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"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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SPECIAL PROTECTION OF CHILDREN IN CRIMINAL JUSTICE SYSTEM

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ABSTRACT

Children in action to behave and act unlawful could harm himself or society. Law No. 11 Year 2012 on Child Criminal Justice System is designed to protect and nurture children in order to meet a better future, because children must be nurtured in order to obtain their identity to prepare the human being independent and responsible. Thus the very comprehensive in placing the child's position in law, so that the entire law enforcement authorities are involved to participate and solve the problem child, be it the police in conducting investigations and inquiries as well as the Public Prosecutor to prosecute and judge in checking on the court is required to understand the problem of child by following a court education of children, as did the Advocate also demanded to know the problem of child. The case of a child who commits an offense or as victims or witnesses are entitled to all the protections and have exclusive rights to the best interests of the child in the process of condemnation as a last resort. Pursued by way of Diversion and Restorative Justice through, in order to give justice to the victims and the two sides to be able to forgive each other and there was no grudge between them, with the provision of compensation is the emphasis back to its original state and not retaliation. All parties related to the crime of child sit together to resolve the issue amicably and to think about how to overcome the consequences in the future, so will each get justice in accordance justice contained in the precepts and to 2 to 5 of Pancasila is justice with dignity that is humanizing.

In the case of criminal case a child should do more in the conference and had the child should be detained, then within 25 days of indictment Public Prosecutor has been delegated to the Juvenile Court and placed in detention Children Special Construction Agency (LPKA). In the course of the trial judges, prosecutors and lawyers are not allowed to wear a toga, but ordinary clothes, while children must be accompanied by parent / guardian and Professional Social Workers.

Keywords : Special Protection, Child, crime.

I. INTRODUCTION

According to Law No. 39 of 1999 on Human Rights, that the child means every human being below the age of eighteen (18) years old and unmarried, including children who are still in the womb when it is in their interest. Children as part of the younger generation successor to the ideals of the struggle and the development of a successor is qualified human resources, are expected to lead and to preserve the unity and integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution to the need for education , construction continuously for the survival and protection of all possibilities that will endanger their future and our nation.

Children oftendo the actions to behave that could harm himself or society. Unlawful acts committed by children because of their negative impact of rapid development and globalization of communication of information as well as the advancement of science and technology, and most parent's lifestyle have brought social changes that greatly influence the behavior of the child, so the child is less and dont get care enough , guidance in attitude, conduct and supervision of a parent who would easily exposed to the flow of people socially unhealthy environment that could harm himself. For the sake of growth and mental development of children, it is necessary to determine the difference in treatment in procedural law and criminal threat. Discrimination and threats regulated in Law Number 11 Year 2012 on Juvenile Justice System, is intended to better protect and nurture children in order to meet the future better. Differences are designed to provide opportunities for children to receive guidance through human identity to prepare an independent, responsible and useful to themselves, their families, communities, nations, countries and religions. The difference in treatment is based on the growth and development of the physical, mental, and social development.

Protecting children is not an obligation, but both biological parents the duty of us all. Islam as a religion is loaded with affection (rahmatan lil Alamin), giving special attention against children, ranging from his mother's womb until the child before adulthood. Liabilities provide for halal and nutritious, justly, giving a good name, mengakikahkan, circumcised, educate, is a manifestation of a compassion intreating children. The treatment of children against criminal case that happened to be treated specially, ranging from arrest, detention and held an inquiry, investigation, and the court is different penuntutua treatment, the perpetrators of criminal acts committed by adults. Given the characteristics and properties that are characteristic of the child and for the

protection of the child, the court shall consider the report of the research community regarding personal data as well as the families of the children concerned. With the results of the report, expected to Judge can obtain the proper presentation is impossible to provide the fairest decision.

Children who commit offenses are entitled to protection of their rights enshrined in article 89 of Law No. 11 of 2012 on the Juvenile Justice System that is, "the child victim and / or the child witness is entitled to all the protections and rights set out in regulations -invitation. Thus very comprehensive in placing the child in the law and the law enforcement authorities are involved to participate and solve the problems of children, in addition to human resources law enforcement officials, particularly investigators, prosecutors and judges are required to understand the issue of children with the education of juvenile justice, as well as advocates who have also demanded to know the problems of children.¹

In principle, cases of children committing criminal offenses to be tried in the judicial process is still promoting the principle of special protection for the best interests of the child as well as the process of adjudication as a last resort while not ignoring the rights of the child. When possible cases of criminal offenses committed by children as far as possible be resolved through non formal or non litigation with the approach of restorative justice is done in order to satisfied the justice for the victims, so that both sides can forgive each other and there is no animosity between them. Law enforcement officials also will seek diversion in the examination of children, as stipulated in Article 7 paragraph (1) of Law No. 11 of 2012 on the Juvenile Justice System, namely: At the level of investigation, prosecution, and examination of the child in the District Court shall be pursued versioned.

II. PROBLEMS

In accordance with the above description may be the writer suggested the problems as follows:

1. What special protection to children who commit criminal acts?.
2. What constraints are faced in protecting specifically towards children who commit criminal acts?.

¹Rosmiati Sain, "*Undang-Undang Sistem Peradilan Pidana Anak dan Problemny*" Dalam Artikel Terkini, Permpuan Berhadapan dengan Hukum, LBH APIK, Makasar.

III. DISCUSSION

A. Special protection of children who commit criminal acts.

The protection of children is not limited to the State government as an accomplice, but must be done by parents, families and communities to be responsible for maintaining and preserving children's rights. Government provides facilities and accessibility for children, especially to ensure the growth and development of the optimal fit of Article 28B paragraph (2) of the 1945 Constitution which states that the State guarantees every child the right to live, grow and develop and has the right to protection from violence and discrimination.² Assuming each person when you hear the word of children in conflict with the law as a co-opted on the child's understanding becomes criminal.

Law No. 23 of 2002 on the Protection of Children, that special protection for children in conflict with the law as referred to in Article 59 including children in conflict with law and children victims of crime. Then children in conflict with the law should receive special protection. According to Article 64 paragraph (2) of Law No. 23 of 2002 on the Protection of Children, that special for children as suspects / perpetrators of criminal acts carried out through the following actions:

- a. The treatment of children humanely with dignity and rights of the child;
- b. The provision of a special escort officer since early childhood;
- c. Provision of special facilities and infrastructure;
- d. The imposition of appropriate sanctions for the best interests of the child;
- e. Continuous monitoring and logging to the development of children in conflict with the law;
- f. Provision of guarantees to maintain relationships with their parents or relatives, and
- g. Protection of identity through the news media and to avoid labeling.

Temporary detention of children placed in Institutions Placement of Children While (LPAS) is a temporary place for children to wait for the judicial process takes place when children need all to be arrested and who had been made a criminal offense remained stationed at the Institute for Development of Special Children is an institution or a protégé of Corrections undergo criminal past. Placement agencies and

²Angger Sigit Pramukti dan Fuady Primaharsya, 2015, *Sistem Peradilan Pidana Anak*, Pustaka Yustisia, Yogyakarta, hal.1.

LPKA LPAS is so that children are not affiliated with adult detainees and inmates will not be affected by both adults and recidivists. Lilik Mulyadi, found a renewal of the Juvenile Justice System is expected for the child offender / suspect learned to improve as a result of his actions and learn responsibility.³

In-Process Research and Investigation in the Police Department has applied the concept of Diversion and Restorative Justice in the Criminal Justice System Child. Restorative justice is a fair settlement that involved offenders, victims and their families and other relevant parties in a criminal act, work together to find a solution to the offense and its implications, with emphasis back to its original state and not retaliation.⁴ While Diversion is a transfer of the case of children Completion of the criminal justice process to outside the criminal justice process.⁵

Restorative justice is defined as a process in which all parties concerned with the crime of child sit together to solve problems and think about how to overcome the effects in the future. Then the process is basically done through diversion efforts undertaken by the Police when children cases have been reported in the police using discretionary authority. Where discretion is a diversion from the criminal justice process formally to non formal process to be resolved amicably, this approach is applied to the settlement of cases of children in conflict with the law. So Restorative Justice or restorative justice have been implemented as part of efforts for resolving cases criminal cases of children in conflict with the law, with the involvement of families, community leaders, perpetrators, victims and stakeholders, with an emphasis back to its original state without any element of retaliation, by way of actors giving compensation and expenses incurred by the victim's family. Restorative Justice is justice so that healing accordance justice in morality and to 2 to 5 of Pancasila, where the restoration of justice for the victim so that no longer exists an element of revenge and punishment of the perpetrators. Approach Restorative Justice is a requirement to do Diversi course with the crime carries a minimum sentence of less than 7 (seven) years and not a repetition of a crime, but if the process does not produce a settlement then the case is processed in the prosecution and courts to approach and understand the psychological condition of the child ,

³Lilik Mulyadi, Pengadilan Anak di Indonesi, Teori, Praktek dan Permasalahannya, Mandar Maju, Bandung, hlm.10.

⁴Ibid.

⁵Ibid.

In the process of prosecution, the public prosecutor against criminal psychiatric child must understand that for children to be treated with the situation, the conditions of mental, physical, social circumstances and ability at the age of the child. Because the prosecutor as a public prosecutor to be cautious in conducting prosecutions, especially against suspected psychiatric conditions who are still children, which is a challenge for prosecutors in the prosecution of suspects who are still children. Because the form of a justice is the implementation of the rights and obligations balanced.⁶ Especially law enforcement in the prosecution conducted by the public prosecutor against criminal child must understand the psychological condition of the child. Implementation of rights and obligations for children who commit criminal acts need to get help and protection so balanced and humane. That the obligation for children to be treated with the situation, the conditions of mental, physical, social circumstances and the ability of a certain age.⁷

Children who committed a crime, in Article 1, paragraph (2) of Law No. 11 of 2012 on the Criminal Justice System Child, namely: child conflict with the law are children in conflict with the law, children who become victims of crime, and children who are witnesses criminal act. Completion juvenile criminal case that is the duty and authority of Attorney of the Republic of Indonesia in handling child against the law in accordance with Article 7 Joint Decision on Handling Children in Conflict with the Law (ABH) of which is: "Does the prosecution by taking into account the best interests of Children in conflict with the law. According Nashriana, the prosecution mechanism against the son who commits an offense different from the mechanism of prosecution of adults, is different because the prosecution mechanism against children apply the principle of *lex specialis derogat legi generalists*, meaning that the rule of law which specifically overrides the rule of law are common, as regulated in Law No. 3 of 1997 as amended by Law No. 11 Year 2012 on Child Criminal Justice System. Although children in quality and quantity can only commit unlawful acts committed as an adult, but the treatment is given should not be the same as treatment for adults who commit crimes.⁸

⁶Wagiati Soetodjo, 2008, *Hukum Pidana Anak*, PT. Refika Aditama, Bandung, hlm. 70.

⁷*Opcit*,

⁸Nashriana, 2011, *Perlindungan Hukum Pidana Bagi Anak di Indonesia*, PT. Raja Grafindo Persada, Jakarta, hlm.76

When on the ground, then the position of the Prosecutor as a public prosecutor in the case of children's duties shall be as soon as possible to make the indictment and arrest of children as continued detention for 10 days and can be extended to 15 days. Within a period of 25 days indictment Public Prosecutor against the children of a felony or offense has been delegated to the Juvenile Court.⁹ Implementation of the task and the authorization is integrated by a technical executing unit prosecutor's office, as stipulated in the Regulation of the Minister of Women Empowerment and Child Protection Number 15 Year 2010 concerning General Guidelines for Handling Children Who Faced with the Law. Directive Technical Jampidum No. B-532 / E / 11/1995 Date: 9 November 1995 concerning the Prosecution Against Children Under Age carried out as follows: "If the accused minors are not detained, the public prosecutor, demanding that the child be returned to parents / guardians to be educated, and if parents / guardians refuse should be required to be submitted to the government as state child or handed over to the organization / entity specific to education as it should without any criminal, as stipulated in Article 45 and Article 46 of the criminal Code , In judicial proceedings, the District Court where the defendant is a child, then the Judge / Judges are not allowed to wear a toga, as well as the Public Prosecutor and Counsel, so that each one wearing ordinary clothes. Children in legal proceedings shall be accompanied by a parent / guardian or chaperone. Advocate / Counsel or giving legal assistance as well as Supervisor of Society to also assist children, as regulated in Article 55 paragraph (1) of the Law System of Juvenile Justice, namely: In the trial of a child, the judge shall instruct the parent / guardian or chaperone, an advocate or other legal aid providers, and Conselor Community to assist the Child. For the judicial process, it is appropriate : Article 45 of the Criminal Code states that: In the case of a criminal prosecution against minors for committing an act before the age of sixteen (16) years, the judge can determine: ordered that the guilty be returned to their parents, guardians or caregivers, without any criminal; or ordered that the guilty be submitted to the government without any criminal, if the act constitutes a crime or any offense under Articles 489, 490, 492, 496, 497. 503-505, 514, 517-519, 526, 531, 532 , 536, and 540 as well as the future two years after being found guilty of committing a crime or a violation of the above, and the verdict has been fixed; or convict the guilty. Article 46 of the Criminal Code states that: (1) If the judge ordered

⁹Maidin Gultom, 2008, *Perlindungan Hukum Terhadap Anak dalam Sistem Peradilan Pidana Anak di Indonesia*, Refika Aditama, Bandung, hlm.70.

that the guilty be submitted to the government, he entered into the house of state education in order to receive an education from the government or in the future by other means, or handed over to a certain person residing in Indonesia or to a legal entity, a foundation or a charitable institution based in Indonesia for organizing education, or later on, at the expense of the government, by other means; in both cases above, the longest until the offender reaches the age of eighteen. (2) Rules for implementing paragraph (1) of this article shall be stipulated by law. If the suspect was arrested, that the Public Prosecutor demanded imprisonment for a period equal to the minimum in custody and if the public prosecutor demanded prison need to be guided by the Attorney General Circular Letter No. SE 001 / JA / 4/1995 on Guidelines for Criminal Charges.

Article 32 of Law No. 11 Year 2012 on the Criminal Justice System Child states that:

- (1) Detention of Children should not be done in terms of the Child are warranted from a parent / guardian and / or institutions that the child will not escape, it will not eliminate or tampering with evidence, and / or will not repeat the crime.
- (2) Detention of Children can only be done with the following requirements:
 - a. Kids have to be 14 (fourteen) years or more; and
 - b. Suspected of committing a crime with imprisonment of 7 (seven) years or more.
- (3) Conditions of detention referred to in subsection (2) must be explicitly stated in the arrest warrant.
- (4) For Kids on hold, the need for physical, spiritual, social and Son must still be covered
- (5) To protect the security of the Child, the Son can do placements in LPKS (Operator Institute of Social Welfare). besides LPAS, detention can be done at the local LPKS and / or the Special Development Centre (LPKA) are institutions where children undergo criminal past.

B. Constraints faced in protecting specifically towards children who commit criminal acts.

Constraints faced in protecting specifically towards children who commit criminal acts and or children in conflict with the law, the police, the prosecutor and the court felt very confused because the child is most afraid due to the inability of the child to

take responsibility for his actions, as a result of children in providing information always changing and sometimes even the child forgot and confused.

This is due to the child's condition is still unstable and can not control themselves and their emotions, to obtain the actual information from the child, the steps taken to involve the child's parents. The goal is that children have the confidence that the process of the criminal justice system in this case the police, public prosecutors and judges do not seem to frighten the children. Another obstacle, namely: the professional social workers to accompany the child is rarely found in every town and district, especially LPAS, LPKS and LPKA difficult to obtain. So every criminal case committed by a child, then it is very difficult to be able to meet the demands of the Law No. 11 Year 2012 on Juvenile Justice System.

IV. CONCLUSION

From all of the above in advance it can be concluded that:

1. That special protection to children who commit a criminal act that is by doing Diversion and Restorative Justice and in accordance Law No. 11 Year 2012 on Child Criminal Justice System, the entire law enforcement officers involved to participate and complete the criminal case conducted by the Child, so that the road taken is the best for the Son. So sought resolution of the case without having to go through the judicial process, by consensus, if not then the process can continue as the criminal justice system, only the handling is not equated with adults.
2. That the obstacles encountered in protecting children in particular against committing criminal offenses, namely for law enforcement in the requested information to the child is very difficult, because the statement is always changing and mostly forgotten, it must involve parents / guardians, Advocate and the professional social workers to assist in order to obtain the actual facts.

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