

Management Of Criminal Actions Performed By Underage Children (Minors)

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Abstract

This study aims to identify and analyze criminal law policies in an effort to overcome criminal acts committed by minors in the future, including the role of penal mediation. The research method used in this research is normative juridical. The results of this study conclude that the regulation on the settlement of criminal acts/child delinquency as an effort to overcome child crimes has been regulated in the Criminal Code (KUHP) and Act No. 3 of 1997 concerning Juvenile Court. The criminal law policies contained in the Criminal Code and the Juvenile Court Law have several weaknesses, namely in the formulation and application stage, at the formulation stage there is dualism in the regulation regarding the determination of the age limit of children, In addition, at the application stage there are conflicting provisions in the provisions regarding sanctions that can be imposed on naughty children. Policies for formulating criminal law in the future must be more optimal and able to provide legal protection for children in conflict with the law, one of which is by formulating provisions for penal mediation in an effort to resolve cases of child crimes.

Keywords: Countermeasures; Crime; Children.

1. Introduction

The international community, which is aware of the importance of the role of children as the successor to the future ideals of the nation, has demanded the international community to give birth to a convention which essentially emphasizes the position of children as human beings who must receive protection for their rights.

Attention to the need for special protection for children began with the Geneva Declaration on the Rights of the Child in 1924 which was recognized in the Universal Declaration of Human Rights in 1958. Then on November 20, 1958, the UN General Assembly ratified the Declaration of The Rights of the Child (children's rights). Indonesia is one of the countries that have ratified the Convention on the Right of Children in 1990 through Presidential Decree no. 36 of 1990. By ratifying this convention, Indonesia has an obligation to fulfill children for all children without exception, one of the rights of children that need attention and protection is the rights of children in conflict with the law. Indonesia itself as a form of protection for children, already has a special law regarding children.

Understanding children is generally associated with a person's age level and mental condition. Meanwhile, the understanding of children in the context of criminal

law is associated with criminal responsibility in terms of the extent to which a child within a certain age limit is considered capable of being responsible for his actions (criminal).¹

A child whose behavior or behavior endangers the interests of the community and is classified as an act that violates the law can be referred to as a child delinquency. The mention of delinquency in children's behavior seems appropriate, because the deviant behavior of children is actually more appropriate to be called child delinquency, not child crime. This consideration is carried out because the mention of crimes against children's behavior that violates the law will have a negative impact on children's development, besides that the mention of child delinquency aims to maintain the good name of children, even though they have violated the law. The problem of children who have problems with the law, both in the position as objects (victim) and children as subjects (perpetrators) of criminal acts, is a problem faced by all countries.²

Juvenile Delinquency is an act or act that violates norms, both legal norms and social norms, which are carried out by young children.³As a result, people's lives become restless, feelings of insecurity are even a threat to their own children. This is inseparable from the many problems that are being experienced by children today, which results in the emergence of delinquency committed by minors.

Based on the results of the study show that children who are in conflict with the law, many get bad treatment and even in some cases have been treated worse when compared to adults who are in the same situation.⁴ Most of the children in conflict with the law admitted to having experienced acts of violence while at the police station, a common form of violence, namely physical violence in the form of slaps and kicks, but there are also cases of violence that are at the same time sexual harassment such as violence directed at the genitals or stripped child suspect.⁵ In addition, violence also occurs in the form of punishment, namely in the form of forcing children to clean the police station (sweeping and mopping) and cleaning the car.

Bad treatment also sometimes still occurs when children are in detention (RUTAN) or Correctional Institutions (LAPAS), the treatment is in the form of bullying or other forms of exploitation.⁶ This fact shows that detention centers and prisons also have a bad influence on children, not only as a result of their association with other prisoners' behavior, both children and adults, but also in the form of their experience of physical and sexual violence while in detention.

The facts described above force us not to expect positive benefits from using the existing juvenile criminal justice system, except for only negative benefits, namely

¹Nur Rochaeti, "Model Restorative Justice Bagi Anak Delinkuen" *Majalah Masalah-Masalah Hukum*, Nomor .4, Desember 2008, p. 243.

²Bambang Sarutomo, "Penyebab Anak Di Bawah Umur Melakukan Tindak Pidana Pencurian Di Kabupaten Demak" in *International Journal of Law Society Services*, Volume 1 No. 1 March 2021, <http://jurnal.unissula.ac.id/index.php/ijls/article/view/14741/5339>

³Wagiati Soetodjo, *Hukum Pidana Anak*, (Bandung: Refika Aditama, 2006), p. 11.

⁴Ruben Achmad, *Upaya Penyelesaian Anak yangberkonflik dengan Hukum di Kota Palembang*, http://www.fh.unsri.ac.id/old_version/RubenAchmad.doc.

⁵Ibid.

⁶Ibid.

suffering and long-term effects for these children.⁷ Therefore, it is only natural that we are obliged to fix this problem, by making changes in implementing systems and processes that are in accordance with the needs of our children and society. One solution that can be taken in handling the criminal case the child is a restorative justice approach, which is implemented by way of diversion. Restorative justice is a process of settlement is done outside the criminal justice system by involving the victim, the perpetrator, the victim's family and the perpetrator's family, the community and the parties concerned with a crime that happened to reach an agreement and settlement.⁸

Actually, until now there is no special Criminal Law regarding children that regulates both the material of crime and the judicial process, so that the juvenile justice process as described above is in reality not being able to resolve child cases in Indonesia, and until now it has not obtained a suitable place as expected by society.

Based on the description above, it is necessary to conduct a research and discussion on how the criminal law policy is in an effort to overcome child crime. This study aims to identify and analyze criminal law policies in an effort to overcome criminal acts committed by minors in the future, including the role of penal mediation.

2. Research Method

The research method used in this study is normative juridical, namely by reviewing or analyzing secondary data in the form of primary legal materials and secondary legal materials, by understanding the law as a set of regulations or positive norms in the legal system that regulates criminal acts / child delinquency. The specifications that will be used in this research are analytical descriptive. The type of data to be used is secondary data covering primary legal materials, secondary legal materials and tertiary legal materials. This research uses Library Research, and the data analysis method that will be used is normative analysis.

3. Results and Discussion

The application policy or the application of sanctions against naughty children is only regulated in Act No. 3 of 1997 concerning Juvenile Court. UU no. 4 of 1979 concerning Child Welfare and Act No. 23 of 2002 concerning Child Protection do not regulate the application policy for children who have problems with the law, both from the detention process, trial, to the imposition of sanctions on children.

The Child Welfare Law only formulates the efforts of the government, families in fulfilling children's rights in an effort to realize children's welfare, while the Child Protection Law only regulates the application of sanctions that are more directed at adults, and only regulates the obligations of the government, society, and families in

⁷ Ibid.

⁸ MalikAL-Ghazali, "Restorative Justice Approach on The Under Age (Minors) Violator of The Traffic Case Accident (Laka) That Lead to Death in Polres Majalengka", dalam *Jurnal Daulat Hukum*, Volume 1 Issue 3 September 2018, p. 706, <http://jurnal.unissula.ac.id/index.php/RH/article/view/3371>

the provision of children's rights as a form of protection for children, and regulates the rules for the formation of the Indonesian Child Protection Commission.

Based on some of the descriptions stated above, it can be seen that the Juvenile Court Law is not sufficient to guarantee legal protection for children who commit criminal acts. When compared with the Criminal Code, in some cases regarding conditional punishment and conditional release, it turns out that the Criminal Code provides more guarantees for protection for children. There are several weaknesses in Act No. 3 of 1997 concerning Juvenile Courts, it is natural that law enforcement officers in handling children's cases often misinterpret and apply the law, so that in practice what appears is injustice for children. So here it is necessary to change the provisions in the Juvenile Court Law, then Act No. 11 of 2012 concerning the Juvenile Justice System.

Criminal law policy in an effort to overcome criminal acts committed by minors in the future, it is impossible to do it in a moment, because criminal policy is an ongoing and continuous effort to find formulations or formulations that are in accordance with future conditions future and of course various problems.

Seeing the formulation, application of criminal provisions, and the implementation of criminal sanctions for children in existing laws and conventions, at least it can provide an overview and direction in making a criminal law policy in an effort to overcome criminal acts committed by children under the age of five. Barda Nawawi Arief said that if there are cases that are not processed, it is in the context of protecting citizens from threats that are not profitable for their lives in the future.⁹

The formulation of provisions on criminal law policies in an effort to tackle criminal acts committed by minors in the future actually already exists at this time, namely the 2008 Criminal Code Concept. Although it is still in the form of a concept, the Criminal Code concept can at least be a learning material to find out what provisions are regulated as instruments of criminal law policy in the prevention of child crimes in the future. In order to be clearer regarding the provisions in the 2008 Criminal Code Concept relating to criminal law policies in dealing with child crimes in the future, the provisions in the 2008 Criminal Code Concept can be described as follows:

Provisions on the Concept of the 2008 Criminal Code in Efforts to Combat Crimes Committed by Minors

It is in this effort to reconstruct the national criminal law system that, in contrast to the current Criminal Code, the General Provisions Book I of the Draft Criminal Code includes the formulation of "Purposes and Guidelines for Sentencing". The formulation of the Goals and Guidelines for Criminalization in the Draft Criminal Code in 2008 is a new thing in Indonesian legislation, because the Criminal Code and specific laws that are currently in force do not regulate or formulate the "Purposes and Guidelines for Criminalization".

⁹Danu Anindhito and Ira Alia Maerani, "Kebijakan Hukum Terhadap Pelanggaran Lalu Lintas Oleh Anak Di Wilayah Polda Jawa Timur" in Jurnal Hukum Khaira Ummah Vol. 13. No. 1 March, 2018, <http://jurnal.unissula.ac.id/index.php/jhku/article/view/2598/1952>

The placement and mention of the term "guidance for punishment" in the Draft Criminal Code underwent several changes, in the 1964, 1968, and 1972 concepts there was no article on "criminal guidelines", in the 1982/1983, 1987/1988, and 1991/1992 concepts (s). /d March 1993) the title "guidance for punishment" appears, in the 1994, 1997/1998, and 2000/2002 concepts the title "guidance for punishment" does not appear, but remains in the title "criminalization", in the 2004-2008 Concept in the General Provisions Book I re-emerged the title "purposes and guidelines for punishment" with a scope that is not the same as the 1991/1992 concept.¹⁰ The objectives and guidelines for punishment formulated in the 2008 Criminal Code Concept are contained in Article 54 and 55 of the Criminal Code Concept, as follows:

a). Article 54: First, Sentencing aims to: Preventing criminal acts by enforcing legal norms for the protection of society; Socializing convicts by conducting coaching so that they become good and useful people; Resolving conflicts caused by criminal acts, restoring balance, and bringing a sense of peace in society; Release the guilt of the convict. Second, Sentencing is not intended to suffer and demean human dignity.

b). Article 55, namely: In sentencing, it is obligatory to consider: Error of criminal act; The motive and purpose of committing a crime; The inner attitude of the criminal act; Is a crime committed with a plan; How to commit a crime; Attitudes and actions of the maker after committing a crime; Curriculum vitae and socio-economic conditions of the perpetrator of the crime; The effect of the crime on the future of the criminal offender; The effect of the crime on the victim or the victim's family; Forgiveness from the victim and/or his family, and/or The public's view of the crime committed.

The existence of goal setting and sentencing guidelines in the 2008 Criminal Code Concept is motivated by efforts to avoid mistakes in sentencing, so the existence of sentencing guidelines will facilitate and eliminate obstacles in prosecuting criminals against criminals, especially minors, besides that the existence of sentencing guidelines will facilitate judges in determining the size of the severity of the crime, thus through this sentencing guideline, the objectives of the criminal law policy will be achieved, namely social defense and social welfare for children.

The formulation of the purpose of punishment as regulated in Article 54 of the 2008 Criminal Code Concept is actually still in dispute, the issue is not only related to the usefulness of the formulation of the purpose of punishment in the Draft Criminal Code, but also the content of the formulation of the purpose of punishment. The content or provisions contained in Article 54 of the Criminal Code concept do not actually provide legal protection if it is related to the prevention of criminal acts by children, that the formulation of Article 54 means that it still recognizes the existence of punishment for children who commit delinquency, this provision becomes strange if it is associated with government efforts in realizing the welfare of Indonesian children, because a punishment for children will certainly greatly hinder the creation of children's welfare.

c). Article 71 of the 2008 Criminal Code Concept: By taking into account Article 54 and Article 55 which have been described above, imprisonment as far as possible shall not be imposed if the following conditions are found: the defendant is under 18 (eighteen)

¹⁰ Barda Nawawi Arief, *Tujuan dan Pedoman Pemidanaan*, (Semarang: Pustaka Magster, 2009), p. 54-55.

years old or above 70 (seventy) years old; the defendant has committed a crime for the first time; the loss and suffering of the victim is not too great; the defendant has paid compensation to the victim; the defendant does not know that the crime committed will cause great losses; the crime occurred because of a very strong incitement from another person; the victim of a crime encourages the occurrence of the crime; the crime is the result of a situation that cannot be repeated; the personality and behavior of the defendant ensure that he will not commit another crime; imprisonment will cause great suffering to the defendant or his family; non-institutional coaching is expected to be quite successful for the accused; the imposition of a lighter sentence will not reduce the seriousness of the criminal act committed by the defendant; the crime occurred in the family, or happened due to negligence.

Article 71 of the 2008 Criminal Code concept regulates the Guidelines for Imprisoning Prison, the formulation of the guidelines for imposing imprisonment above shows that the concept of the Criminal Code formulates negative imprisonment guidelines (ie to avoid or not to impose imprisonment, especially on children). The background of the implementation of negative guidelines in implementing imprisonment is based on the idea of "selective and limiting policies" in the use of imprisonment as a response to the many criticisms of imprisonment which contain many negative sides.¹¹

The use of guidelines for imposing imprisonment also aims to prevent a minor from being deprived of his freedom due to imprisonment, this goal is very much in line with opinions regarding the rejection of the imposition of imprisonment on children, because they consider imprisonment as a criminal offense does not educate for the development of children involved in delinquency/crime.

Article 71 of the Draft Criminal Code is a provision that complements and answers the provisions contained in Articles 54 and 55 of the Draft Criminal Code regarding the Purpose and Guidelines for Sentencing. Although the 2008 Criminal Code Concept still recognizes the existence of a criminal process, Article 71 confirms that if there is no imprisonment for minors who are proven to have committed a crime, this is confirmed in the provisions of Article 71 letter a, which explains that imprisonment as far as possible it is not imposed if the circumstances of the defendant are found to be under 18 (eighteen) years of age.

With regard to criminal law policies in an effort to tackle child crimes in the future, it turns out that the provisions in the Criminal Code 2008 concept in addition to regulating criminal guidelines, it turns out that in Chapter III, the fourth part, Articles 113 to 131, the 2008 Criminal Code concept also regulates special sub-sections that regulate "crimes and actions for children", namely:

a). Article 113 of the Draft Criminal Code:

- (1) A child who has not reached the age of 12 (twelve) years committing a crime cannot be held accountable.
- (2) Criminal acts and actions for children only apply to people between the ages of 12 (twelve) years and 18 (eighteen) years who commit a crime.

¹¹ Ibid, p. 97-98.

The formulation of the provisions of Article 113 of the Criminal Code concept provides more legal protection for children, because in general Indonesian children can be said to be able to account for their actions at the age of 12 years and over, with the formulation of Article 113 of the Criminal Code Concept can explain if Indonesian children who have not reached the age of 12 years but have committed a crime cannot be sentenced to a crime or action, because they are considered unable to account for their actions.

b). Article 114 of the Draft Criminal Code:

(1) With due observance of the provisions regarding objectives and guidelines

Sentencing as referred to in Article 54 and Article 55, for the sake of the child's future, examination before the court may be postponed or stopped after hearing the considerations of the investigator, public prosecutor, and community officer.

(2) The postponement or termination of the examination as referred to in paragraph

(1) is accompanied by the following conditions:

a. the child will not commit a crime; and/or

b. the child within a certain time must compensate all or part of the loss caused by his actions.

The provisions in Article 114 of the Draft Criminal Code are based on the principle of the idea of "diversion" in Rule 17.4 Beijing Rules (UN Resolution 40/33 dated November 29, 1985 concerning Minimum Standard Rules for the Administration of Juvenile Justice) which states: "The competent authority shall have the power to discontinue the proceedings at any time".¹² Article 114 of the Criminal Code concept, although it does not clearly explain the existence of diversion efforts in the settlement of juvenile delinquency cases, but if we look at the provisions of Article 114 paragraph (2) b, at least this provision can represent a regulation regarding diversion efforts in the settlement of juvenile delinquency cases.

c). Article 116 Draft Criminal Code:

(1). The main crimes for children consist of:

a. Verbal punishment:

1. Criminal Warning; or

2. Criminal reprimand;

b. Criminal conditions:

1. criminal coaching outside the institution;

2. social work crime;

3 criminal supervision;

c. Criminal Fines; or

d. Criminal Limitation of Freedom:

1. punishment for fostering in the family;

2. imprisonment; or

3. criminal cover.

(2). Additional penalties consist of:

a. confiscation of certain goods and/or bills;

¹² Ibid., p. 132.

- b. payment of compensation; or
 - c. fulfillment of customary obligations.
- d). Article 129 Draft Criminal Code:
- (1) Every child who complies with the provisions as referred to in Article 40 and Article 41 may be subject to the following actions:
 - a. treatment in mental hospitals;
 - b. submission to the government; or
 - c. surrender to someone.
 - (2) Actions that can be imposed on children without imposing the main punishment are:
 - a. return to parents, guardians or carers;
 - b. submission to the Government;
 - c. surrender to someone;
 - d. the need to take part in an exercise held by the government or private body;
 - e. revocation of driving license;
 - f. deprivation of profits derived from criminal acts;
 - g. repairs due to criminal acts;
 - h. rehabilitation; and/or
 - i. care in the institution.

The formulation of criminal sanctions and actions that can be imposed on naughty children in Articles 116 and 129 of the Criminal Code concept has indicated an improvement in the imposition of sanctions on children who are in trouble with the law, these improvements can be seen by the increasing variety of criminal sanctions and regulated action sanctions. The basic punishment formulated is also felt to provide more legal protection for children, although imprisonment that is depriving children of independence is still regulated in the provisions of Article 116 of the Criminal Code Concept, but regarding the main punishment in the form of imprisonment. The concept of the Criminal Code in Article 126 has emphasized that imprisonment can only be imposed as a last resort against bad boys.

In the formulation of action sanctions regulated in Article 129 of the Criminal Code concept, it also increasingly indicates the attention of the government in providing legal protection for children in conflict with the law. The uniqueness of the provisions of Article 129 of the Draft Criminal Code is the formulation of action sanctions in the form of revocation of driving licenses, the formulation of this provision has similarities with the provisions of sanctions for actions against children in the Dutch Criminal Code which has been described previously. The deficiency in Article 129 of the Criminal Code concept is contained in Paragraph (2) c, which regulates the sanction of action in the form of surrendering a naughty child to someone, this is because the concept of the Criminal Code does not explain clearly about the "person".

The problem is whether these sanctions can be carried out if in the future the Draft Criminal Code is stipulated and approved as a new Criminal Code for the State of Indonesia, while we already know that in juvenile justice there has been Act No. regulates the types of sanctions that can be imposed on naughty children. This can be a dilemma in the future, because according to the principle of *leg specialis derogate leg*

generalis (law that specifically ignores general legislation), the provisions in the Juvenile Court Law that are specific in nature will be applied, even though the provisions in the current Court Law there has not been felt to provide legal protection for children who are in trouble with the law.

The attention of law enforcement officers is very much needed here, especially law enforcement officers as formulators / legislators (Legislative Institutions), to carry out a review or change to the provisions contained in the Juvenile Court Law, especially regarding the types of sanctions, so that With a review of the types of sanctions contained in the Juvenile Court Law, it is hoped that in the future these provisions will be in accordance with what is stipulated in the Criminal Code Concept and will not cause confusion in imposing sanctions on children.

In accordance with the ideals of establishing a Unitary State of the Republic of Indonesia in order to establish a State of Law (*recht staat*), and not a State of Power (*macht staat*), then one of the indicators of achievement is the formation of conditions and capabilities of citizens or society to obey the law, or even society law-abiding. In this situation, the law enforcement process should not always be carried out using formal or penal justice methods as so far which is mostly done by law enforcement officers, one of which is in the form of repressive police actions and continued with the law enforcement process. Therefore, in order to obtain a mutually beneficial settlement between the two litigants,

Case settlement with penal mediation is settled out of court, so penal mediation is often referred to as ADR (Alternative Dispute Resolution). This opinion is actually wrong, because the term ADR is only known in the settlement of civil disputes, although in certain cases a settlement similar to ADR is carried out to resolve criminal cases, such as the provisions of Article 82 of the Criminal Code concerning offenses committed in the form of "violations which are only threatened with a fine". "Article 82 of the Criminal Code explains that the authority/right to claim the offense is nullified if the defendant has paid the maximum fine for the offense and the costs (peace costs) that have been incurred if the prosecution has been carried out.

Settlement out of court based on Article 82 of the Criminal Code above actually does not clearly describe the possibility of a peaceful settlement through penal mediation between the perpetrator and the victim (especially in the matter of giving compensation or compensation) which is a "means of diversion/diversion" to stop prosecution and criminal prosecution. , because Article 82 of the Criminal Code is only a provision to determine sanctions in the form of paying maximum fines to those who are threatened with criminal acts so that the prosecution is stopped.

The current development there is a tendency to use penal mediation efforts in efforts to overcome criminal acts committed by minors, the use of penal mediation is based on a thought that the use of the penal route in an effort to overcome criminal acts committed by children does not provide protection for children and has many limitations in its use, both in application and execution. Regarding the limitations of the current criminal law, Sudarto stated that the use of criminal law is a response to a

symptom (*kurieren am symptom*) and is not a solution by eliminating the causes.¹³ So that the limitations of the ability of criminal law so far have also been caused by the nature/nature of the function of criminal law itself, as well as criminal sanctions (law) so far are not drugs (*remedium*) to overcome the causes of disease, but only a means to overcome the symptoms/effects of the disease.¹⁴

Starting from opinions regarding the limitations of the current Criminal Code, in the formulation of provisions, The concept of the Criminal Code and the Draft Criminal Procedure Code that will come are more aimed at regulating penal mediation as an effort to tackle criminal acts committed by minors. So that the use of criminal law is not only a drug to eradicate the consequences caused by a crime, but also as a tool to prevent the causes of crime.

Penal mediation can be applied in the settlement of criminal cases, especially child crimes, but in the process of its application it is still necessary to have a legal umbrella or legal framework that is integrated in material criminal law (KUHP) and formal criminal law (KUHAP) as a form of legal certainty. Although the penal mediation effort in resolving child criminal cases has actually been used by the police with their police discretion, but the implementation is only based on the Secret Telegram on the Settlement of Child Cases from the Police Criminal Investigation Unit which is addressed to the Head of *Polrestabes* throughout Indonesia, not based on the provisions of laws and regulations concerning children who already exist in Indonesia. This mechanism is often referred to as diversion (or non-penal diversion) by the police or police diversion.¹⁵

Arrangements regarding the settlement of criminal cases with penal mediation have actually been implicitly regulated in the Draft Criminal Code, namely in Chapter IV regarding the Loss of Prosecution Authority and Criminal Implementation Article 145 letter d Book I of the 2008 Criminal Code Concept, namely: Article 145 letter d Concept of the 2008 Criminal Code: Prosecution authority is void, if there is a settlement outside the process.

Based on the provisions in Article 145 letter d of the 2008 Criminal Code Concept, it can be explained that the Criminal Code Concept recognizes the existence of penal mediation, so that it is possible to settle criminal cases outside the court, although the provisions regarding penal mediation in detail have not been regulated in the Criminal Code Concept.

The need for regulation of mediation efforts in resolving child criminal cases in a statutory provision, should be a special concern for the legislative body as the party authorized to make or amend provisions in a law to immediately make laws and regulations regarding penal mediation. This is because efforts to settle out of court/penal mediation against child criminal cases are really needed, apart from being

¹³ Sudarto, *Hukum Pidana dan Perkembangan Masyarakat*, (Bandung: Sinar Baru, 1983), p. 35.

¹⁴ Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, Citra Aditya Bakti, Bandung, 1998, p. 45.

¹⁵ Adrianus Meliala, *Dampak Proses ADR dalam Penegakan Hukum Polri*, seminar paper, Jakarta, 28 February 2007 in Adrianus Meliala, *Penyelesaian Sengketa Alternatif: Posisi dan Potensinya di Indonesia*, Universitas Indonesia, Jakarta, 2007.

an effort to overcome crimes committed by children, using penal mediation efforts can prevent children from the stigmatization process of crime.

At this time there is a law relating to children, so the legislative body should be able to change the law on children by adding provisions on Penal Mediation in the existing law on children. For example, in Act No. 23 of 2002 concerning Child Protection which regulates the establishment of a Child Protection Commission, perhaps the Legislative Institution can add the function or authority of the KPAI in resolving child cases by using penal mediation efforts. The provisions regarding penal mediation efforts can also be added to the provisions of Act No. 3 of 1997 concerning Juvenile Courts, because the process of resolving children's cases is regulated in the Law on Juvenile Courts.

4. Closing

The concept of the 2008 Criminal Code as the original Indonesian Criminal Code has regulated the provisions regarding children separately, which is contained in Chapter III, the fourth part on "Criminal and Actions for Children", besides that in the 2008 Criminal Code Concept it also regulates the Guidelines for Sentencing, Guidelines for Imposing Imprisonment and Penal Mediation. . Although the provision regarding the existence of penal mediation in resolving criminal cases is not clearly and separately regulated in a chapter in the 2008 Criminal Code Concept, it is only formulated in Chapter IV concerning the Disappearance of Prosecution Authority and Criminal Implementation. The formulation of the Guidelines for Imprisoning Prisons in the 2008 Criminal Code Concept, shows that the 2008 Criminal Code Concept provides more legal protection for children who are in conflict with the law, This is because the Guidelines for Implementing Prison Penalties as regulated in Article 71 emphasize that there is no prison sentence that is depriving of freedom for juvenile delinquents. In the Juvenile Criminal Justice System, Act No. 11 of 2012 includes provisions regarding the maximum limit of criminal penalties for child perpetrators of crimes without regard to the existence of laws or other regulations that regulate the limits of minimum prison threats such as in the Narcotics Law and the Child Protection Act.

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