repetition of crime through the development of children based on children's appropriate education in the correctional system refers to the programs that have been and will be implemented by the Directorate General of PAS as the implementing unit combined with matters considered beneficial to be applied in the correctional system of the example examples of models of several countries namely Malaysia, the Philippines, Thailand and Japan are tailored to the needs and conditions in Indonesia.

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<sup>5</sup>C I Harsono, 1995, *Sistem Baru Pembinaan Narapidana*, Djambatan, Jakarta, page.19.

For children who have been convicted will undergo a coaching stage in LPKA. Child Coaching in LPKA is in accordance with the rules in The Beijing Rules and the SPPA Act, that Child preparatory coaching is placed in LPKA. The correctional system in addition aims to restore the child to a good citizen also aims to protect the community against the possibility of repeated criminal acts by the child. Recognizing this, the Indonesian penal system is more emphasized on the aspect of Child development through education, rehabilitation, reintegration and still has to go through restorative justice approach.

Indonesia can apply a combination of several methods of coaching to be tailored to the needs and benefits of child development in the penal system especially in terms of children's education. An alternative model of child-rearing based on child-friendly education in a penitentiary system using the Un-Absolute Individual Treatment method. The purpose of an impure individual approach is that in certain cases the coaching of the Child is done individually, for example in the assessment stage.

This is necessary because each child has a different social, psychological, economic and reasoning background in committing a crime. Meanwhile, for the development of the child in terms of fulfillment of the right to get an education, it can be done with the group approach by keeping in mind the condition of the child. A study in the New South Wales Drug Program showed that children who had received an individual coaching treatment ratio of occurrence of recidivism become 40- 58%.

Child development should also observe local customary norms without prejudice to the dignity of the child. Given that after leaving the LPKA the child will return to the community, LPKA needs to prepare the child or provide guidance to the child so that the child can be re-integrated with the local community (which has customary law norms of each region).

The use of customary law in the development of children in LPKA is important to consider. Government policy should pay attention to the cultural aspect from which the child lives, because when the child returns to the middle of society they are able to integrate with the community. The activities at LPKA will be linked to local cultural values.

The law of creating a dignified society is a law capable of humanizing human beings means that the law treats and upholds human values according to the nature and purpose of life. This is because humans are noble beings as the creation of God Almighty as stated in the

2<sup>nd</sup> principle of Pancasila is a just and civilized humanity, which has the value of recognition of the dignity and human dignity with all rights and obligations and get fair treatment of human, to self, nature and to God.<sup>6</sup>

The guidance of a child who commits a repetition of a crime as defined above can be said to be an effort to bring about dignified justice, an effort of humanize human<sup>7</sup>; especially dignified justice for children, because children are not small human adults. They cannot think of negative consequences, either in themselves or in society. Part of the idea of justice is never out of touch with the law, for speaking of the law, clearly or vaguely is always a matter of justice.<sup>8</sup>

## CONCLUSION

The regulation of guidance on children in the penal system is contained in the Law on the Criminal Justice System of the Child, Act Number 12 of 1995 on Corrections. The guidance on children in the prisons is provided in Article 12 of Law Number 12 Year 1995 concerning Correctional, that in the context of guidance on child crime in prisons, the classification is based on age, sex, duration of imprisonment, type of crime, and other criteria accordingly with the need or development of coaching.

The weaknesses in the guidance on the criminal child are: First, the factor of the Correctional Student, the provision of guidance to the Correctional Student is done so that the Correctional Student does not repeat his mistake and can improve her/himself better. Second is the factor of Infrastructure in ChildSpecial Coaching Institution, Third, Human Resources Factors. Human Resources (HR) is one of the important factors and cannot be separated from an organization, both institutions and companies. Fourth is the community factor. Society is an important component in determining the success of coaching. Therefore, the Correctional Students who have been out are depended on the association or education of the parents and the community. If the association and upbringing obtained are poor then it will open a chance the child becomes a child recidivist.

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<sup>6</sup>Teguh Prasetyo, 2013, *Hukum dan Sistem Hukum Berdasarkan Pancasila*, Media Perkasa, page. 93. Bdk., Teguh Prasetyo, 2015, *Keadilan Bermartabat: Perspektif Teori Hukum*, Cetakan Kesatu, Nusa Media, Bandung.

<sup>7</sup>*Ibid.*

<sup>8</sup>Satjipto Rahardjo, 1982, *Ilmu Hukum*, Alumni, Bandung, page. 45.

Development of children who repeat crime based on justice of dignity namely the coaching of children who repeat crime is said as an effort to bring justice dignity, effort to humanize human; especially dignified justice for children, because they have not been able to think about the negative consequences, either in themselves or in society.

## SUGGESTIONS

1. The Indonesian penitentiary system is more emphasized on the aspect of Child development through education, rehabilitation, reintegration and still has to go through restorative justice approach.
2. Provide religious cultivation and moral coaching of children since childhood starting from the family, due to religion and morals are the strongholds of defense in protecting families from damage and destruction including the involvement of children in committing criminal acts.
3. Providing understanding about the involvement of children in committing criminal acts up to the sentence will distance themselves from friends, family and social life.

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## **Regulations**

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945;

Undang-Undang Nomor 4 Tahun 1979 tentang Kesejahteraan Anak

Undang-Undang Nomor 8 Tahun 1981 tentang Kitab Undang-Undang Hukum Acara Pidana.

Undang-Undang Nomor 3 Tahun 1997 Tentang Pengadilan Anak.

Undang-Undang Nomor 39 Tahun 1999 tentang HAM

Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak

Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak.

Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan Atas Undang- Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak.