

Legal Protection for Child Criminals in the Indonesian Justice System

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Abstract. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System stipulates that juvenile justice in absolute competence is within the scope of the General Court. The form of providing legal protection is intended to provide opportunities for children to become responsible human beings in their future. The objectives of this study: 1). to determine and analyze legal protection for child perpetrators of criminal acts in the current judicial system in Indonesia; 2). to determine and analyze the weaknesses and solutions for legal protection for child perpetrators of criminal acts in the current judicial system in Indonesia. This study uses a normative legal approach, with a descriptive analytical research method. The data used are primary and secondary data that will be analyzed qualitatively. Research problems are analyzed using the theory of punishment, retributive theory, legal purpose theory, combined theory and legal system theory. The results of the study concluded that: 1) Legal protection for children in the criminal justice system in Indonesia can be seen from the entire legal process, starting from the investigation stage, arrest and detention, prosecution, trial and guidance. The entire process must be carried out based on the provisions of the SPA Law and must prioritize the needs, development and growth of children, both mentally, physically, and socially, and the interests of the community. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPA Law) provides legal protection for children in conflict with the law (consisting of children in conflict with the law, children who are victims of criminal acts and children who are witnesses to criminal acts) in Indonesia.; 2). The weaknesses of legal protection for children who commit crimes are the lack of quality and quantity of human resources of law enforcement officers who handle criminal cases committed by children, and the lack of coordination between law enforcement officers and related institutions that handle criminal cases. The solution to these weaknesses is that law enforcers should improve the quality and quantity of human resources of law enforcement officers who handle criminal cases committed by children and increase synergy between related law enforcers.

Keywords: Child Perpetrators; Criminal; Legal Protection; Justice System.

1. Introduction

There are several examples of such conditions, such as the case in South Jakarta at the end of 2024, a 14-year-old child with the initials MAS consciously killed his father and grandmother and injured his mother. A case involving children as perpetrators of a crime also occurred in Palembang, South Sumatra in September 2024. Four children with the initials IS (16 years old), MZ (13 years old), NS (12 years old) and AS (12 years old) were the perpetrators of the murder and rape of a junior high school student in Palembang, namely AA (13 years old). Laws are made and enforced in order to regulate and protect the interests of citizens so that there is no conflict and also to protect human rights. Law is a series of rules, regulations and rules, both written and unwritten, relating to the regulation of relations between citizens in society.¹

Law Number 23 of 2003 in Article 4 states that every child has the right to live, grow, develop, and participate fairly in accordance with human dignity and honor, and to receive protection from violence and discrimination. The criminal justice system is a legal instrument in dealing with various forms of crime in society. The use of the criminal justice system is considered a form of state response in dealing with crime and a form of effort to enforce criminal law. Therefore, the system is expected to be able to resolve the problem of crime that occurs in the midst of society. According to Davies in Marlina² The term criminal justice system describes the word system covers an impression of a complex to end (the word system shows the impression of a complex object consisting of parts and each sub-part is interconnected with the other parts and runs from beginning to end.

Based on this understanding, it is clear that the objectives of the criminal justice system will be realized if the four law enforcement agencies work together in an integrated manner (integrated criminal justice administration) because the four law enforcement agencies work like "connected vessels" even though each agency stands alone and has its own superior. According to Muladi in Romli Atmasasmita³ criminal justice system as a network of justice that uses material criminal law, formal criminal law or criminal enforcement law. To achieve the goals and effectiveness of the criminal justice system is not easy because there are several things that need to be considered, namely:

1. Police efficiency is a prerequisite for good correctional administration;
2. The overuse of temporary detention results in correctional facilities accommodating inmates beyond their capacity, a problem that can actually be overcome by reducing input, increasing output and shortening trial times;
3. Reducing the burden on inmates of correctional institutions by using alternatives to imprisonment.

Every child in conflict with the law who enters the criminal justice system must be treated humanely. Internationally, the implementation of juvenile criminal justice is guided by the

¹Yahya Harahap, 2015, Discussion of Problems and Implementation of Criminal Procedure Code (Court Hearing Examination, Appeal, Cassation, and Judicial Review), Jakarta: Sinar Grafika, p. 1

²Marlina, Op.cit, p. 6

³Romli Atmasasmita, 1996, Criminal Justice System, Bandung, , Bina Cipta, p. 17

Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), which guidelines contain the following principles:

1. Social policies promote maximum youth welfare and minimize intervention by the criminal justice system;
2. Non-discrimination against child perpetrators of crimes in the criminal justice process;
3. Determination of the age limit for responsibility for children;
4. Imprisonment is a last resort;
5. Diversion actions are carried out with the consent of the child or parent/guardian;
6. Fulfillment of children's rights in the juvenile criminal justice process;
7. Child privacy protection.

The principles of The Beijing Rules above have not been fully implemented even though Law Number 11 of 2012 concerning the Juvenile Criminal Justice System has been formed. Among them, the Public Prosecutor in handling child cases still provides criminal charges rather than actions. As a result, in the trial, the special judge for children who is expected to be able to provide justice to children, still has the view to give punishment. We can see this by the fact that there are still many cases of imprisonment being imposed on children compared to punishments in the form of actions, returning them to their parents/guardians, guidance by foundations or social departments and care provided by the State.⁴

2. Research Methods

The approach method in this research is to use a normative legal approach, namely a process to find legal rules, legal principles, and legal doctrines to answer the legal issues faced.⁵In this type of legal research, law is conceptualized as what is written in statutory regulations or law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate.⁶

3. Results and Discussion

3.1. Legal Protection for Child Criminals in the Current Justice System in Indonesia

The juvenile criminal justice system is the entire process of resolving cases of children in conflict with the law, starting from the investigation stage to the guidance stage after undergoing the criminal process, which is based on protection, justice, non-discrimination, the best interests of the child, respect for the child, the survival and development of the child, proportionality, deprivation of liberty and punishment as a last resort and avoidance of retaliation.⁷

The juvenile criminal justice system is a translation of the term The Juvenile Justice System, which is a term used to define a number of institutions that are part of the court, including

⁴Article 24 of Law Number 11 of 2012 concerning Amendments to Law Number 3 of 1997 concerning Juvenile Justice (Juvenile Criminal Justice System)

⁵Peter Mahmud Marzuki, 2010, Legal Research, Jakarta: Kencana Prenada, p. 35.

⁶Amiruddin and H. Zainal Asikin, 2006, Introduction to Legal Research Methods, Jakarta: PT. Raja Grafindo Persada, p. 118

⁷Article 1 number 1 and Article 2 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

the police, public prosecutors and legal counsel, supervisory institutions, juvenile detention centers, and juvenile development facilities.⁸In Indonesia, the juvenile criminal justice system is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. There are two things that are the basis for thinking in organizing the criminal justice process for children, namely:

1. That children who commit crimes are not seen as criminals, but must be seen as people who need help.
2. The legal approach to children should prioritize persuasive-educational and (psychological/psychological) approaches, namely, as far as possible, avoiding legal processes that are purely punitive, mentally degrading and discouraging, and avoiding stigmatization processes that can hinder the process of developing maturity and independence in a natural way.⁹

In criminal acts, children as perpetrators must receive different treatment from perpetrators of crimes committed by adults in general because the mental, physical and psychological state of children is more vulnerable. Children as perpetrators of crimes who are in the juvenile criminal justice process must receive protection of their rights, as stated by Maidin Gultom, that in essence children cannot protect themselves from various actions that cause mental, physical, social losses, in various areas of life and livelihood.¹⁰

There are several approaches taken for children in conflict with the law according to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System:

1. Based on restorative justice, juvenile criminal justice with restorative justice aims to seek peace between victims and children, prioritize resolution outside the judicial process, keep children away from the negative influence of the judicial process, instill a sense of responsibility in children, realize child welfare, prevent children from being deprived of liberty, encourage society to participate, and improve children's skills.
2. Discretion, in the juvenile criminal justice system, discretion is known as the policy of juvenile investigators in determining a case of a juvenile delinquent, not to continue the investigation with legal considerations in accordance with the legislation and in the best interests of the child.
3. Diversion, this aims to achieve peace between victims and children, resolve children's cases outside the judicial process, prevent children from being deprived of liberty, encourage society to participate and instill a sense of responsibility in children.¹¹

Children in conflict with the law are children who are 12 years old but under 18 years old who are suspected of committing a crime. Children who are victims are children who are under 18 (eighteen) years old who experience physical, mental and/or economic suffering caused by a

⁸Setya Wahyudi, *Implementation of Diversion Ideas in Reforming the Juvenile Justice System in Indonesia*, Yogyakarta: Genta Publishing, 2011. p. 35.

⁹Barda Nawawi Arif in Waluyadi, *Child Protection Law*, Bandung: Mandar Maju, 2009, p. 46.

¹⁰Maidin Gultom, *Legal Protection for Children in the Juvenile Criminal Justice System in Indonesia*, Bandung: Refika Aditama, 2008. p. 12

¹¹Zulfikar Judge. "The Position of Children in Conflict with the Law as Perpetrators of Criminal Acts", *Lex Jurnalica*, Volume 13, Number 3, December 2016. p. 231- 233.

crime. Regarding the form of victim involvement in the juvenile justice system, of course it must be based on the best interests of the victim and the victim's child by trying to maintain a well-maintained family atmosphere so as not to cause fear in the victim and the victim's child. Law No. 11 of 2012 also emphasizes the safety and comfort of child victims, every investigation and investigation (investigation) process in law enforcement agencies must be guided or supervised by their parents and/or guardians. The parties involved in the juvenile criminal justice process are:

- a) The investigator is a Child Investigator;
- b) The Public Prosecutor is the Child Public Prosecutor;
- c) The judge is a child judge;
- d) Community Guidance Officers are functional law enforcement officials who carry out community research, guidance, supervision, and assistance for children inside and outside the criminal justice process; and
- e) A social worker is someone who works in either a government or private institution who has the competence and profession of social work as well as concern in social work obtained through education and/or experience in social work practice to carry out social problems.

The presence of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System moves from handling children as perpetrators of criminal acts, where law enforcement officers must always pay attention to the conditions of children that are different from adults. The basic nature of children as individuals who are still unstable, the future of children as national assets, and the position of children in society that still needs protection can be used as a basis for finding an alternative solution regarding how to prevent children from a formal criminal justice system, placing children in prison, and stigmatization of the position of children as prisoners. One solution is to divert or place child perpetrators of criminal acts out of the criminal justice system. This means that not all problems of juvenile delinquency cases must be resolved through formal justice channels, and provide an alternative for resolution with a justice approach in the best interests of children and by considering justice for victims known as the approach through the principle of Restorative Justice.¹²

There are more than 4,000 children as perpetrators of criminal acts who enter the judicial process every year. In dealing with and overcoming children who commit violations of the law or criminal acts, it is necessary to consider the position of the child and all of his/her unique characteristics and traits. Therefore, in dealing with the problem of naughty children, parents, society and also the state should be more responsible for the guidance, education and development of the child's behavior.

In an effort to provide legal protection for children, Indonesia has ratified the Convention on the Rights of the Child through Presidential Decree Number 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child, created Law Number 4 of 1979 concerning Child Welfare, Law Number 39 of 1999 concerning Human Rights, Law Number 23

¹²Randy Pradityo, "Restorative Justice in the Juvenile Criminal Justice System", Journal of Law and Justice, Volume 5, Number 3, November 2016, p. 319–330.

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of 2002 concerning Child Protection, and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Some references that can be used in implementing diversion for children in conflict with the law, especially as perpetrators, are:

1. International Regulations

a. Convention on the Rights of the Child

The Convention on the Rights of the Child, affirms that: States Parties shall strive to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged, suspected, accused or recognized as having infringed the criminal law and in particular:¹³

1) Setting a minimum age so that children below that age are deemed not to have the capacity to violate criminal law.

2) Where appropriate and desirable, take steps to deal with such children without having to resort to legal means, provided that human rights and legal safeguards are fully respected.

b. The United Nations Standard Minimum Rules for Administration of Juvenile Justice – the Beijing Rules (United Nations Standard Minimum Rules for Administration of Juvenile Justice - Beijing Rules)

This regulation explains about the freedom to make decisions in terms of discretion at all stages and levels of justice and at different stages of the administration of justice for children/adolescents, including investigation, prosecution, decision-making and subsequent regulations. However, in its implementation it is required to be carried out with responsibility, in making the decision must also be truly qualified and specially trained to carry it out wisely and in accordance with their respective functions and duties.

Thus, it is required to take the measures deemed most appropriate in each individual case with, and the need to provide checks and balances with a view to curbing abuse of power, decision-making freedom and to protecting the rights of young offenders, accountability and professionalism are the most appropriate instruments to curb the broad decision-making freedom. Thus, professional qualifications and skilled training are here given priority as valuable means to ensure the judicious exercise of decision-making freedom in the case of juvenile offenders.¹⁴

¹³Convention on the Rights of the Child, Adopted by the United Nations General Assembly on 20 November 1989. Article 40

¹⁴The United Nations Standard Minimum Rules for Administration of Juvenile Justice – the Beijing Rules, Adopted by UN Assembly Resolution No. 40/33 of 29 November 1985. Point 6 points (1), (2) and (3), see also explanation

In terms of transfer, it is also regulated that:

- 1) If necessary, consideration must be given to authorized officials in handling child perpetrators of crimes without following the judicial process.
- 2) The police, prosecutors, or other institutions that handle cases of juvenile delinquents must be given the authority to handle such cases at their own discretion without going through formal trials, in accordance with the criteria stated in the objectives of the applicable legal system and in accordance with the principles in other provisions.
- 3) Any diversion involving referral to the community or other services deemed necessary requires the consent of the child, or his/her parents or guardians. The decision to divert a case must be subject to review by the competent authority in practice.
- 4) To facilitate the policy disposition of child cases, efforts should be made to establish community programs such as temporary supervision and guidance, restitution, and compensation to victims.

Thus, consideration must be given to whether it is necessary to try child perpetrators without going through formal trials by authorized officials, to divert or not to divert cases, and diversion must be used whenever possible.

Police, prosecutors or other agencies should be empowered to resolve such cases at their discretion without going through formal trials, in accordance with the criteria set out as the objectives of the legal system and in accordance with the principles in the provisions should have the authority to carry out diversion. Therefore, the criteria for diversion should be established and should be in accordance with the principles in the Beijing provisions.¹⁵ Any diversion in the form of referral to appropriate community or other services requires the consent of the child, or their parents or guardians.

The decision to divert a case must be subject to review by an authorized official in its implementation, the consent of the child or his/her parents or guardians is a requirement in diversion. The decision to divert must be reviewable by an authorized official (Prosecutor and Police).¹⁶

In order to facilitate the policy disposition of juvenile cases, efforts must be made to establish programs in the community such as: temporary supervision and guidance, restitution and compensation to victims. Efforts must be made to create programs for children who are diverted or diverted. The principles of diversion in the Beijing Rules are:

- 1) Children should not be forced to admit that they have committed certain acts. Of course, if there is a thought that it would be easier not to act in the best interests of the child by forcing him to admit his actions so that his case can be handled formally. This cannot be

¹⁵Ibid

¹⁶Ibid

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justified.

2) Diversion programs are only used on children who admit that they have done something wrong. But there should be no coercion.

3) Imprisonment cannot be part of Diversion. The mechanisms and structures of diversion do not allow for the deprivation of liberty in any form as this violates basic rights in due process.

4) There is a possibility of re-submission to the court (the case must be able to be transferred back to the formal justice system if no solution can be found).

5) The right to a trial or judicial review. Children must still be able to maintain their right to a trial or judicial review.

c. The United Nations Rules for the Protection of Juvenile Deprived of Their Liberty

In this regulation it is explained that "Deprivation of Liberty" is any form of detention or imprisonment or placement of a person in a place of detention, where the person is not allowed to leave at will, on the orders of a judicial, administrative or other public authority. The purpose of this regulation is to establish minimum standards for the protection of children who are deprived of their liberty in any form, which are consistent with human rights and fundamental freedoms, and are intended to eliminate the detrimental effects of all types of detention, and to foster reintegration into society. In the case of children who are arrested or awaiting trial, the following must be done:¹⁷

- 1) Detention measures should be avoided;
- 2) Even if it is necessary to do so, it is limited to certain circumstances;
- 3) Alternative measures must be attempted
- 4) All children must be presumed innocent
- 5) Fast court process
- 6) Detention must be separated from children who are convicted.
- 7) Legal aid for children

d. The United Nations Guidelines for the Prevention of Juvenile Delinquency – the Riyadh Guidelines

This regulation contains steps that can be taken in terms of preventing the occurrence of

¹⁷The United Nations Rules for the Protection of Juvenile Deprived of their Liberty. Adopted by UN Assembly Resolution 45/133 of 14 November 1990.

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juvenile delinquency. Emphasis should be given to preventive policies that help the successful socialization and integration of all children and adolescents, especially through the family, community, peer groups, schools, vocational training and the world of work, and through voluntary organizations. The appropriate personal development of children and adolescents should be taken into account and in the process of socialization and integration they should be accepted as full and equal partners.¹⁸

Placement of a child or adolescent in an institution should be a last resort and for the shortest possible period of time, with the best interests of the child or adolescent in mind. In order to prevent the continued shaming, victimization and punishment of adolescents, legislation should be created to ensure that any act that is not considered a violation and is not subject to punishment if committed by a child or adolescent.¹⁹

2. National Regulations

a. Law no. 4 of 1979 concerning Child Welfare

This law is intended to realize child welfare and fulfill children's basic needs.²⁰ This law also explains the rights of children, namely:²¹

- 1) The right to welfare, care, upbringing and guidance based on love both within the family and in special care to grow and develop naturally.
- 2) The right to services to develop one's abilities and social life, in accordance with the culture and personality of the nation, to become a good and useful citizen.
- 3) The right to care and protection, both during pregnancy and after birth.
- 4) The right to protection of the environment that may endanger or hinder natural growth and development.

All of these national legal instruments are intended to provide stronger guarantees of protection of children's rights when they are faced with the law and must undergo the judicial process. However, in its implementation,

The juvenile criminal justice system in Indonesia still faces various problems, one of which is the criminal sentencing system for child perpetrators of crimes that does not fulfill all aspects of legal protection for children, for example, detention of children that is not in accordance with procedures, a long judicial process starting from investigation, prosecution, trial, which

¹⁸The United Nations Guidelines for the Prevention of Juvenile Delinquency – the Riyadh Guidelines, adopted and proclaimed in UN General Assembly Resolution No. 45/112 of 14 December 1990. Article 10.

¹⁹Ibid., Article 56

²⁰Law no. 4 of 1979 concerning Child Welfare. Article 1 number 2

²¹Ibid., Article 2

ultimately places child convicts in correctional institutions or those who are returned to society with an acquittal will still leave trauma and negative implications for children.

Types of sanctions in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System are principal penalties consisting of warning penalties; penalties with conditions in the form of coaching outside the institution, community service, or supervision; job training; coaching within the institution; and imprisonment. Additional penalties consist of confiscation of profits obtained from the crime or fulfillment of customary obligations. In addition to criminal sanctions, sanctions for actions for children are also regulated, namely return to parents/guardians; surrender to someone; treatment in a mental hospital; treatment at LPKS; obligation to attend formal education and/or training held by the government or private agencies; revocation of driving license; and/or improvement due to the crime.

In addition to the types of sanctions, the new policy in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is regarding the use of the principle of Restorative Justice, namely the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a fair resolution by emphasizing restoration to the original state, and not retaliation. The diversion process, namely the transfer of the resolution of child cases from the criminal justice process to a process outside the criminal justice system, must also be used in the investigation and prosecution process.

The practice of juvenile justice in Indonesia is based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPA). The juvenile criminal justice system is the entire process of resolving cases of children in conflict with the law, from the investigation stage to the guidance stage after serving a sentence (Article 1 number 1 of the SPA Law). The SPA Law aims to realize a justice system that truly guarantees the best protection for the interests of children in conflict with the law. This is in accordance with one of the principles of the implementation of the juvenile criminal justice system in Article 2 of the SPA Law, namely protection. The SPA Law defines minors as children who are 12 years old but not yet 18 years old and distinguishes children in conflict with the law into 3 (three), namely:

- a. Children who are perpetrators of criminal acts (Article 1 number 3 of the SPA Law)
- b. Children who are victims of criminal acts (Article 1 number 4 of the SPA Law); and
- c. Children who are witnesses to criminal acts (Article 1 number 5 of the SPA Law).

There are differences in the criminal justice process for adults and children who commit crimes, namely, the law lightens the criminal acts committed by children, because there are children's rights that must be protected. The differences in the judicial process can be seen, among others, in the provisions of Article 3 of the SPA Law which regulates the rights of every child in the criminal justice process, including:

- a. Treated humanely by paying attention to needs according to age;
- b. Separated from adults;
- c. Obtain legal and other assistance effectively;
- d. Carrying out recreational activities;
- e. Free from torture, punishment or other cruel, inhumane or degrading treatment;

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- f. Not sentenced to death or life imprisonment;
- g. Not be arrested, detained or imprisoned, except as a last resort and for the shortest possible time;
- h. Obtain justice before a juvenile court that is objective, impartial, and in a hearing that is closed to the public;
- i. His identity is not published;
- j. Obtain assistance from parents/guardians and people trusted by the child;
- k. Obtain social advocacy;
- l. Gaining a personal life;
- m. Obtaining accessibility, especially for children with disabilities;
- n. Obtaining education;
- o. Obtain health services; and
- p. Obtain other rights in accordance with the provisions of laws and regulations.

According to Article 4 of the SPA Law, children who are serving a prison sentence have the right to:

- a. Remission or reduction of sentence;
- b. Assimilation;
- c. Leave to visit family;
- d. Conditional release;
- e. Leave before release;
- f. Conditional leave;
- g. Other rights in accordance with statutory regulations.

Furthermore, the principle of protection in the SPA Law is seen in terms of imposing sanctions. Children as perpetrators of criminal acts can be subject to 2 (two) types of sanctions, namely action sanctions (criminal perpetrators under the age of 14) and criminal sanctions (Article 69 of the SPA Law).

a. Sanctions include, return to parents/guardians, surrender to someone, treatment in a mental hospital, treatment at LPKS, obligation to attend formal education and/or training held by the government or private bodies, revocation of driving license and/or correction due to criminal acts (Article 82 of the SPA Law).

b. Criminal sanctions include principal penalties and additional penalties (Article 71 of the SPA Law).

- Principal penalties include, warning penalties, penalties with conditions (consisting of coaching outside the institution, community service, or supervision), job training, coaching within the institution and prison.

- Additional criminal penalties include confiscation of profits obtained from criminal acts or fulfillment of customary obligations.

Legal protection for children in the criminal justice system in Indonesia can be seen from the entire legal process, starting from the investigation stage, arrest and detention, prosecution, trial and guidance. The entire process must be carried out based on the provisions of the SPA Law and must prioritize the needs, development and growth of children, both mentally, physically, and socially, and the interests of society.

3.2. Weaknesses and Solutions for Legal Protection for Child Criminals in the Indonesian Justice System

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System regulates the definition of Children in Conflict with the Law, in the provisions of Article 1 number 2, namely, children in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts. While the definition of Children in Conflict with the Law (Children) in number 3, is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a crime. In dealing with children as perpetrators of criminal acts, law enforcement officers must always pay attention to the condition of children which is different from adults. The basic nature of children as individuals who are still unstable, the future of children as national assets, and the position of children in society who still need protection can be used as a basis for finding an alternative solution regarding how to prevent children from a formal criminal justice system, placing children in prison, and stigmatization of the position of children as prisoners. One solution is to divert or place child perpetrators of criminal acts out of the criminal justice system. This means that not all juvenile delinquency cases must be resolved through formal justice channels, and provide an alternative for resolution with a justice approach in the best interests of the child and by considering justice for the victim, which is known as an approach through the principle of restorative justice.²²

The principle of restorative justice is a popular alternative in various parts of the world for handling children in trouble with the law because it offers a comprehensive and effective solution. The principle of restorative justice aims to empower victims, perpetrators, families, and communities to correct an unlawful act by using awareness and realization as a basis for improving community life explaining that the principle of restorative justice is basically simple, meaning it is an application of the theory of justice that emphasizes the restoration of losses caused by criminal acts.²³

The provisions relating to diversion are emphasized in Article 5 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which reads:

"In the Juvenile Criminal Justice System as referred to in paragraph (2) letters a and b, Diversion must be attempted." Based on the provisions above, it can be said that the concept of restorative justice through diversion is a legal breakthrough that must and must be used in every case of children in conflict with the law. Diversion was born with the desire to avoid negative effects on the psychological development of children due to the implementation of the criminal justice system with all the consequences of sentencing. Diversion is a diversion of the settlement of juvenile criminal cases from the judicial process towards a settlement through deliberation which in this case involves the victim, perpetrator, family of each victim and perpetrator and the community outside the judicial process. Diversion is part of the settlement of juvenile criminal cases through a restorative justice approach. This is very

²²Ibid.

²³Nikmah Rosidah, 2014, *Legal Culture of Juvenile Judges in Indonesia*, Semarang: Pustaka Magister, p. 103

important to do so that the rights of children, both victims and perpetrators, are protected for their future, while also restoring social order in society.²⁴

As stipulated in Article 7 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the diversion process using the principle of restorative justice is only used in cases of children whose criminal threat is under 7 (seven) years and is not a repetition. Furthermore, according to the provisions of Article 9 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is emphasized that in the process of enforcing juvenile criminal law, law enforcement officers, including investigators, public prosecutors, and judges in carrying out diversion must consider the category of the crime, the age of the child, the results of community research from Bapas (Correctional Agency) and support from the family and community environment.

Implementing criminal law policy means that it contains efforts that lead to changes, improvements and renewal of criminal law not only for the present, but also for the future. Efforts and policies to create better criminal law regulations are essentially inseparable from the goal of combating crime. The function of criminal law in general is as social control in the sense that criminal law functions to prevent crime from occurring or a preventive function and prosecute perpetrators for their actions that violate it or a repressive function. And so far criminal law has been seen as a powerful tool to combat crime. In Article 1 paragraph (2), Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System states that "Children who are in conflict with the law are children who are in conflict with the law, children who are victims of criminal acts, children who are subject to criminal sanctions".

In this paper, we examine children in conflict with the law. Article 1 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that "Children in conflict with the law, hereinafter referred to as Children, are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old, who are suspected of committing a crime."

In order to realize the protection of children's rights, more specific regulations are needed so that Law Number 11 of 2012 concerning the Juvenile Criminal Justice System or better known as the SPA Law was created. In the SPA Law there is a clause that is quite progressive to protect children's rights, namely the clause regarding diversion, where diversion is the settlement of children's cases outside the courts which aims to protect children's rights and also for the realization of restorative justice for children contained in Article 5 paragraph (1) of the UUSPA, namely "The Juvenile Criminal Justice System must prioritize the Restorative Justice Approach. In the Juvenile Criminal Justice System, both Investigation, Prosecution, and in Juvenile Trials, Diversion must be attempted."

Which means that not all juvenile delinquency cases must be resolved through formal justice, and provide alternatives for resolution with a justice approach for the best interests of the child

²⁴Rio Fabry, 2016, "Analysis of the Implementation of Restorative Justice Principles in Traffic Crime Cases with Child Perpetrators", Thesis, Lampung: Postgraduate Program in Law, Faculty of Law, University of Lampung, p. 5

and consider justice for the victim. Restorative Justice is known as a concept of punishment that intends to find a way to enforce a fairer and more balanced punishment system, by considering the interests of the perpetrator and victim as a mechanism to achieve goals that are resolved through peace.²⁵

Restorative Justice is a diversion process, namely all parties involved in a particular crime together solve the problem and create an obligation to make things better by involving victims, children, the community and related parties to find the best solution for children without any element of retaliation. Restorative Justice is the most recommended form of diversion for children in conflict with the law. This is because the concept of Restorative Justice involves various parties to resolve a problem related to a crime committed by a child. Diversion is carried out on the grounds of providing an opportunity for lawbreakers to become good people again through non-formal channels by involving community resources, diversion seeks to provide justice to cases of children who have committed crimes to law enforcement officers as law enforcement.²⁶

The aim of resolving children's cases through diversion is contained in Article 6 which reads:

- a. Achieving peace between victims and children.
- b. Resolving children's cases outside the judicial process.
- c. Prevent children from being deprived of liberty.
- d. Encourage the community to participate, and
- e. Instill a sense of responsibility in children.²⁷

Diversion is considered an alternative path that is in accordance with various international legal conventions. Article 1 number 7 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, specifically for Juvenile cases, a mechanism is known to divert the resolution of cases from the criminal justice process to a process outside the criminal justice system, which is called Diversion. Conceptually, the implementation of the diversion program in the juvenile criminal justice system is to prevent an increase in juvenile crime in the future, by involving all parties directly related to criminal acts by children.²⁸

The factor that causes the deviation of children's behavior that occurs today is the lack of parental supervision so that the decisions taken by children are not appropriate. It should be understood that children are different from adults when making decisions to do something, so in this condition children should be positioned as victims, not as perpetrators. In its implementation, diversion is regulated in Article 7 of Law Number 11 of 2012 which reads:

²⁵Rina Nurhaliza, Herry Liyus, Dheny Wahyudi, Implementation of Diversion Agreement at Investigation Level in Criminal Justice System, Jurnal Of Criminal Law, Vol. No.1, 2020, p. 113-114.

²⁶Sri Rahayu, Diversion as an Alternative to Settlement of Criminal Cases Committed by Children in the Perspective of the Juvenile Criminal Justice System, Journal of Legal Studies, 2015, p. 130-131.

²⁷Paulus Hadisuprpto, Understanding and Dealing with Child Delinquency, Malang: Bayumedia Publishing, 2008, p. 130.

²⁸Mujiburrahman, Diversion and Imposition of Criminal Sanctions in the Juvenile Justice System, Journal of Legal Studies, Vol. 5 Number 1, 2018, p. 80

1. At the level of investigation, prosecution and examination of child cases in the District Court, diversion must be attempted.
2. Diversion as referred to in paragraph (1) is implemented in cases where the crime is committed:
 - a. threatened with imprisonment of less than 7 (seven) years, and
 - b. is not a repetition of a criminal act.²⁹

In Article 7, according to the author's analysis, the diversion process carried out at the investigation, prosecution, and district court levels can only be carried out when a child commits a crime with a criminal threat of less than 7 (seven) years and is not a repetition of the crime. So when a child commits a crime over 7 (seven) years, diversion cannot be attempted.

The implementation of diversion is also regulated in Article 3 of Government Regulation Number 65 of 2015 which reads:

- 1) Every investigator, public prosecutor and judge in examining a child is obliged to attempt diversion.
- 2) Diversion as referred to in paragraph (1) is implemented in cases where the crime is committed:
 - a. threatened with imprisonment of less than 7 (seven) years, and
 - b. is not a repetition of a criminal act.

The diversion regulation in Article 3 of Government Regulation Number 65 of 2015 also provides a limit on the threat of criminal punishment of 7 (seven) years as stated in paragraph (2) letter a. So that when a child commits a crime with a threat of criminal punishment of more than 7 (seven) years, the settlement process cannot be carried out through diversion. Meanwhile, in Article 3 of Supreme Court Regulation Number 4 of 2014 which reads:

"The Juvenile Judge is obliged to attempt Diversion in cases where a child is charged with committing a crime that is punishable by imprisonment for less than 7 (seven) years and is also charged with a crime that is punishable by imprisonment for 7 (seven) years or more in the form of a subsidiary, alternative, qualitative or combination (combined) indictment.

Supreme Court Regulation Number 4 of 2014 Article 3, expands the provisions contained in Article 7 paragraph (2) UUSPA that the diversion process can still be carried out by the Judge at the trial level even though the criminal threat is more than 7 (seven) years, as long as the crime meets the requirements of a subsidiary, alternative, qualitative or combination (combined) indictment. When we refer to the Supreme Court regulation, the diversion process with a criminal threat of more than 7 years cannot be carried out at the investigation level or at the prosecution level, but can only be carried out at the trial level because the Supreme Court Regulation only applies in the scope of the court.

²⁹Ibid., p. 131

In practice, children in conflict with the law here are children who are 12 years old, but not yet 18 years old who are suspected of committing a crime (UU SPA). Based on this definition, criminal responsibility for children is imposed from the age of 12 until they reach adulthood. Meanwhile, children who are not yet 12 (twelve) years old cannot be brought to court, because based on sociological, psychological, and pedagogical considerations, children are considered not yet able to be held responsible for their actions.³⁰ This is regulated in Government Regulation of the Republic of Indonesia Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 12 (twelve) Years of Age.

According to Article 21 paragraph (1) of the Criminal Procedure Code, detention may be carried out on the grounds that there is concern that the suspect or defendant will flee, damage or remove evidence, or repeat the crime. However, in criminal procedure law, limiting a person's freedom through arrest and detention is not a requirement, but rather a step to seek the truth in cases of violations of the law. Detention may only be carried out in certain cases and must take into account the rights of the individual concerned.³¹ Child detention centers must be separated from adult detention centers, and during the detention process, the child's physical, mental, and social needs must continue to be considered and met. This is regulated in Article 45 paragraph (3) and (4) of Law No. 3 of 1997, that detained children must be placed in a Juvenile Correctional Institution separate from adult prisoners. This limitation is carried out with psychological considerations, to avoid negative impacts that may arise, because children who are detained are not necessarily proven to have committed delinquency. Being in the same environment as adult prisoners can have a negative effect on the mental development of children, considering the experiences of adult prisoners are different from children who are still in the development stage. This separation aims to protect children from negative influences that may arise if they are left in the same justice system as adults.

In addition, children in conflict with the law must be guaranteed the right to receive assistance from parents or guardians, as well as legal assistance services. In this case, the state is expected to be able to provide adequate facilities and resources, both in terms of separate correctional institutions for children and in terms of guidance oriented towards recovery and rehabilitation. The policy of applying criminal law to children in conflict with the law must also take into account the importance of the role of the family and community in the child rehabilitation process. Children involved in criminal acts often have a family background or environment that is less supportive. Therefore, programs that involve families and communities as part of the rehabilitation process are very important to reduce the possibility of children being trapped again in criminal acts. In this context, the implementation of discretion also includes community involvement through discretionary deliberations. The parties involved in this process are the police, perpetrators and/or their parents/guardians,

³⁰Setyorini, EH, Sumiati, S., & Utomo, P. (2020). The Concept of Restorative Justice for Children in Conflict with the Law in the Juvenile Criminal Justice System. *DiH: Journal of Legal Studies*, 149–159.

³¹Setyorini, EH, Sumiati, S., & Utomo, P. (2020). The Concept of Restorative Justice for Children in Conflict with the Law in the Juvenile Criminal Justice System. *DiH: Journal of Legal Studies*, 149–159.

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victims and/or their parents/guardians, community and community counselors (community leaders or from the school).

Weaknesses in legal protection for children who commit crimes are: lack of quality and quantity of human resources of law enforcement officers who handle criminal cases committed by children, and lack of coordination between law enforcement officers and related institutions that handle criminal cases.

The solution to this weakness is that law enforcers should improve the quality and quantity of human resources of law enforcement officers who handle criminal cases committed by children and increase synergy between related law enforcers.

4. Conclusion

Legal protection for children in the criminal justice system in Indonesia can be seen from the entire legal process, starting from the investigation stage, arrest and detention, prosecution, trial and development. The entire process must be carried out based on the provisions of the SPA Law and must prioritize the needs, development and growth of children, both mentally, physically, and socially, and the interests of society. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPA Law) provides legal protection for children in conflict with the law (consisting of children in conflict with the law, children who are victims of criminal acts and children who are witnesses to criminal acts) in Indonesia. The law provides protection for children during the stages of arrest and detention, investigation, prosecution, trial and development. The SPA Law also regulates the form of settlement of child criminal cases through a diversion process that must be attempted during the investigation, prosecution and trial stages. The weaknesses of legal protection for child perpetrators of crimes are the lack of quality and quantity of human resources of law enforcement officers who handle criminal cases committed by children, and the lack of coordination between law enforcement officers and related institutions that handle criminal cases. The solution to this weakness is that law enforcers should improve the quality and quantity of human resources of law enforcement officers who handle criminal cases committed by children and increase synergy between related law enforcers.

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