

Application of Criminal Sanctions Against Children in Conflict with the Law Based on the Values of Justice

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Abstract. *The regulation of criminal penalties for child perpetrators in conflict with the law is still a polemic, because the restorative approach has not been fully implemented to the maximum. The purpose of this study is to analyze and find the application of criminal sanctions against children in conflict with the law today. To analyze and find the weaknesses in the application of criminal sanctions against children in conflict with the law today. To find a policy formulation for the application of criminal sanctions against children in conflict with the law based on the value of justice. This thesis is written using a sociological legal approach method, the research specifications are descriptive analysis, data sources consist of primary data and secondary data taken from principal legal materials, secondary legal materials, tertiary legal materials, data collection techniques through observation and interviews. The results of the study show the application of criminal sanctions against children in conflict with the law of the Juvenile Criminal Justice System Law Number 11 of 2012 amending Law Number 3 of 19997 concerning Juvenile Courts through warning sentences, sentences with conditions, job training, coaching in institutions and finally imprisonment, in which case imprisonment should be the last resort as the principle of criminal law, namely (ultimum remidum) "criminal is the last option" that can be imposed on children in conflict with the law, for that other criminalization approaches must be attempted first.*

Keywords: *Children; Criminal; Justice; Law; Sanctions.*

1. Introduction

Children as the next generation become the channel for the aspirations and hard work of the nation and also an asset for future national development.¹ Children are a trust from God Almighty who must be saved so that during their development and growth as adults they are continuously successful for the future of the nation, so that the government must fully provide legal protection and natural rights for children as part of the nation's children who are expected to be the successors to the ideals of the Indonesian nation's struggle.²

The state is obliged to guarantee the welfare of children legally according to applicable laws as regulated in the 1945 Constitution of the Republic of Indonesia Article 28 B paragraph (2) which states, "every child has the right to survive, grow and develop and has the right to protection from violence and discrimination". Child protection is also mandated in Article 34 paragraph (1) of the 1945 Constitution which states, "The poor and neglected children are cared for by the state". This article regulates the state's responsibility in fulfilling basic needs that are appropriate for humanity.

Viewed from any perspective, the judge's action in granting the Public Prosecutor's demands is also considered not to show logical and reasonable reasoning. Because the imposition of a prison sentence is feared not to be a solution in efforts to improve and foster it. In fact, the criminal justice system for Children in Conflict with the Law must prioritize affection as a family and intend to improve the child.

2. Research Methods

The approach method used in this study is the empirical legal approach method. Based on Soetandyo Wignjosoebroto's view, empirical legal research is research in the form of empirical studies to find theories about the process of law working in society.³ The research specification used in this study is descriptive analysis, namely describing the applicable laws and regulations and related to legal theories and legal implementation related to children in conflict with the law. Describe clearly and comprehensively everything related to how the legal protection of children in conflict with the law is based on literature studies and data obtained from documents, and then a careful analysis is carried out in order to solve the problems in this study.

¹Ediwarman, "Juvenile Justice at the Crossroads in the Perspective of Victimology (learning from the Raju case)", *Jurnal Konstitusi*, Vol. 18 No. 1, 2006: p. 4

²Hardianto Djanggih, Concept of Legal Protection for Children as Victims of Cybercrime Through Penal and Non-Penal Approaches, *Mimbar Hukum-Faculty of Law, Gadjah Mada University*, Vol. 30, No. 2, 2018, p. 317

³Soetandyo Wignjosoebroto, *Law, Paradigm, Method and Dynamics of the Problem*, Huma, Jakarta, 2002, p. 147.

3. Results and Discussion

3.1. Application of Criminal Sanctions Against Children in Conflict with the Law

Children are the heirs and also the future portrait of the nation in the future, the next generation of the nation's ideals, so that every child has the right to survival, growth and development, participation and the right to protection from criminal acts. Based on Article 1 paragraph (3) of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, what is meant by children in conflict with the law (children in conflict with the law) are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime.

The development of society and technology today indirectly also affects the level of crime that occurs with various modes, the tendency of increasing crime can be seen from the news in the mass media, both print and electronic media, the crimes that occur are not only committed by adults but also by children, either as perpetrators or as victims of a crime. The many cases of children in conflict with the law are certainly very worrying considering that children are the next generation of the nation who must be protected by the state. The tendency of increasing cases committed by children with various modes must be addressed immediately.

Data obtained by the author in the EMP (Electronic Investigation Management) of the National Police Criminal Investigation Center (Pusiknas) shows that 40,079 children have been in conflict with the law since January 2024. As many as 20.83 percent of children are in conflict with the law or are reported or suspects or perpetrators. Meanwhile, 49.37 percent of children are victims of criminal acts. Meanwhile, 29.78 percent of children are witnesses to criminal acts.⁴

One of the crimes that often involve children as perpetrators is abuse. Abuse as a form of crime is a social problem that is very difficult to eliminate. Criminal acts of abuse committed by minors are very disturbing, because children should still be getting an education, not as perpetrators of criminal acts. This shows the need for more serious prevention and handling.

Handling of children's cases that are not differentiated from adult cases is considered inappropriate because such a system will harm the interests of the child concerned. Children who are under pressure when their case examination is in progress will affect their mental attitude. They will feel very afraid, feel stressed and as a result they will become quiet and uncreative. In themselves they feel scolded by the examining officer and also feel that they are being shunned by society.

⁴<https://pusiknas.polri.go.id/>accessed on February 26, 2025

This is very detrimental to the interests of the child, do not let it happen that after the case is finished or returns to society after serving a sentence, the child becomes more naughty. Do not let the child who has been involved in a criminal case not be able to socialize well, so that he cannot devote himself to the nation and state. Therefore, in handling children's cases, especially for law enforcement officers, special attention is needed, the examination or treatment cannot be the same as adults, it is necessary to have certain approaches so that the child being examined can be free from fear and feel safe.

Before discussing the application of criminal sanctions in Indonesia against children in conflict with the law, the author will briefly review the minutes of the session on the formation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System where the draft law was initially proposed by the government as a form of protection for children in conflict with the law and also to the formation of a working committee related to the formation of the law by Commission III of the Indonesian House of Representatives consisting of 9 (nine) factions, namely the Democrat faction, Golkar faction, PDIP faction, PKS faction, PAN faction, PKB faction, Gerindra faction, Hanura faction, PPP faction and the government's views represented by the Minister of Law and Human Rights, Minister of Social Affairs, Minister of State for Women's Empowerment and Child Protection, Minister of State for Empowerment of State Apparatus and Bureaucratic Reform.

The conclusion related to the mini factions' opinions can be summarized that all factions in Commission III of the Indonesian House of Representatives have many differences, objections, and agreements in this Mini Faction meeting on the Draft Law on the Criminal Justice System, fundamental differences related to the draft formation of the Law on the Juvenile Criminal Justice System. Imprisonment is considered the last resort that can be imposed on children and the process of resolving juvenile crimes must prioritize the principle of restorative justice.

From the results of the working committee report, mini opinions of the factions and the first level working meeting of the Draft Law on the Juvenile Criminal Justice System, it can be concluded that Commission III of the Indonesian House of Representatives together with the government agree that the changes in the new Draft Law on the Juvenile Criminal Justice System must prioritize children's rights, including the right to survival, the right to protection, the right to growth and development and the right to participate as regulated in the convention on the rights of the child.⁵This is an explanation regarding the Minutes on the Formation of Legislation on the Juvenile Criminal Justice System.

⁵Saputra, T. (2022). Implementation of Imprisonment as a Last Resort for Children. *Visio Justisia Law Journal*, page 6.

Many criminal cases committed by children must end in imprisonment with the aim of providing a deterrent effect, so that they do not repeat the deviant act for the sake of a better future for the child. However, imprisonment has not been able to suppress the high number of child crimes. What happens is that some of the children with deviant behavior become recidivists and are imprisoned again. This will actually have a worse impact on the child's development.

Barda Nawawi Arief said that imprisonment not only results in the deprivation of liberty, but also has negative consequences for things related to the deprivation of liberty itself. These negative consequences include the deprivation of a person's normal sexual life, so that homosexual relations and masturbation often occur among convicts. The deprivation of a person's liberty also means the deprivation of that person's freedom to do business, which can have serious consequences for the socio-economic life of his family. Moreover, imprisonment is said to be able to provide a bad label (stigma) that will continue to be carried over even though the person concerned no longer commits a crime. Another consequence that is also often highlighted is that the prison experience can cause degradation or a decrease in human dignity and self-esteem.⁶

It is on this basis that the Government and the People's Representative Council of the Republic of Indonesia finally initiated a change in the justice system applied to children. Therefore, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System was born, which was ratified on July 30, 2012 and enacted at that time.

The law provides many legal breakthroughs in the philosophical, sociological, legal and psychopolitical objectives of society which make this law more fulfilling the sense of justice for children. The substance of the article that is very different from the previous law is the provision on criminal policy for children in conflict with the law. Chapter V of Law Number 11 of 2012 which regulates the provisions of Criminal and Action.

Article 69 paragraph (2) of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System states that a child who has not reached the age of 14 years can only be subject to action. The lightness of the act, the child's personal circumstances, or the circumstances at the time the act was committed or which occurred subsequently can be used as a basis for the judge's consideration not to impose a criminal penalty or sanction by considering aspects of justice and humanity.

According to Sudarto, what is meant by criminal sanctions is suffering that is intentionally imposed on a person who commits an act that meets certain requirements. According to Roeslan Saleh, what is meant by criminal sanctions is

⁶Priyanto, D. (2009). *Implementation System of Prison Sentences in Indonesia*. Bandung: Refika Aditama.

a reaction to a crime and this is in the form of misery that is intentionally imposed by the state on the perpetrator of the crime. 9 Law No. 11 of 2012 concerning the Juvenile Criminal Justice System explains that the main penalties that can be imposed on children consist of:

- a) Criminal Warning
- b) Criminal with Conditions
- c) Job Training
- d) Coaching in Institutions
- e) Prison Sentence

Meanwhile, additional criminal penalties consist of:

- a) Confiscation of profits obtained from criminal acts; or
- b) Fulfillment of customary obligations

There has been a paradigm shift in the imposition of new sentences on children through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which also opens the door to handling children in conflict with the law so that the law can be implemented properly for the benefit and protection of children.

The basic substance regulated in Law Number 11 of 2012 is a firm regulation regarding restorative justice to avoid and keep children away from the judicial process, because in its process, the Juvenile Court Law Number 3 of 1997 was deemed insufficient to cover all children's needs such as protection and justice so that the Juvenile Justice System Law was formed which can later avoid stigmatization of children in conflict with the law and it is hoped that children can return to the social environment naturally. The spirit of the urgency of the formation of this Juvenile Criminal Justice System Law is to make imprisonment a last resort as explained in Article 81 paragraph (5) "imprisonment is the last resort".

In this discussion, the author highlights a case of a court decision where the child defendant, hereinafter referred to as the Child, was 15 years old when the verdict was given on March 8, 2023 or at least at some time in 2023, residing at Jl. Ceger Raya No. 04 RT/RW 02/01 Kel Jurangmangu Timur Kec Pondok Aren Kota Tangerang Selatan or at least in another place that is still included in the jurisdiction of the South Jakarta District Court.

In essence, the public prosecutor has submitted his charges against the child defendant as follows:

1) Declaring that the Child has been proven legally and convincingly guilty of committing the crime of participating in serious abuse with prior planning as per Article 355 Paragraph (1) of the Criminal Code in conjunction with Article 55 Paragraph (1) 1 of the Criminal Code in the Public Prosecutor's First Primary Indictment;

2) Therefore, imposing a prison sentence on the child with a prison sentence of 4 (four) years in LPKA minus the time the child was in temporary detention with the order that the child remain in detention.

3) Establishing evidence (attached in the verdict attachment)

4) Ordering the child to pay court costs of Rp. 2,000 (Two Thousand Rupiah).

And in the main case the judge decided that:

1) Declaring that the Child has been proven legally and convincingly guilty of committing the crime of "participating in committing Serious Abuse with prior planning" as in the First Primary Indictment.

2) Sentencing the child to a prison sentence of 3 (three) years and 6 (six) months in LPKA

3) Determining that the period of detention that the child has served is deducted in full from the sentence imposed.

4) Determining that the child should remain in custody

5) Establishing evidence (attached in the verdict attachment)

6) Charge the child to pay court costs of Rp. 5,000 (Five Thousand Rupiah).

Legal treatment of children should receive serious attention because these children are the future of a nation. Therefore, in making decisions, judges must be sure that the decisions taken will be a strong basis for returning and managing children towards a good future to develop themselves as citizens who are responsible for the life of the nation.⁷

Criminal law is designed so that all interests of the state, society, and individuals are protected in a balanced and harmonious manner according to Pancasila. The purpose of punishment is very important according to JE Sahetapy, an Indonesian legal expert. Judges must reflect on the criminal or criminal aspects within the framework of the purpose of punishment by considering the sense of

⁷Gosita, A. (2004). Child Protection Issues. Jakarta: PT Ilmu Bhuana.

justice in society and analyzing the reciprocal relationship between the perpetrator and the victim.⁸

The process of resolving cases of children in conflict with the law must be carried out based on the principles of the juvenile criminal justice system. The principles of the juvenile criminal justice system include protection, justice, non-discrimination, the best interests of the child, respect for the child's opinion, the child's survival and development, child development and guidance, proportionality, deprivation of liberty and punishment as a last resort and avoidance of retaliation. Moreover, the position of children in committing crimes is not the same as adults who already have reason and experience, where children are at a level that is not yet able to fight for something that is their right.

Referring to the regulation of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System which is more comprehensive in placing the position of children in the law, it means that in this law (SPPA) all Law Enforcement Officers are involved in resolving children's problems. This regulation is clearly needed by judges in passing sentences on perpetrators of criminal acts so that harmony and conformity between the final decision and statutory regulations are created.

Fulfillment of the legal objectives in the form of legal certainty in Decision Number 4/Pid. Sus/Anak/2023/PN.Jkt.Sel, needs to be considered and reviewed. In this article, the Author highlights the differences between Law Number 3 of 1997 concerning Juvenile Courts and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System regarding the sentencing of children in conflict with the law. The main focus on the aspect of benefit is imprisonment which does not provide maximum benefits for ABH.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System stipulates that the principal punishments that can be imposed on children in conflict with the law consist of warnings, punishments with conditions, job training, coaching in institutions, and finally imprisonment. This is reinforced in Article 71 Jo Article 81 paragraph (5) "Imprisonment for children is only used as a last resort".

Judges in imposing principal or additional penalties on children who commit crimes, both according to statutory regulations and other applicable laws in the community concerned must be considered and decided as well as possible. Considering that children who are dealing with the law will have an impact on their psychology and receive a lot of negative stigma, both from themselves and their environment. However, it must also be considered from the side of the

⁸Fitri, W. (2017). Basics of Criminal Law in Indonesia. Jakarta: PT Nusantara Persada Utama.

victim who has become the target of the perpetrator's crime which has resulted in a significant loss.⁹

In the decision above, it can be seen that the judge did not use the principle of preference in dealing with conflicts between legal norms, namely *lex posteriori derogat legi priori* which states that the new regulation overrides the old regulation.¹⁰ Considering that the Juvenile Criminal Justice System Law was enacted in 2012 and the Juvenile Court Law was enacted in 1999, it is not in line with this principle that judges prioritize the use of the Juvenile Court Law and ignore the Juvenile Criminal Justice System Law.

If we look at the decision above, there is no authoritative solution for Children in Conflict with the Law who were given a prison sentence of 3 years and 6 months for ordering abuse. Where imprisonment is not a solution that provides a way out of the problem. Imprisonment does not provide an educational solution, by placing children in conflict with the law, their rights as children cannot be fulfilled optimally. In addition, the purpose of the Child Criminal Justice System Law by advancing welfare and paying attention to the principle of proportionality is also not fulfilled. The Child Criminal Justice System Law was formed with the aim of avoiding the use of criminal sanctions that are solely punitive. With Children in Conflict with the Law who are not sentenced to undergo training or supervision, this decision can be said to be unable to provide an authoritative solution. In addition, punishment that is not in accordance with the needs of Children in Conflict with the Law is certainly not in line with the principle of the best interests of the child. Punishment in the decision has not been able to provide a better life for Children in Conflict with the Law and is not the best way to solve the problem of Children in Conflict with the Law.

This makes it understandable that there is a discrepancy between the verdict and the regulations of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. This is a problem because of the overlap considering that the judge in making a verdict must be based on statutory regulations. Based on the analysis above, the author argues that the judge's verdict in this case does not fully reflect the principle of justice. The judge should have considered more mitigating factors, interpreted the law more flexibly, and adopted a restorative justice approach. Therefore, this verdict deserves to be reviewed, and it is hoped that there will be an appeal that can provide more proportional justice for the defendant.

Considering the mitigating circumstances that the defendant is still under 18 years old, the defendant regrets his actions and the defendant's parents suffer

⁹Melani, WS (2013). Criminal Law for Children. Bandung: Refika Aditama.

¹⁰Mertokusumo, S. (2002). Understanding the Law (An Introduction). Yogyakarta: Third Printing Liberty

from stroke and stage 4 lung cancer and in essence in this case the restorative justice approach process has not been attempted as stated in the Child Justice System Law that imprisonment is the last resort that can be imposed on children in conflict with the law, therefore other efforts outside the court (restorative justice) must be attempted.

Viewed from any perspective, the judge's action in granting the Public Prosecutor's demands is also considered not to show logical and reasonable reasoning. Because the imposition of a prison sentence is feared not to be a solution in efforts to improve and foster it. In fact, the criminal justice system for Children in Conflict with the Law must prioritize affection as a family and intend to improve the child.

Regarding the above problems, the Author is of the view that Decision Number 4/Pid.Sus.Anak/2023/PN.Jkt.Sel has not realized legal justice and benefits for ABH. Legal justice is not seen with ABH who are not sentenced to undergo criminal training or other guidance according to the mandate of the Juvenile Criminal Justice System Law, which in fact should be sentenced to imprisonment. Regarding benefits, imprisonment does not provide maximum benefits for children in conflict with the law considering that this is the principle of the best interests of children upheld by the Juvenile Criminal Justice System Law.

3.2. Weaknesses in the Application of Criminal Sanctions to Children in Conflict with the Law

1) Weaknesses of the Substantive Law on Criminal Sanctions Against Children in Conflict with the Law.

Legal substance in Lawrence M. Friedman's legal system theory, another component of the legal system is substance, which means the rules, norms, and real patterns of human behavior in the system. Thus, legal substance is related to applicable laws and regulations that have binding power and become a guideline for law enforcement officers in carrying out their duties.

The substance of law according to Friedman is:¹¹

"Another aspect of the legal system is its substance. By this is meant the actual rules, norms, and behavioral patterns of people inside the system...the stress here is on living law, not just the rules in law books."

In Lawrence's theory, it is stated that substance plays a role in determining whether or not the law can be implemented. Substance also means a product produced by people in the legal system which includes the decisions they issue, the new rules they create. Substance also includes living law, not just the rules in

¹¹Lawrence M. Friedman, Op.,Cit

the law books. As a country that still adheres to the Civil Law System or the Continental European system (although some laws and regulations have also adopted the Common Law System or Anglo Saxon), it is said that law is written regulations while unwritten regulations are not stated as law. This system influences the legal system in Indonesia.

Diversion has actually been implemented in several parts of the legal system in Indonesia, but is hampered by weak implementation and law enforcement. One form of handling children who are vulnerable to being involved or involved in delinquency or an unlawful act against children (ABH) is regulated in:

- 1) Article 16 paragraph 3 of Law No. 23 of 2002 concerning Child Protection states that "the arrest, detention or criminal imprisonment of children may only be carried out as a last resort".
- 2) Article 66 paragraph 4 of Law No. 39 of 1999 concerning Human Rights states that the arrest, detention or imprisonment of children may only be carried out in accordance with applicable law and may only be implemented as a last resort.
- 3) Article 37 letter b of the Convention on the Rights of the Child states that no child shall be deprived of his or her liberty, unlawfully or arbitrarily. The arrest, detention or punishment of a child shall be in accordance with the law and shall be applied as a last resort and for the shortest period of time.
- 4) UN Rules for the Protection of Children Deprived of Their Liberty (Havana Rules Article 17).
- 5) TR/1124/XI/2006 from the Head of the Criminal Investigation Unit of the Indonesian National Police dated 16 November 2006 and TR/395/VI/2008 dated 9 June 2008 on the Implementation of Diversion and Restorative Justice in Handling ABH. The UN Standard Minimum Regulations for non-custodial measures (The Tokyo Rules).
- 6) The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).
- 7) Regulation of the Chief of National Police Number 8 of 2009.
- 8) Jampidum Technical Instructions Number: B532/E/I1/1995 dated 9 November 1995 concerning Prosecution of Minors.
- 9) Joint Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Chief of Police of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, Minister of Women's Empowerment and Child Protection of the Republic of Indonesia No. 166/KMA/SKB/XII/2009, No. 148A/A/JA.12/2009, No. B/45/XII/2009, No. M.HH-

08 HM.03.02 of 2009, No. 10/PRS-2/KPTS/2009, No. 02/Men. PP and PA/XII/2009 dated December 22, 2009 concerning the Arrest of Children in Conflict with the Law (Article 13 letter a). "Investigators make efforts to handle cases of children in conflict with the law with a restorative justice approach for the best interests of the child and must involve the Correctional Center, parents, and/or families of victims and perpetrators of criminal acts and local community leaders."

2) Weaknesses of the Legal Structure of Criminal Sanctions Against Children in Conflict with the Law

The definition of legal structure in Lawrence M. Friedman's legal system theory is referred to as a Structural system that determines whether or not the law can be implemented properly. The legal structure based on Law Number 8 of 1981 includes; starting from the Police, Prosecutor's Office, Courts and Criminal Execution Agencies (Lapas).

The authority of law enforcement agencies is guaranteed by law. So that in carrying out their duties and responsibilities they are free from the influence of government power and other influences. There is an adage that states "fiat justitia et pereat mundus" even though the world is collapsing, the law must be upheld.

The law cannot run or be upheld if there are no credible, competent and independent law enforcement officers. No matter how good a law is, if it is not supported by good law enforcement officers, then justice is just a dream.

Sociologically, each law enforcer has a position and role. Position is a certain position in the social structure. The position contains certain rights and obligations. Rights and obligations are roles. Therefore, a person who has a certain position is called a role holder. A certain role can be described into the following elements:

- a. Ideal role,
- b. The role it should be.
- c. Roles perceived by oneself, and
- d. Actual role played

The ideal and supposed role comes from another party, while the role that is considered by oneself and the role that is actually carried out comes from oneself. The issue of roles is considered important because the discussion of law enforcement is actually more focused on discretion. Discretion concerns decision-making that is not strictly bound by law, where personal judgment also plays a role.

Not all law enforcement officers have a legalistic paradigm, as evidenced by the many peace efforts made by the BauBau Police Child Protection Unit and the decision of one of the judges at the BauBau District Court who imposed more sanctions than criminal sanctions.

1) Police

The duties and authorities of the Republic of Indonesia National Police in handling ABH in accordance with Article 8 of the Joint Decree on Handling ABH include:

- a) Preparing investigators who have interest, ability, attention and dedication and are certified in the field of children at the National Police Headquarters and its regional ranks;
- b) Increase the number of Women and Children Service Units/PPA Units at the National Police Headquarters and its regional ranks;
- c) Providing special examination rooms for children at the National Police Headquarters and its regional offices;
- d) Carrying out education and training on handling ABH;
- e) Develop standard guidelines/manuals on handling ABH using a restorative justice approach;
- f) Forming a working group for handling ABH; and
- g) Conducting internal socialization, which in its implementation can be done in collaboration with related agencies.

The police have a big role in handling ABH because they are the first gate in law enforcement. The weaknesses faced by the police in implementing a diversion approach are that many law enforcers still have a legalistic paradigm, are rigid, and lack understanding about handling ABH.

2) Prosecutor's Office

The Prosecutor's Office is a government institution in the legal field that has the task and function to implement special state powers in the prosecution area. The duties and authorities of the Republic of Indonesia Prosecutor's Office in handling ABH include:

- a) Conduct prosecution with due regard to the best interests of ABH;
- b) Preparing prosecutors and administrative staff who have interest, ability, attention and dedication and are certified in the field of children in each prosecutor's office;

- c) Providing special examination rooms for children in every prosecutor's office;
- d) Holding regular discussions and necessary training;
- e) Prepare guidelines/manuals, circulars on handling ABH using a diversion approach;
- f) Forming a working group for handling ABH;
- g) Conduct internal socialization;
- h) To make the function of the head of the high prosecutor's office more effective in providing guidance and supervision of the prosecution process in his/her jurisdiction.

The weakness of the prosecutor's office in handling ABH is the unavailability of prosecutors who are certified as child prosecutors and the absence of special detention rooms for children.

3) Court

A set of regulations shows that the judiciary as a subsystem of criminal justice both functionally and organizationally has undergone quite significant changes. However, functionally the judicial institution functions to examine, try and decide every criminal case in accordance with the provisions of the laws and regulations that are still in force. The activities and work of the judicial institution can be seen from the judicial institution after the transfer of the case to the court carried out by the prosecutor's subsystem. The series of activities is continued by examining and ending with a decision on a criminal case based on the judge's conviction, and also based on the principles of freedom, honesty and impartiality. With the decision being made to the defendant, it means that the work of the judicial subsystem has been completed functionally.

The duties and authorities of the Supreme Court of the Republic of Indonesia in handling ABH include:

- a) Preparing judges and clerks who have interest, ability, attention and dedication who are certified in the field of children in every district court;
- b) Preparing child-friendly facilities and infrastructure, waiting rooms and courtrooms, as well as child witness rooms in each court in stages;
- c) Conduct regular discussions and necessary training;
- d) Issue Supreme Court Circulars/Supreme Court Regulations/and prepare standard operating procedures for handling children in conflict with the law using a restorative justice approach;

- e) Forming a working group for handling ABH;
- f) Conduct internal socialization;
- g) To make the function of the chief justice effective in providing guidance and supervision of the course of trials within his jurisdiction.

The actualization of the failure of judicial institutions in the reform era shows a perspective from law enforcement officers who use the law as a transactional instrument to fulfill the desire for power, popularity, and even business interests alone.

3) Weaknesses of the Legal Culture of Criminal Sanctions Against Children in Conflict with the Law

Legal culture according to Lawrence M. Friedman is a person's attitude towards law and the legal system - their beliefs, values, thoughts, and expectations. Legal culture is the atmosphere of social thought and social power that determines how law is used, avoided, or abused. Legal culture is closely related to public legal awareness. The higher the public legal awareness, the better the legal culture will be created and can change the public's mindset about law so far. Simply put, the level of public compliance with the law is one indicator of the functioning of the law.

The relationship between the three elements of the legal system itself is powerless, like a mechanical work. The structure is likened to a machine, the substance is what the machine does and produces, while the legal culture is whatever or whoever decides to turn the machine on and off, and decides how the machine is used.

Associated with the legal system in Indonesia, Friedman's Theory can be used as a benchmark in measuring the law enforcement process in Indonesia. The police are part of a structure together with prosecutors, judges, advocates, and correctional institutions. The interaction between these law enforcement components determines the strength of the legal structure. However, the upholding of the law is not only determined by the strength of the structure, but is also related to the legal culture in society. However, until now the three elements as stated by Friedman have not been implemented properly, especially in the legal culture.

The weaknesses of the legal culture of criminal sanctions against children in conflict with the law include:

- a. Re-offending or repeated violations often occur by perpetrators who have undergone restorative justice.

This is the dilemma in the settlement through diversion and restorative justice. Where this settlement method has a weakness, namely re-offending or re-violation by the perpetrator. From the results of Graffith's research in 1999 in the state of Victoria, Australia, cases that often occur are the recurrence of violations committed by the perpetrator after conferencing, where there is no significant difference when the child perpetrator goes through the restorative justice process or imprisonment (probation). But the comparison of the number of re-offending after restorative justice or through court examination does not necessarily indicate the sterility of restorative justice to prevent re-offending, because there are still other factors that cause re-offending from the restorative justice process.¹²

b. Difficulty in obtaining consent from victim/victim's family

Although non-litigation methods can prevent children who commit crimes from various negative effects of criminal sanctions, it turns out that not all parties agree. In this case, it is usually the victim who does not agree. Where not all victims or the victim's family are willing to accept non-litigation settlement methods. The victim generally wants the perpetrator to be put in prison so that he is deterred.

c. Lack of public understanding of the restorative justice process and its objectives, as well as trust in the officers implementing it.

The settlement of criminal acts committed by children through diversion and restorative justice policies brings community participation and mediators as one of the components besides law enforcement officers in the criminal justice system. However, in this case, the community does not understand restorative justice and its objectives so that sometimes the community does not want to play a role in carrying out restorative justice.

In fact, the role of the community here is very necessary, where the community has a role, namely providing its aspirations in the implementation of the restorative justice process, namely trying to restore the order of society that has been disturbed due to violations committed by the perpetrator and returning the victim and perpetrator to their original container, namely their family and environment. There is difficulty in creating public trust in the implementation of restorative justice in serious cases. In addition, the reason for recidivism by child perpetrators after undergoing the restorative justice process raises questions from the community if the process must be repeated how many times against the same perpetrator.

One of the important aspects of the SPPA Law is the principle of restorative justice (*restorative justice*) which is a diversion process in which all parties

¹²Ibid

involved in a crime work together to solve the problem and create an obligation to improve the situation by involving the victim and the community in finding a solution. Even so, the diversion rules in the SPPA Law still have shortcomings because they are not oriented towards the perpetrator and the victim in a balanced way. Article 9 paragraph (2) of the SPPA Law tends to disadvantage the position of child perpetrators of crimes to carry out diversion. Then, Articles 112 to 117 of the Draft Law on the Criminal Code (RUU KUHP) are also the result of adoption of the SPPA Law so that they do not fulfill the principles *the best interest of the child*.

The concept of Pancasila Justice has a different meaning from the concept of justice according to legal experts, such as Aristotle and John Rawls. This is because in Pancasila Justice, there are philosophical, socio-cultural, and socio-political values of the Indonesian nation. Therefore, the application of the criminal system in Indonesian law should refer to Pancasila which not only upholds written law, but also unwritten law or law that lives in society (*living law*). Diversion agreements must also be reached on the basis of mutual consensus between the perpetrator, victim, and related parties in a balanced manner.

The urgency of reformulating the criminal justice system for children in conflict with the law based on Pancasila justice must be emphasized. This is because the SPPA Law which regulates this matter still contains legal weaknesses. Reformulation can be done by raising the age limit of criminal responsibility for children to 14 years, so that the applicable rules can be more in accordance with the emotional, mental, and intellectual conditions of children following international legal instruments and regulations in other countries. Then, the diversion requirements listed in Article 7 paragraph (2) of the SPPA Law can be designed more maturely, such as the proportional principle in accordance with Pancasila Justice.

4. Conclusion

The application of criminal sanctions against children in conflict with the law Law on the Juvenile Criminal Justice System Number 11 of 2012 amending Law Number 3 of 1997 concerning Juvenile Courts through warning sentences, conditional sentences, job training, institutional development and finally imprisonment, in which case imprisonment should be the last resort as per the principle of criminal law, namely (*ultimum remedium*) "criminal punishment is the last option" that can be imposed on children in conflict with the law, for that reason other criminalization approaches must be attempted first.

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