

Juridical Studies on the Application of Criminal Sanctions on Children Who Conflict with the Law Are Reviewed from Law Number 11, the Year 2012 on the Criminal Justice System for Children

Sumarno*, Ismaidar, Dwintoro, Abdullah Syafi

Department of Law, Faculty of Social Science, Universitas Pembangunan Panca Budi, North Sumatra, Indonesia

*Corresponding author: Sumarno

| Received: 16.01.2019 | Accepted: 26.01.2019 | Published: 30.01.2019

DOI: [10.21276/sijlcj.2019.2.1.3](https://doi.org/10.21276/sijlcj.2019.2.1.3)

Abstract

Children involved in criminal acts, the first thing that should not be forgotten is to see their position as children with all their particular characteristics and characteristics. Thus, their orientation is based on the concept of child protection in their handling process so that this will rest on the concept of prosperity children and children's interests. Providing protection and a sense of justice given that children must get protection, then in violations committed by the child still and must be considered and considered the background and causes of violations committed by the child so that the child will not lose hope to look at the future. Legal problems seem to be one of the phenomena that have never subsided in the life of society, nation, and state. As the phenomenon of legal problems increases, legal studies are also increasing, which aim to explore various problems from the perspective of existing law and legislation. Penal punishment is not merely revenge but an aim to influence human behavior by legal rules. Child protection is all efforts made to create conditions so that each child can exercise his rights and obligations for the development and growth of children in a reasonable manner both physically, mentally and socially. Child protection is an embodiment of the existence of justice in a society. Thus, protection of children is cultivated in various fields of life and state of society.

Keywords: Children, Criminal Sanctions, Criminal Justice System, Conflict, Protection System.

Copyright @ 2019: This is an open-access article distributed under the terms of the Creative Commons Attribution license which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use (NonCommercial, or CC-BY-NC) provided the original author and source are credited.

INTRODUCTION

Talks about children and their protection will never stop throughout the history of life, because children are the next generation and successors of development, such as the generation prepared as the subject of sustainable development and the control of the future of a country, including Indonesia. The protection of Indonesian children means protecting the potential of human resources and building Indonesian people as a whole, towards a just and prosperous society, materially spiritual based on Pancasila and the 1945 Constitution.

Legal problems seem to be one of the phenomena that have never subsided in the life of society, nation, and state. As the phenomenon of legal problems increases, legal studies are also increasing, which aim to explore various problems from the perspective of existing law and legislation. Penal punishment is not merely revenge but an aim to influence human behavior by legal rules [1].

The social facts that have recently occurred in community life are child-related problems, the social

life that is strongly influenced by various factors we are faced with the problem of handling children suspected of committing criminal acts. Children are the foundation of the hopes of the future of the nation, state, society or family, because of their condition as children, special treatment is needed in order to grow and develop naturally both mentally and spiritually [2]. Starting from this, in essence, the regulation of children has been explicitly regulated in the Indonesian constitution, which is related to human rights arrangements as regulated in Article 28B number 2 of the 1945 Constitution which regulates the right of child development and obtaining protection. Child protection efforts must be started as early as possible so that later they can participate optimally for the development of the nation and state. That is Article 2 paragraph (3) and (4) of the Republic of Indonesia Law 1945 that "Children have the right to care and protection both during the womb and after being born [3]."

In our system of legislation, there is no unification of child law, but it is codified in several laws and regulations currently in force. Existing regulations that are expected to be able to protect

children, in reality, are still not encouraging. The fate of children in conflict with the law has not been as beautiful as verbal expressions that often we hear positioning children worth, important, successors to the future of the nation and some other symbols.

Children's rights as referred to in legal documents concerning the protection of children's rights are still not sufficient enough to get rid of dangerous conditions for children. Enforcement of children's rights as humans and children as children is still a concern. The problem of children to date has not attracted many parties to defend it. The world order and people's life behavior still save children's problems [4].

Delinquency and crimes committed by children continue to increase such as abuse of narcotics, robbery, theft and rape, destruction of goods and so on. The social facts that have recently occurred in community life are child-related problems, wherein social life that is strongly influenced by various factors, we are faced with the problem of handling children suspected of committing criminal acts.

Bad children need to be handled through a special judicial institution because children cannot be treated the same as adults. Article 25 of Law Number 48 the Year 2009 concerning Judicial Power states that "In the General Court environment specialization can be arranged which is regulated by law." Juvenile Justice is one of the Special Courts that handles child criminal cases.

The legislation that has been made by the Indonesian government to protect rights to children as stated in Law Number 4 of 1979 concerning Child Welfare, Law Number 39 of 1999 concerning Human Rights, Law Number 23 of 2002 concerning Child Protection, Law Number 11 of 2012 concerning Child Criminal Justice System, which substantially regulates children's rights in the form of, rights to life, rights to name, educational rights, basic health rights, the right to worship according to religion, the right to express, think, play, create, rest, socialize and social security rights. Facing and handling the juvenile justice process involved in a crime, the first thing that should not be forgotten is to see its position as a child with all its special characteristics and characteristics, thus its orientation is based on the concept of child protection in its handling will rest on the concept of child welfare and the interests of the child. In the Child Criminal Justice System regulated in Law Number 11 of 2012 dividing three definitions of children which explains that:

- A child in conflict with the law from now on referred to as a child who is twelve years old, but not yet 18 (eighteen) years old who is suspected of committing a criminal act.
- A child who is a victim of a crime, from now on referred to as a child of the victim, is a child who is

not 18 (eighteen) years old who experiences physical, mental, and economic losses caused by a criminal act.

- The child who becomes a Witness of Crime, from now on referred to as a witness's child, is a child who is not 18 (eighteen) years old who can provide information for investigation, prosecution and examination of a court hearing about a criminal case that is heard, seen and/or experienced by himself.

It is stated in Article 1 paragraph (1), (2) and (3) of Law Number 11 of 2012 concerning the Juvenile Justice System. Juvenile Justice realizes child welfare so that children are tried individually. All activities carried out in juvenile justice should be carried out by child investigators, child prosecutors, child judges and officers of child custody institutions, based on the principle of child welfare. The judge imposes a child sentence or is intended to provide the best to the child, without sacrificing the interests of the community and upholding the authority of the law. Therefore, criminal sanctions imposed on children are based on truth, justice, and welfare of children [5].

RESULTS AND DISCUSSION

Regulation of Criminal Sanctions against Children Who Conflict with the Law

Legal sanctions are a sentence of cause and effect because it is the case and the consequence is punishment, the person affected will receive sanctions either go to jail or be subject to other penalties from the authorities. Legal sanctions are a type of sanctions that are nosy that are threatened or imposed on acts or perpetrators of criminal acts or crimes that can interfere with or endanger legal interests. Criminal sanctions are a guarantor for rehabilitating the behavior of the perpetrators of these crimes, but it is not uncommon that criminal sanctions are created as a threat from human freedom itself. A criminal is a sufferer or sorrow that is intentionally charged to a person who commits an act that fulfills the elements of certain conditions [6].

According to Anselm Von Feuerbach, criminal sanctions are the threat of punishment that is suffering and torture. It is by his outstanding teaching with the "Psychological Pressure" (*de psychologisches he dwang*), such as that the threat of punishment will prevent others from doing evil [7]. In criminal law, legal sanctions are called penalties. According to R. Soesilo, Punishment is "A feeling of uneasiness (misery) imposed by a judge with a verdict on someone who has violated the criminal law." That as stated in Article 10 of the Criminal Code (KUHP), such as the types of criminal sanctions:

1. Basic Criminal
 - a. Death Penalty
 - b. Prison Criminal
 - c. Criminal Cage: V
 - d. Penalty Penalty

- e. Criminal Covering. (Law Number 20 of 1946)
2. Additional Crime
 - a. Revocation of certain rights
 - b. Deprivation of certain rights

That in Indonesia what is meant by children does not have an understanding. It is caused by laws and regulations relating to the interests of children, each of which provides its understanding by the purpose of the issuance of these laws and regulations. According to Law Number 11 of 2012 concerning the Child Criminal Justice System. For the discussion of the Child Criminal Justice System, which is the main discussion and subsequently is the understanding of children according to Law Number 11 of 2012. If the Child Criminal Justice System is considered as referred to in Article 1 number 1 of Act Number 11 of 2012, it can be known that The Child Criminal Justice stipulated in Law Number 11 of 2012 is a system regarding the process of resolving child cases in conflict with the law.

The child in conflict with the law referred to in Law Number 11 of 2012 concerning the Child Criminal Justice System, according to Article 1 number 2 of Act Number 11 of 2012, consists of:

- Children with legal conditions from now on referred to as children, are children who are 12 (twelve) years old, but who are not 18 (eighteen) years old who are suspected of committing a criminal act (Article 1 point 3).
- A child who is a victim of a crime, from now on referred to as a child of the victim, is a person who is not 18 (eighteen) years old who experiences physical, mental, and economic losses caused by a criminal act (Article 1 number 4).
- The child who becomes a criminal sanction, hereinafter referred to as the witness's child, is a child who is not 18 (eighteen) years old who can provide information for investigation, prosecution and examination in a court hearing about a criminal case that is heard, seen and/or experienced by themselves (Article 1 number 5) [8].

According to Law No. 3 of 1997 in this law precisely in Article 1 paragraph (1) states that children who reach the age of 8 (eight) years arrive before reaching the age of 18 (eighteen) years. In the provisions of this Law, it is determined that the minimum limit of children is 8 (eight) years. For a child who commits a crime not yet 8 (eight) years old, it can be fostered by a parent, guardian or foster parent. If not trained, the investigator submits it to the Ministry of Social Affairs. Law Number 12 of 1995 in Article 1 paragraph 8 letters a, b and c of this Law states that the correctional students of both criminal children, state children, and civilian children to be educated in the Child Prison are the longest until they are 18 (eight twelve) years, and for civilian children to be able to be placed in the child's bed, the extension of the placement may only last until 18 (eighteen) years old.

Law Number 23 of 2002 concerning Child Protection in Article 1 point 1 states that a child is someone who is not 18 (eighteen) years old, including children who are still in the womb. That is the Civil Code (Civil Code) based on the provisions of Article 330 of the Code of Civil Code of the Child is those who have not reached the age of even 21 (twenty-one) years and have not married. That is the Criminal Code (Criminal Code) does not explicitly mention the category of children but can be found in Article 45 and 72 which uses the age limit of 16 years and article 283 which gives a limit of 17 years [9].

Various meanings of children as mentioned above use the age category. In this case, what age is categorized as a child? The child who commits a crime is mentioned in Law Number 3 of 1997 as a bad boy. It is different from Law No. 11 of 2012 which replaces the mention of children in conflict with the law. That in international practice it is called juvenile delinquency determined by the age of the perpetrators and by the types of behavior of the perpetrators to be submitted to the Juvenile Court. Most countries have a minimum and maximum age limit for a child to submit before the court [10]. That in this case what is meant by sanctions is a legal consequence for violators of the provisions of the law or a means of coercion for compliance with the law [11]. Judging from the perspective of Law Number 11 of 2012 concerning the Child Criminal Justice System there are sanctions as follows:

- Criminal Sanctions
- Sanctions for Actions, and
- Administrative Sanctions.

In Law No. 11 of 2012, there is no mention of civil sanctions. However, in the application of Law No. 11 of 2012 civil penalties may arise. The civil sanction is as a result of violating the law (Article 1365 of the Civil Code) against the provisions contained in Law Number 11 of 2012.

Criminal Sanctions

According to Sudarto, what is meant by criminal sanctions is suffering that deliberately imposed on people who commit acts that fulfill certain conditions [12]. According to Roeslan Saleh, what is meant by criminal sanctions is a reaction to offenses, and this is a manifestation of the misfortune that is deliberately inflicted by the state on the maker of the offense [13]. According to Van Hamel, the meaning of criminal law according to positive law is particular suffering, which has been imposed by the competent authority in the name of the state as the person in charge of public law order for someone who is an offender [14]. In this case solely because the person has violated a legal regulation that must be enforced by the state. Based on the formulation of what is meant by criminal as stated by the van Hammel expert, another thing is stated by P.A.F Lamintang that the crime is actually not a goal and cannot possibly have a purpose.

Regarding the types of criminal acts according to Law Number 11 of 2012 are as follows. In Article 71 Paragraph (1), necessary crimes for children consist of the following:

- Warning Crimes, from the provisions contained in Article 72 of Law Number 11 of 2012, it can be seen that criminal warnings constitute minor crimes that do not result in restrictions on children's freedom. Explanation of Article 9 paragraph (2) letter b of Law Number 11 of 2012 states that what is meant by "minor criminal offense" is a criminal offense or imprisonment for a maximum of 3 (three) months.
- Criminal with conditions from Article 73 paragraph (1) jo, paragraph (3) jo paragraph (4) of Law Number 11 of 2012, it can be seen that a criminal condition provided that the funds are imposed by a judge on a child that does not need to be implemented as long as undergoing a criminal period, fulfilling the general requirements in the form of not going to commit a crime and special conditions in the form of committing or not carrying out certain rights stipulated in a judge's decision.

Guidance outside the institution is to take part in a counseling and counseling program conducted by peasant advisors, to take part in psychiatric therapy at home, to attend therapy due to alcohol, drug, psychotropic, and other addictive substances. Community Service and Criminal Community service is a criminal intended to educate children by increasing their awareness of positive community activities. Special supervision is imposed on children, such as children's behavior in daily life at home and the provision of guidance carried out by community counselors.

- Job Training, Explanation of Article 78 paragraph (1) of Law Number 11 of 2012 states that what is meant by "institutions that carry out job training" include vocational training centers, implemented vocational education institutions, for example by the ministry that organizes government affairs in the field of employment, education, or social.
- Guidance in Institutions, Criminal guidance in institutions is carried out at work training or coaching institutions organized, both by the government and the private sector. Criminal guidance in the institution is dropped if the circumstances and actions of the child do not endanger the community.
- Prison, Prison Penalty in Article 79 paragraph (1) of Law Number 11 of 2012 is called criminal restriction of freedom imposed in the case of a child committing a serious crime or a criminal act accompanied by violence. Criminal restrictions on the freedom imposed on children no later than ½ (one half) of the maximum jail sentence imposed on adults.

In this case, what is meant by "maximum criminal threat for adults" in the explanation of Article 79 paragraph (2) states that the maximum sentence of imprisonment for a crime is carried out by the provisions in the Criminal Code or other laws. The minimum specifications for imprisonment do not apply to children.

Action Sanctions

Whereas in CHAPTER V of Law Number 11 of 2012, it mentions criminal acts and actions, which means sanctions consist of criminal acts and taking into account what the intended criminal means according to experts as previously stated. In this case the contrary referred to as action is what has been charged to a person who commits a crime that is not suffering or what is not suffering or what is not suffering or what is not a reaction to the offense which is not manifested as a sorrow inflicted by the state on the maker of the offense. E. Utrecht argues that punishment aims to give special suffering (*bijzonder leed*) to the offender so that he feels the consequences of his actions, while the purpose of the action is more protective and educational, more social. E. Utrecht further stated that in the practice of many cases it was shown that the border between punishment and action was only theoretical and practically difficult to determine [15]. After it is stated about what is meant by action, the types of actions will be presented according to Law Number 11 of 2012. Paragraph (1): Actions that can be imposed on children include:

- Returns to parents or guardians.
- Submission to someone in the explanation of Article 82 paragraph (1) letter b of Law Number 11 of 2012 mentioning "surrender to someone" is a surrender to an adult who is deemed capable, well-behaved, and responsible by the judge and trusted by the child.
- Care in a mental hospital, this action is given to children who at the time of committing a crime suffer mental disorders or mental illness
- Care for social welfare institutions (LPKS). Obligation to take formal education and / or training held by the government or private entity. Revocation of driving license and / or repairs due to criminal acts.

Whereas in the explanation of Article 82 paragraph (1) letter g of Law Number 11 of 2012, it states that what is meant by "repairs due to criminal acts", for example, is to repair damage caused by criminal acts and restore the situation in accordance with the crime. With the provisions contained in Article 71 paragraph (5) and Article 82 paragraph (4), then according to Law Number 11 of 2012 a Government Regulation is still needed regarding:

1. Form and procedure for implementation:
 - a. Basic Criminal Case
 - b. Additional Crime

2. Reimbursement of criminal fines with criminal work training if the material law is punishable by criminal in the form of imprisonment and criminal penalties.
3. Further provisions regarding actions.

Therefore, before the Government Regulation is stipulated, problems arise to implement Law Number 11 year, especially considering that in Chapter XIII of Transitional Provisions, this issue is not regulated.

Administrative Sanctions

In the opinion of J.J. Oosternbring referred to as administrative sanctions is a sanction that arises from the relationship between the government and citizens carried out by a third party, such as without the intermediary of the judicial power, but can be directly implemented by the administration itself. Furthermore, J. J. Oosternbring reminded that the said "without intermediary power of justice" needs to be underlined, in the sense that the application of administrative sanctions is basically (in beginsel) without legal mediation, but in some cases, there are also administrative sanctions that must go through judicial processes [16]. In this case, what is meant by administrative sanctions by the provisions of Article 95 of Law Number 11 of 2012 are administrative sanctions determined and mentioned in the laws and regulations which form the basis of officials who are entitled to impose administrative sanctions in question.

Criminal Justice System against Children in Conflict with Law

Court competency can be divided into two, such as absolute competence relating to the authority of the judicial body to examine a case. Regarding the absolute authority of the court which regulates children is seen in Article 10 of Law Number 14 of 1970 concerning the Principles of Judicial Power. In Law No. 11 of 2012 concerning the Child Criminal Justice System, it discusses that the children's hearing and adult sessions are conducted differently. Relative competency is what kind of judicial authority (in the case of juvenile courts in a state court) to examine and decide cases. Because the object of juvenile justice concerns criminal cases, then to determine which state court has authority, consider the place where the crime is committed (*locus delicti*). In article 2 of the Criminal Code, such as [17]:

- Leer van de lichamelijke daat is this theory also called the theory of material action, which says *locus delicti* is the place where the perpetrator commits the crime.
- Leer van het instrument is a theory of tools used, which says that *locus delicti* is done in the place where the tool is used resulting in a crime.
- Leer van gevolg is a theory that says *locus delicti* is the place where the result of action.

In connection with the principle, there is a difference between Law No. 3 of 1997 concerning

Child Justice and Law Number 11 of 2012 concerning the Child Criminal Justice System. In Law No. 3 of 1997 the Juvenile Court, there are explicitly nine principles, such as [18]:

- Age Limitation
- Children's courts examine children in a family atmosphere..
- Juvenile court requires "Case splitting".
- Meeting with a single judge and child judge is determined by the Chair of the Supreme Court of the Republic of Indonesia.
- Penalties are lighter than adults.
- Special officials are handled.
- The presence of parents, guardians or foster parents is required, and he acknowledges community counselors.
- The presence of legal counsel.
- Child detention is shorter than adult care.

However, in Law Number 11 of 2012 concerning the Criminal Justice System of Children there are Ten Principles such as:

- Protection
- Justice
- Non-Discrimination
- The best interests of the child
- Appreciation of children's opinions
- Survival and growth of children
- Guiding and mentoring children
- Proportional
- Extortion of independence and conviction as a last resort taken
- Avoidance of retaliation

In addition to the principles that imbue the contents of the child criminal justice system law, there is also a philosophical basis is the Indonesian nation's life view in nation and state, such as Pancasila, the translation of Pancasila values in reflecting a sense of order and prosperity desired by Indonesian society. It is stated that children are the mandate and gift of God Almighty who has dignity and dignity, children are entitled to special protection, especially legal protection in the juvenile justice system. This philosophical basis affirms the values of Pancasila, such as the Almighty God and just and civilized humanity so that as a dignified nation that upholds the values of religiosity, the problem of children facing the law must be given the best priority for children.

The sociological basis of the realization of the implementation of a child criminal justice institution can be beneficial or detrimental to the physical mentality and child sociability. Today's criminal offenses in quantity and quality tend to increase compared to other criminal acts. Almost all crimes committed by adults are now carried out by children. Various factors are the unfavorable socioeconomic conditions, the influence of globalization in the fields of

communication and information, entertainment, scientific development, and lifestyle.

Juridical basis, this legal theory upholds the value of justice, freedom and public welfare. It was explained in Law Number 39 of 1999 concerning Human Rights and Law Number 23 of 2002 concerning Child Protection.

The basis of community psychopolitics is a real condition in society regarding acceptance or the degree of rejection of the Act. Criminal acts committed by children directly or indirectly constitute a criminal act which is related to the process of children's interaction in the environment [19].

Formally in Law Number 11 of 2012 concerning the Child Criminal Justice System, it is stated that the validity of restorative justice (Article 1 paragraph 5 (1) jo paragraph (3) applies. What is meant by restorative justice? Where in restorative justice is the translation of restorative justice [20]?

Whereas in Law Number 11 of 2012 concerning the Child Criminal Justice System there are no provisions that can explain further what is meant by "restorative justice," except in the general explanation of Law Number 11 of 2012 stated Restorative justice is a diversion process. This means that all parties involved in a particular criminal act jointly address the problem and create an obligation to make things better by involving victims, children and the community in finding solutions to improve, reconcile and reassure those who are not based on retaliation [21].

Diversion is the giving of authority to law enforcement officials to take policy actions in resolving the problem of child offenders by not taking informally, including stopping or not continuing or releasing from the criminal justice process or returning or surrendering to the community and other forms of social service activities.

In Law Number 11 of 2012, diversion is formulated in CHAPTER II, where all provisions regarding conditions, implementation and what must be considered in diversion are all listed in full. That is Article 6 of Law Number 11 of 2012 the purpose of diversion is:

- Achieve peace between victims and children.
- Complete child cases outside the court process.
- Avoid children from deprivation of their human rights.
- Encourage the community to participate.
- Instill a sense of responsibility to the child.

Whereas in Article 8 of Law Number 11 of 2012 concerning matters that must be resolved and become references, such as:

- Interest of the victim.

- Child welfare and responsibility.
 - Avoidance of negative stigma.
 - Retaliation avoidance.
 - Community harmony.
 - Adherence to decency and public order.

Whereas in carrying out diversion, which has become an obligation that must be carried out at the level of examination, investigators, public prosecutors, and judges must consider criminal acts as a result of research on children from the penal body as well as support from the family and community environment.

Regarding the juvenile criminal procedural law contained in CHAPTER III of Law Number 11 of 2012, Article 16 stipulates that the provisions in the criminal procedure law also apply to juvenile justice proceedings, unless otherwise stipulated in this Law. In the provisions contained in Article 16 of Law Number 11 of 2012, it can be seen the provisions contained in the Criminal Procedure Code, unless specified otherwise in Law Number 11 of 2012. As an example can be stated as follows:

1. To carry out investigations, prosecutions, and examinations of child court cases, that investigators, public prosecutors, and judges must fulfill the following conditions:
 - a. Has to experience as an investigator, public prosecutor and judge in the general court environment.
 - b. Have interest, attention, and dedication and understand children's problems.
 - c. Has participated in a technical trial on juvenile justice.
2. According to Article 54 of Law No. 11 of 2012, it is determined that to examine a judge to conduct a hearing in a closed manner for the public, except for reading the verdict.
3. Article 7 paragraph (1) of Law No. 11 of 2012 stipulates that investigators, public prosecutors and case examinations of children in the district court must submit diversion.

That as for the stages in settlement of child criminal cases, starting from the investigation, a series of actions by the investigator during the preliminary examination to look for evidence of a criminal act [22]. The investigation implies a series of actions carried out by investigating officials by the manner in the law to find and collect evidence, with evidence that makes or becomes clear the crime that occurred and at the same time found the suspect or criminal offender [23]. Investigators in child criminal cases are child investigators who have met the requirements by these laws and regulations that specifically conduct investigations of children in conflict with the law. Child case investigators must ask for consideration or advice from Community Counselors after a criminal act has been reported or reported even if deemed necessary. Investigators can ask for consideration or advice from

education experts, psychologists, psychiatrists, religious leaders, professional social workers or social welfare workers, and other experts.

Child detention must not be carried out if the child receives a guarantee from the parent/guardian and institution that the child will not flee, will not eliminate or damage the evidence, and/or will not repeat the crime. Child detention can only be carried out with the following conditions:

- The child is 14 years or older.
- Suspected of committing a criminal offense with the threat of imprisonment of seven years or more.

This provision is a new thing as a form of giving the age limit of children who can be detained, given the age below 14 (fourteen) years which is still vulnerable to being detained. The guarantee of children's rights must also be given as long as the child is detained, in the form of physical, spiritual and social needs of the child must still be fulfilled.

If detention is carried out in the interests of prosecution, the Public Prosecutor may make detention for a maximum of 5 (five) days. The period of detention at the request of the Public Prosecutor can be extended by the District Court Judge no later than 5 (five) days. If the term has expired, then the child must be issued by law, if the detention is carried out in the interest of an examination at a court hearing. Judges can hold detention for a maximum of 10 (ten) days.

The period at the request of the Judge can be extended by the chairman of the district court no later than 15 (fifteen) days. If the period has expired and the Judge has not given a decision, the child must be issued by law.⁵² The official who makes an arrest or detention must notify the child and parents/guardian about the right to obtain legal assistance. If the official does not implement the provision, the arrest or detention of the Child is null and void

The stages of the juvenile criminal justice process are then a prosecution process. Prosecution is an action of the Public Prosecutor (PU) to delegate a criminal case to the District Court (PN), which is authorized regarding and according to the manner stipulated in the trial. Prosecutions in juvenile offenses contain the definition of the actions of the Public Prosecutor to delegate child cases to juvenile court with requests to be examined and decided by a child judge in a child's trial. In the process of this stage, the public prosecutor assigned the task of prosecuting a child who commits a crime is a Public Prosecutor. It is by the provisions of Article 41 of Law Number 11 of 2012 Child Criminal Justice System, such as:

- Prosecution of a Child's case is carried out by a Public Prosecutor determined by the Decision of the Attorney General or other official appointed by the Attorney General.

- The requirement to be determined as a Public Prosecutor as referred to in paragraph (1) includes having experience as a public prosecutor, having interest, attention, dedication, and understanding the problem of the Child; and has attended technical training on juvenile justice.
- If no Public Prosecutor is fulfilling the requirements as referred to in paragraph (2), the prosecution task shall be carried out by the public prosecutor who performs the task of prosecuting criminal offenses committed by adults.

Whereas in Article 42 of Law Number 11 of 2012 the Child Criminal Justice System is

- The Public Prosecutor must seek Diversion no later than 7 (seven) days after receiving the case file from the Investigator.
- Diversion, as referred to in paragraph (1), is carried out no later than 30 (thirty) days.
- If the Diversion process succeeds in reaching an agreement, the Public Prosecutor submits the minutes of the Diversion along with an agreement on Diversion to the head of the district court to make a determination.

If Diversion fails, the Public Prosecutor must submit the minutes of the Diversion and delegate the case to the court by attaching the report on the results of the social research.

Whereas if no public prosecutor fulfills the conditions specified in this Act in the case of a child criminal case, then by Article 41 paragraph 3 the task of prosecution is carried out by a public prosecutor carrying out the task of prosecuting a criminal offense committed by an adult. At this stage, the public prosecutor is still obliged to seek Diversion.

If Diversion is successfully carried out, the Public Prosecutor's public prosecutor submits the Diversity report along with an agreement on Diversion to the head of the district court to make a determination. However, if Diversion fails, the Public Prosecutor must submit the Diversion minutes and delegate the case to the court by attaching the results of the social research report. This provision is contained in Article 42 paragraph 3 and 4 of the Child Criminal Justice System Act.

Examination in Court Sessions The head of the court is obliged to assign a judge or panel of judges to handle child cases no later than three days after receiving the case file from the public prosecutor. Previously, the judge must seek diversion no later than seven days after being determined by the head of the district court as a judge. Diversion is carried out no later than 30 days. In principle, the diversion process can be carried out in the mediation room of the district court. If the diversion process succeeds in reaching an agreement, the judge conveys the transcript of the

minutes along with a diversion agreement to the head of the district court for determination. If diversion is not carried out, the case is continued at the trial stage.

During the trial, the child is tried in a particular courtroom. Furthermore, the children's hearing waiting room is separated from the adult waiting room. The time of the child's trial takes precedence over the time of the adult hearing. In the trial of the child, the judge checks the child's case in a hearing that is declared closed to the public, except the reading of the verdict. Examination of child cases must be carried out in a closed manner in a particular courtroom for children. However, in some instances it is deemed necessary, the judge can determine case examinations to be carried out openly without reducing children's rights.

In the trial of the child, the judge is obliged to order parents/guardians or assistants, advocates or other legal aid providers and community advisers to assist children. Although in principle the crime is the responsibility of the child himself, because in this case, the defendant is a child, the child cannot be separated from the presence of parents/guardians. In the case of a parent/guardian and companion not present, the trial will continue with the assistance of an advocate or other legal aid provider and community counselor. In the case of not carrying out the order, the child's hearing is null and void by law. After the judge opens the trial and declares the session closed to the public, the child is called in as well as the parent/guardian, advocate or other legal aid provider and community guide.

Provisions without the presence of children are intended to avoid things that affect the lives of children of victims and children of witnesses. The report contains:

- Personal data on children, family, education and social life.
- The background of committing a crime.
- The situation of the victim in the event of a victim in a crime against the body and life.
- Other things considered appropriate.
- News of diversion.
- Conclusions and recommendations from Community Counselors.

Therefore, if the child of the victim and witness cannot be present to provide information in front of the court session, the Judge may order the child of the victim and the child of the witness to be heard:

- Outside the court session through electronic recording conducted by Community Guidance in the local legal area in the presence of Investigators or Public Prosecutors and Advocates or other legal aid providers; or
- Through a direct examination with an audiovisual communication tool accompanied by a parent/guardian, Community Advisor or another companion.

At the time of reading the court decision is carried out in a hearing that is open to the public and cannot be attended by the child. The identity of children, children of victims and children of witnesses, must still be kept secret by the mass media, using only initials without pictures. For this reason, the court must provide excerpts of the verdict on the day the verdict is pronounced to the child or advocate or other legal aid providers, Community Advisor and the public prosecutor. Furthermore, the court is obliged to provide a copy of the decision no later than five days from the verdict being pronounced to the child or another lawyer or legal aid provider — community and public prosecutor counselors [23].

Protection System for Children Conflicting with Law

Child protection is all efforts made to create conditions so that each child can exercise his rights and obligations for the development and growth of children in a reasonable manner both physically, mentally and socially. Child protection is an embodiment of the existence of justice in a society. Thus protection of children is cultivated in various fields of life and state of society. Child protection activities carry the consequences of unwritten law. Law is a guarantee for child protection activities. Arif Gosista argues that legal certainty needs to be sought for the continuation of child protection activities and preventing fraud that brings undesirable negative consequences in the implementation of child protection [25].

Legal protection for children is regulated in Law Number 35 of 2014 concerning Amendment to Law Number 23 of 2002 concerning Child Protection in Article 59 paragraph (1) states "The Government, Regional Government, and other State institutions are obliged and responsible for providing special protection for children. In the case of special protection for children dealing with law contained in Article 64 of Law Number 35 Year 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, it can be done through:

- Humane treatment about needs according to their age.
- Separation from adults.
- Provision of legal assistance and other assistance effectively.
- Enforcement of recreational activities.
- Exemption from torture, punishment or other cruel, inhuman and degrading treatment and degree.
- Avoidance of imposition of capital punishment and or a life sentence.
- Avoidance of arrest, detention or imprisonment, except as a last resort and in the shortest amount of time.
- Provision of justice before the courts of children that is objective, impartial and in a closed session to the public.
- Avoidance of publication on its identity.

- Assisting Parents or Guardians and people trusted by children.
- Provision of social advocacy.
- Giving personal life.
- Providing education.
- Provision of health services and
- Provision of other rights by statutory provisions.

That Article 1 number 2 of Law Number 23 of 2002 stipulates that child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate, optimally by human dignity and dignity, and get protection from violence and discrimination. The basis for implementing child protection is:

- Philosophical basis, Pancasila is the basis of activities in various fields of family life, community, state, and nationhood, as well as the philosophical basis for implementing child protection.
- Ethical basis, the implementation of child protection must be by the relevant professional ethics, to prevent deviant behavior in the exercise of authority, power, and strength in the implementation of child protection.
- Juridical basis, the implementation of child protection must be based on the 1945 Constitution and various other applicable laws and regulations. The application of this juridical basis must be integrative, such as the integrated application of laws and regulations from various related legal fields [25].

One solution that can be taken in handling cases of child crime is the restorative justice approach, which is carried out using diversion (diversion). Restorative justice is a process of settlement that is carried out outside the criminal justice system by involving victims, perpetrators, families of victims and perpetrators, the community and parties with interest in a criminal act that occurs to reach agreement and settlement. Restorative justice is considered a new way of thinking/paradigm in seeing a crime committed by someone. However, in its implementation, the juvenile justice system in Indonesia still faces various problems. Existing problems include the detention of children who are not by procedures, a lengthy judicial process ranging from the investigation, prosecution, court, which ultimately places the convicted child in a correctional institution or who is returned to the community with a free decision will still leave trauma and negative implications to children.

Legal protection for children in the judicial process is carried out starting from the level of investigation, investigation, prosecution, examination at the court until the implementation of the court's decision. During the judicial process, the rights of the child must be protected by applicable law and therefore must be carried out consequently by the parties related

to the resolution of the child's problem. The things that must be considered in the process of handling children who are faced with the law are:

1. Protection for children who commit criminal acts, especially for children who are faced with the law, according to Article 64 paragraph (1) of the Child Protection Act, directed at children in conflict with the law and children who are victims of criminal acts. Based on Article 64 paragraph (2) of the Child Protection Act, protection for children facing the law is carried out through:
 - a. Human treatment of children by the dignity and rights of children;
 - b. Provision of specialized facilities and infrastructure;
 - c. Provision of individual escort officers for children from an early age;
 - d. Monitoring and recording continues to be carried out on the development of children facing the law;
 - e. Providing guarantees for maintaining relations with parents or family;
 - f. Protection from identity is reporting through mass media and avoiding labeling. Labeling is essential to avoid for a child who commits a crime because an evil stamp / evil stigma/label will stick even if the person does not commit a crime again [26].
2. Legal protection for children who are witnesses and victims of criminal acts. Law No. 13 of 2006 concerning the Protection of Witnesses and Victims has not explicitly arranged for the protection of children as witnesses. For this reason, this regulation is deemed to have still found weaknesses in regulation, especially those related to the protection of child witnesses. For this reason, the Witness and Victim Protection Agency have formulated input on the provisions of change. Law Number 13 of 2006 concerning the Protection of Witnesses and Victims that regulates the protection of children which reads in Article 10 B are:
 - a. Protection of Witness and Victim Protection Institutions for children who become Witnesses and Victims can be given after obtaining permission from parents or guardians except in the case of:
 - 1) The parent or guardian of the child concerned is suspected of being a criminal offender against the child concerned.
 - 2) Parents or guardians who should be strongly suspected of preventing the child from giving testimony;
 - 3) Parents or guardians who are incompetent to carry out obligations as parents or guardians.
 - 4) Children who do not have parents or guardians; and
 - 5) Children whose parents or guardians are unknown.
 - b. The protection of the Witness and Victim Protection Agency for children who become Witnesses and Victims as referred to in paragraph (1), is given based on the appointment of the Chairperson of the local District Court at the request of the Witness and Victim Protection

Agency. Other statutory provisions. For example, in the provisions of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, which places children as victims and witnesses as well as the provisions of Law Number 23 of 2002 concerning Child Protection [27].

The Right to Get Legal Aid a child who is involved in a crime to obtain legal assistance without questioning the type of crime has been committed. Children have the right to get legal assistance at each stage of the examination, both in the stages of investigation, investigation, prosecution, and examination at the court. Witness/child victims must be accompanied by parents/guardians, people trusted by children or social workers at each stage of the examination. However, if the parent of the child is a criminal offender, the parent/guardian is not obliged to assist.

CONCLUSION

Children with legal conditions, hereinafter referred to as children, are children who are 12 (twelve) years old, but who are not 18 (eighteen) years old who are suspected of committing a criminal act, a criminal sanction that is deliberately charged to a person who commits an act that meets the requirements certain conditions and particular suffering. The juvenile justice system is then a prosecution process. Prosecution is the action of the Public Prosecutor (PU) to delegate a criminal case to the District Court (PN), which is authorized regarding and according to the manner stipulated in the trial. Prosecutions in juvenile offenses contain the definition of the actions of the Public Prosecutor to delegate child cases to juvenile court with requests to be examined and decided by a child judge in a child's trial. Child protection is all efforts made to create conditions so that each child can exercise his rights and obligations for the development and growth of children in a reasonable manner both physically, mentally and socially. Child protection is an embodiment of the existence of justice in a society. Thus protection of children is cultivated in various fields of life and state of society.

REFERENCES

- Ninie, S. (2007). *Penerapan Sanksi Tindak Pidana*, PT. Sinar Grafika, Jakarta, Tahun.
- Darwan, P. (2003). *Hukum Anak Indonesia*, PT. Citra Aditya, Bandung.
- Kesejahteraan anak adalah suatu tatanan kehidupan dan penghidupan yang dapat menjamin pertumbuhan dan perkembangan yang wajar, baik secara rohani, jasmani, maupun sosial. (Undang-Undang No.4 Tahun 1979 tentang Kesejahteraan Anak).
- Muhammad, J., & Zulchaina, Z. T. (2000). Aspek Hukum Perlindungan Anak Dalam Perspektif Konvensi Hak Anak. *PT Citra Adilya Bakti, Bandung*.
- Maidin, G. (2010). *Perlindungan Hukum Terhadap Anak*, PT. Rafika Aditama, Bandung.
- Andrisman, T. (2009). *Hukum Pidana: asas-asas dan dasar aturan umum hukum pidana Indonesia*. Penerbit Universitas Lampung.
- <http://www.suduthukum.com>, pengertian-sanksi-pidana.html, diakses tanggal 11 Nopember 2018, Pukul 20.49 WIB.
- Wiyono, R. (1996). *Sistem Peradilan Pidana Anak di Indonesia*, Sinar Grafika, Jakarta Timur, 14-15.
- Pramukti, A. S., & Fuady Primaharsya, S. H. (2015). *Sistem Peradilan Pidana Anak*. Media Pressindo. Bandung: PT.Buku Seru, Cetakan Pertama, 8-9.
- Sri Widoyowati, W. S. (1983). *Anak dan Wanita Dalam Hukum*, LP3ES, Jakarta, 10-11.
- Hamzah, A. (2008). *Terminologi hukum pidana*. Sinar Grafika, Jakarta, Cetakan Kesatu, 138.
- Muladi, D. K. K. (1992). *Teori-Teori dan Kebijakan Pidana*, Alumni, Bandung, Cetakan Kedua, 2.
- Roeslan, S. (1984). *Kitab Undang-Undang Indonesia*, Amico, Bandung, Cetakan Ketiga, 25.
- Lamintang, P. A. F. (1984). *Hukum Penitensier Indonesia*, Armico, Bandung, Cetakan Kesatu, 20.
- Utrecht, E. (1987). *Hukum Pidana II*, Pustaka Tinta Mas, Surabaya, Cetakan Ketiga, 360.
- Ridwan, H. R. (2011). *Hukum Administratif Negara*, Raja Grafindo Persada, Jakarta, Cetakan Keenam, 299.
- Darwin, P. (1997). *Hukum Anak Indonesia*, Citra Aditya Bakti, Bandung, 13-14.
- Nashriana. (2011). *Perlindungan hukum pidana bagi anak di Indonesia*. RajaGrafindo Persada.
- Pramukti, A. S., & SH & Fuady Primaharsya, S. H. (2018). *Sistem Peradilan Pidana Anak*. Media Pressindo.
- Nasir, D. M. (2013). *Anak Bukan Untuk Dihukum. Jakarta: Sinar Grafika*.
- Wiyono, R. (1996). *Sistem Peradilan Pidana Anak Di Indonesia* Sinar Grafika.
- Darwin Prist, Op.Cip.,hal 37.
- Yahya, H. M. (2006). *Pembahasan Permasalahan dan Penerapan KUHAP (Penyidik dan Penuntut Umum)*, 2009. *Sinar Grafika, Jakarta*.
- Maidin, G. (2008). *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Anak Di Indonesia*.
- Atmasasmita, R. (1997). *Peradilan Anak di Indonesia. Mandar Maju, Bandung*.
- <https://manunggalkusumawardaya.wordpress.com/2010/07/07/perlindungan-terhadap-anak-yang-melakukan-tindak-pidana/>. diakses tanggal 24 September 2017, Pukul 20.30 WIB
- <http://www.hukumonline.com/klinik/detail/lt50b39aa15ed03/adakah-aturan-khusus-yang-melindungi-anak-sebagai-saksi>., diakses tanggal 20 Nopember 2018, pukul 21.00 WIB.