

## Criminal Justice System of Children in Indonesia

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**Abstract:** Child criminal justice process is very different from the criminal justice process against adults. In the criminal justice process and the imposition of criminal sanctions against children, law enforcers and related parties must carry out legal proceedings in accordance with the rules of the criminal law of children and always uphold the rights and interests of the Child. In Indonesia the overthrow sanctions against children is the last way in the law enforcement and done very carefully for the sake safeguarding the interests of the child.

**Keywords:** Criminal Justice System, Children, Indonesia.

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### I. INTRODUCTION

Children are an integral part of human survival and the continuity of a nation and state. In the Indonesian Constitution, children have a strategic role that is expressly stated that the state guarantees the right of every child to survival, growth and development and for the protection of violence and discrimination. The child needs to be protected from the negative impacts of rapid development, the globalization of information and communications, the advancement of science and technology, and the changing styles and way of life of some parents who have brought about fundamental social change in the life of society that is very influential to the value and Child behavior. Deviation of behavior or unlawful acts committed by the Child, among others, is caused by factors from within the child (family) and outside the Child (the environment). Therefore, the role of parents to keep and educate children in the development toward maturity becomes the main obligation. (Bakhtiar, H. S., 2011)

Children are part of the community, they have the same rights as other communities to be protected and respected. Any State anywhere in the world is obliged to give adequate attention and protection to the rights of the child, which include civil, economic, social and cultural rights, but it seems that the position and rights of the child when viewed from a juridical perspective have not received attention seriously both by the government, law enforcers and society in general and still far from what should be given to them. This condition is also complicated by the weak implementation of the law on the rights of the child committed by law enforcement officers themselves.

In order to realize qualified human resources, survival, physical and mental development as well as protection from various threats that may threaten their integrity and future, sustainable and integrated coaching needs to be sought. In reality, the youth development effort, often faced with difficult problems and challenges, such as behavior disorder of children. Even further than that, there are children who commit acts that violate the law, both children from high socioeconomic circles, middle, and lower.

Judging from the juridical aspect, the meaning of "Child" in the eyes of the positive law of Indonesia is defined as a person under age (*minderjaring*), inferiority (*minderjarigheid*) or often referred to as a child under the guardian (*minderjarige ondervoerdij*) (Lilik Mulyadi. 2005). The definition of the child itself if we look further in terms of chronological age according to law may vary depending on place, time and for what purposes, it will also affect the limits used to determine the age of the child.

The imposition of sanctions is a tool of power to strengthen the enactment of a norm and to prevent and combat acts that interfere with the validity of a norm. The goal of imposing sanctions against children is to allow the child to blend back into society. *Double track system* is a two-way system of sanctions in criminal law, namely criminal sanctions and types of action sanctions. Although in practice, the difference between criminal sanctions and action sanctions is often somewhat vague, but at the level of basic ideas both have a fundamental difference, where criminal sanctions are based on the basic idea of "why punishment", whereas action sanctions depart from the basic idea "that". (M. Sholehuddin. 2004)

Considering the characteristic and characteristic characteristic of the Child and for the protection of the Child, a Child subject to the law shall be tried in a criminal court of the Child residing in the general

judicature. The court proceedings of the Child since the arrest, detention and trial of the guidance shall be carried out by a special official who understands the Child's problem.

If the legal process of the child is to be carried out then it would be unfair to the defendant to be subject to the same legal process as the adult defendant. Likewise with the criminal who will be imposed on the child, of course very unfair if the criminal who must be lived with the criminal defendant adult. Especially considering that the child is the successor of the ideals of the nation's struggle, so that in handling the crime committed by the child, should really pay attention to the interests and future of the child.

Therefore, through Article 103 of the Criminal Code, it is still justified by other acts which, according to law other than the Criminal Code, may be punished as long as the law is related to the child's issue and not contrary to the provisions of the Criminal Code (*lex specialis derogat legi generali*).

Under this principle also the criminal law of children justifies other laws, outside the Criminal Code related to children's problems such as the provisions of the law regulated in Law No. 11 Year 2012 about the Criminal Justice System of Children, in this law regulates the distinction of treatment in in the procedural law and the threat of punishment.

The differentiation of treatment and threats set out in this law is intended to provide more protection and protection for children in the face of its long-term future. In addition, the distinction is intended to provide an opportunity for the child so that after going through coaching will gain identity to become a better human being, which is useful for self, family, community, nation and state.(Wigiati Soetedjo, 2010)

Sanctions are a logical consequence of an act committed. Sanctions can have the same meaning as punishment but the meaning is different from the criminal. Criminal (*starf*) is a sanction that is only applied in the field of criminal law. Understanding of criminal sanctions includes all types of criminal both in the Criminal Code and criminal provisions outside the Criminal Code. In Indonesia is a country that uses two types of criminal sanctions at once, namely in the form of criminal (*straf*) and actions (*maatregels*).

Theoretically, criminal is more suffering, although the element of education and its guidance and supervision become the main goal. While more action leads to activities of protection, education and coaching of children. Criminal is defined as an affliction deliberately imposed or imposed by the state upon a person or persons as a result of the law (sanction) for him or her for committing a crime of a criminal law. Criminal is an uncomfortable feeling (for example in the form of restrictions, fulfillment of certain obligations) imposed by the state through criminal justice because a person or corporation is criminally violating the law and convincing guilty. Mild acts, personal circumstances of the Child, or circumstances at the time of an act or subsequent acts may be used as a basis for judges consideration not to impose criminal or to impose measures with respect to justice and humanity. Therefore, the focus of the discussion of this paper is how the concept and system of criminal justice against children who perform criminal acts in Indonesia.

## II. CONCEPT OF THE CRIMINAL JUSTICE SYSTEM OF CHILDREN

Criminal procedural law is also called a formal criminal law. According to Lamintang, the formal criminal law contains rules governing how the abstract criminal law should be applied concretely (P.A.F. Lamintang, 1984). Meanwhile Sudarto said that the criminal law of fomal regulates how the state by the means of its equipment exercises its right to impose criminal sanction. (Sudarto,1990)

Thus, the procedural law of child criminal justice is the rules that regulate for abstract child criminal law applied in concrete. In Law no. 11 Year 2012 about the criminal justice of children is set in Chapter III from Article 16 to Article 62, meaning that there are 47 articles that regulate the criminal procedural law of children.

In view of this criminal procedural law as a *lex specialis* of the general criminal procedural law (KUHAP), the provisions of the law in criminal procedure (KUHAP) shall also apply in the case of the criminal justice of the child, unless otherwise provided in the Criminal Justice System Act. As a form of guaranteeing the protection of the rights of the child, investigators, prosecutors and judges are obliged to provide special protection for the child being examined for criminal acts committed in emergency situations and special protection and carried out through the imposition of sanctions without weighting. (Law and Regulations. 2012)

The guarantee of the protection of children's rights is also contained in Article 18 which states that in handling child cases, child victim, and / or Witness's children, Social Advisor, Professional Social Workers and Social Welfare Workers, Investigators, the Prosecutor General, Judge, and Advocates or legal aid providers others should pay attention to the best interests of the child and keep the family atmosphere maintained. Therefore, Article 19 also states that everything related to the identity of the child, the child of the victim, and / or the child of the witness shall be kept confidential in the printed or electronic media or even the identity referred to above including the child's name, the name of the victim's child, the name of the witness's son, parents' names, addresses, faces, and other matters that may reveal the identity of the child, the victim's child, and / or the child of the witness.

If the offense is committed by a child before the age of 18 (eighteen) years and is submitted to the court where after the child has exceeded the age of 18 (eighteen) years, but has not reached the age of 21 (twenty one) years, the child remains submitted to the children's hearing.

In Article 21 it is determined that a child not yet 12 (twelve) years of age commits or is suspected of committing a criminal offense, investigator, counselor, and professional social worker has decided to:

- a. hand it back to the parent / guardian; or
- b. to include it in education, coaching and mentoring programs in government agencies or Social Welfare Implementing Institutions in institutions that handle social welfare, at both central and regional levels, for a maximum period of 6 (six) months.

The decision shall be submitted to the court for a maximum period of 3 (three) days. In addition, the Penitentiary (BAS) must evaluate the implementation of educational programs, coaching and mentoring to children. In case of result of evaluation as meant in the above statement, then the child is considered still need education, coaching, and further guidance, education, coaching and coaching can be extended for 6 (six) months.

Government agencies and Social Welfare Implementing Agencies as described above shall submit monthly reports of child development to Breathing on a monthly basis, as well as further provisions on terms and procedures for decision-making and education, coaching and mentoring programs.

In the trial process still use the existing model in Law no. 3 of 1997 About Juvenile Court (Law and Regulations, 1997), in the form of prohibition of using toga or official attribute for officer, it is contained in Article 22 which read: "Investigator, Public Prosecutor, Judge, Community Guidance Guidance, Advocate or other legal aid providers, and other officers in checking the child's case, the victim's child, and / or the child's witness does not wear a gown or official attribute.

This treatment is intended to prevent children from being afraid and scary to face judges, prosecutors, investigators, legal counselors, social counselors, and other officials, so as to expose their feelings to judges why they commit a crime. In addition, it is also useful to create a family atmosphere so as not to become a terrible event for children. (Wagiati Soetodjo. 2005)

At each level of examination, the child shall be provided with legal assistance and accompanied by a Community Guidance or other companion in accordance with the provisions of legislation. In fact, at every level of examination, the child of the victim or child of the witness shall be accompanied by a parent and / or a person trusted by the victim's child and / or witness's son, or social worker. In the case of parents as suspects and; or the defendant of the case being examined, the provisions referred to above do not apply to parents.

Children committing crimes together with adults or members of the Indonesian Armed Forces shall be brought to the Juvenile Court, while adults or members of the Indonesian Armed Forces shall be brought to justice. In the case register the child and the child of the victim must be specially made by the institution handling the child's case.

### **III. CHILD CRIMINAL JUSTICE PROCESS**

#### **1. Investigation**

The investigation implies a series of actions by an investigative official in the manner in which the law seeks to collect evidence, and with evidence it makes or becomes the light of a crime that occurs and at the same time finds the suspect or perpetrator of his/her crime (Yahya Harahap. 2006). This means that the investigation in a child criminal case is to the juvenile "child investigator to search for and find an event that is considered or suspected as a criminal offense committed by a child, then who is referred to as a child investigator?" In Article 26 of the Criminal Justice System Law, mentioned:

- 1) The investigation of a child's case shall be conducted by an investigator stipulated by the Decree of the Chief of Police of the Republic of Indonesia or other officer appointed by the Chief of Police of the Republic of Indonesia.
- 2) The examination of the child of the victim or the child of the witness is carried out by the investigator.
- 3) Conditions to be determined as Investigators are as follows;
  - a. has experience as an investigator;
  - b. have interest, attention, dedication, and understanding of Children's problems; and
  - c. has attended technical training on Juvenile justice.

To investigate a child's case, the investigator shall require consideration or advice from the Counselor after the crime has been reported or reported. In case it is deemed necessary, the Investigator may seek advice or advice from educational experts, psychologists, psychiatrists, religious leaders, Professional Social Workers or Social Welfare Workers, and other experts, even in the case of examining child victims and witnesses, social reports of Professional Social Workers or Social Welfare Workers after the crime is reported or reported. Thus, the results of Community Research shall be submitted by Breath to the Investigator within a maximum of 3 x 24 (three times twenty four) hours after the request of the investigator is received.

In principle, the investigator is obliged to try to make the diversion within 7 (seven) days after the investigation begins. And the Diversi process as referred to above shall be held no later than 30(thirty) days after the commencement of the diversion. In the event that the diversion process succeeds in reaching the agreement, the Investigator delivers the report of the diversion event and the diversion agreement to the President of the District Court to be made *pe. net*. If the conversion fails, the Investigator is obliged to continue the investigation and delegate the case to the Public Prosecutor by enclosing the divergence report and the community research report.

## **2. Arrest and Detention**

The authority granted to the investigator is so widespread. Sourced from the authority granted by a law, the investigator has the right to reduce the freedom and human rights of a person, provided that it still rests on the legal basis of arrest and detention. It is also in the law of criminal justice.

Article 30 of the Criminal Justice System Law reads:

- 1) The arrest of the Child shall be made for the purpose of investigation no later than 24 (twenty four) hours.
- 2) A child who is arrested shall be placed in a special service room of the Child.
- 3) In the case of the special service room of the child not yet in the area concerned, the child is entrusted to the LPKS.
- 4) The arrest of a child must be done in a humane manner with due regard to the need for age.
- 5) The cost for each child placed in the LPKS is charged to the budget of the ministry that carries out governmental affairs in the social field. "

In addition, in conducting the investigation, the investigator coordinates with the Public Prosecutor and coordinates as previously explained that it shall be conducted within a maximum of 1 x 24 (one time twenty four) hours from the beginning of the investigation.

Detention of a child shall not be exercised in the event that a child obtains a guarantee from a parent / guardian and / or institution that the child will not escape, will neither eliminate nor damage evidence, nor will it repeat offenses. Detention of a child may only be made under the following conditions:

- a. Children are 14 (fourteen) years of age or older; and
- b. allegedly commits a crime with imprisonment of 7 (seven) years or more.

This provision is a new thing as a form of child retention that can be withheld, given the age under 14 (fourteen) years who are still vulnerable to be arrested. Guarantees for the rights of the child should still be provided as long as the child is detained, in the form of physical, spiritual, and social needs of the child must remain fulfilled. To protect child safety, child placement can be done in LPKS.

Detention for the purpose of the investigation shall be made no later than 7 (seven) days, and the period of detention referred to at the request of the investigator may be extended by the Prosecutor at the latest 8 (eight) days. If the period of time has expired, the child shall be issued by law, and the detention of the child shall be exercised in the LPAS. In the absence of LPAS, detention can be conducted at the local LPKS.

In the event that detention is conducted for the purpose of prosecution, the Prosecutor may hold a maximum of 5 (five) days in detention. The period of detention as requested by the Public Prosecutor may be extended by the judge of the court within a maximum period of 5 (five) days, and in the event that the period of time has expired, the child shall be issued by law. In the case of detention conducted for the purpose of examination in court, the judge may hold a maximum of 10 (ten) days of detention. The duration of the request for a judge may be extended by the President of the District Court for a maximum period of 15 (fifteen) days. If the time period has expired and the judge has not yet given the verdict, the child shall be issued by law.

The determination of a court regarding the seizure of evidence in a child's case shall be determined for a maximum of 2 (two) days. In the case of detention conducted for the purposes of examination at the appellate level, the appellate judge may hold a maximum of 10 (ten) days of detention. The period referred to above shall be extended by the President of the Court of Appeal within 15 (fifteen) days. In the event that the period of time, when it has expired and the appeal judge has not issued a decision, the child shall be issued by law. In the event that the detention shall be made for the purpose of examination at the cassation level, the cassation judge may hold a maximum of 15 (fifteen) days of detention.

The period of time referred to above, the request of the cassation judge may be extended by the Chief Justice of the Supreme Court for a maximum of 20 (twenty) days. If it has expired, the cassation judge has not given the verdict, the child must be issued by law.

In addition, the officer making the arrest or detention shall notify the child and the parent / guardian of the right to obtain legal assistance. If such an official does not comply with the provisions referred to above, the arrest or detention of a child is null and void.

### **3. Prosecution**

Prosecution is an act of Public Prosecutor to delegate criminal cases to the District Court (PN), which is authorized in matters and in the manner stipulated in the Act with a request to be examined and decided by a judge in the hearing. The prosecution in a child criminal case contains an understanding of the action of the Pediatric Prosecutor to bring the child's case to the child's court with a request to be examined and decided by a child's judge in a child's trial.

Article 41 provides that the Public Prosecutor shall be appointed by the Decree of the Prosecutor General or other official appointed by the Attorney General. Conditions to be stipulated as a Public Prosecutor as mentioned above include:

- a. has experience as a Public Prosecutor;
- b. have interest, attention, dedication, and understanding of children's problems; and
- c. has attended technical training on juvenile justice.

In the absence of a Public Prosecutor who meets the requirements referred to, the prosecutorial task shall be carried out by the Prosecutor performing the prosecution duty for the crime committed by an adult. The Public Prosecutor shall seek a maximum of 7 (seven) days after receiving the case file of the Investigator and be versioned as in the case of a maximum of 30 (thirty) days. In the event that the diversion process reaches an agreement, the Public Prosecutor submits the version of the diversified event and the diversion agreement to the President of the District Court for determination. In the event of failure, the Public Prosecutor shall submit the dispatch report and submit the case to court by enclosing a report on the results of a public research.

### **4. Examination In Court**

#### **1) First Judge**

The Judge of the Juvenile Court, ie, to a First-Level Judge, examination in a court hearing against a child's case shall be conducted by a judge appointed by the Decree of the Chief Justice of the Supreme Court or other officer appointed by the Chief Justice of the Supreme Court by the Chair of the Court of Appeal. Terms to be judged include:

- a. has experience as a judge in the general judicial environment;
- b. have interest, attention, dedication, and understanding of children's problems; and
- c. has attended technical training on juvenile justice.

In the absence of a judge who meets the requirements set forth above, the duties of the examination at the hearing of the child shall be carried out by a judge conducting an examination for a criminal offense committed by an adult. In addition, the judge examines and decides cases of children in the first degree with a single judge, as well as the President of the District Court may determine the examination of a child's case by an assembly judge in the event of a criminal offense punishable by imprisonment 7 (seven) years or more or difficult to prove it even in each trial The judge is assisted by a substitute clerk or substitute clerk.

#### **2) Appeal Judge**

Similarly, the appellate judge, in which the appellate judge is determined by the decision of the Chief Justice of the Supreme Court on the proposal of the High Court of Chief concerned. The appellate judge examines and decides the child's case on appeal with a single judge. The President of the Court of Appeal may stipulate the examination of a child's case with an assembly judge in the event of a criminal offense punishable with imprisonment of 7 (seven) years or more or difficult to prove it and in carrying out his duties, appellate judge assisted by a clerk or a substitute clerk.

#### **3) Judge of Cassation**

The cassation judge was appointed by the decision of the Chief Justice of the Supreme Court, the Appeal Judge to examine and decide upon the case of a cassation as a single judge. The Chief Justice of the Supreme Court may determine the examination of a child's case by an assembly judge in the event of a criminal offense punishable by imprisonment of 7 (seven) years or more or difficult to prove it. In performing his duties, the Cassation Judge is assisted by a clerk or a substitute clerk.

#### **4) Judge of Review (PK)**

At the stage of the Judicial Review process (PK) of a court decision concerning the case of a child who has obtained permanent legal force can be requested for review by the child, parent / guardian and / or advocate or other legal aid provider to the Chief Justice in accordance with the provisions of the law legislation.

#### **5) Examination at the Court Session**

In the process of examination in the court, the head of the court shall determine the judge or the judge to handle the child's case within 3 (three) days after receiving the case file from the prosecutor. The Judge shall

seek the maximum of 7 (seven) days after the stipulation by the President of the District Court as a judge, so that the diversion as referred to in paragraph (2) shall be held no later than 30 (thirty) days. In principle, the diversion process can be carried out in the mediation court of the District Court. If the diversion process reaches an agreement, the judge shall deliver the version of the diversified / bearing / diversified version of the Agreement to the President of the District Court to establish its determination. In fact, if the diversion process is unsuccessful, the case proceeds to the stage of the trial.

In the trial process, in principle, the child is tried in a special session of the child and the waiting room of the children's hearing is separated from the adults' waiting room. The time of the trial of the child is registered from the time of the adult trial. In addition, the judge examines the case of a child in a hearing that is declared closed to the public, except for the reading of the verdict. In a child hearing, the Judge is obliged to instruct the parent / guardian or companion, advocate, or other legal aid providers, and the Counselor to assist the child. If the parent / guardian and / or counselor is not present, the hearing continues with the accompanying advocates or other legal aid providers and / or the Community Guides. In the event that a judge does not enforce the provisions referred to above, the child hearing is null and void. After the judge opens the proceedings and declares the trial closed to the public, the child is called in with the parent / guardian, advocate or other legal aid providers, and the Counselor of the Society.

The trial of the children's case is closed to create a calm atmosphere and full of kinship, so the child can express all events and feelings openly and honestly during the trial run.

After the indictment was read out, the judge ordered the Social Advisor to read out the report on the results of community research concerning the child in the absence of a child, unless the judge held another opinion. The report contained:

- a. personal data of children, family, education, and social life;
- b. background of a crime;
- c. the circumstances of the victim in the event of a victim in a crime against the body or life;
- d. other matters deemed necessary;
- e. event news versioned; and
- f. conclusions and recommendations of the Community Guides.

When examining the victim's child and / or witness's children, the judge may order that the child be taken out of the courtroom. At the time of the examination of the victim's child and / or witness's child, the parent / guardian, advocate or other legal aid provider, and the Counselor of the Community remain present. Therefore, if the child of the victim and / or the child of the witness can not be present to give testimony before the court hearing, the judge may order the victim's child and / or the witness's child to be heard:

- a. outside the court hearing through electronic recording conducted by a Community Guidance Counselor in a local jurisdiction with the presence of an investigator or prosecutor and an advocate or other legal aid; or
- b. through direct remote examination with audiovisual communication tools accompanied by parents / guardians, Social Guides or other companions.

Basically, the child hearing is continued after the child is informed of the information given by the victim's child and / or the child's witness when the Child is outside the courtroom. Thus, before passing the verdict, the Judge gives an opportunity to the parent / guardian and / or counselor to express the things that are beneficial to the child. In certain cases the victim's child is given a chance by the judge to express his opinion on the case. Therefore, the judge shall consider the social research report of the Counselor prior to the judgment of the case, and in the case of a community research report referred to above not considered in the judge's decision, the decision is null and void.

In the process of reading the decision of the court conducted in a session open to the public and can not be attended by the child. The identity of the child, the child of the victim, and / or the child of the witness shall be kept secret by the mass media as referred to in Article 19 using only the initials without drawings. To that end, the court is obliged to give an award on the day the verdict is addressed to the child or advocate or other legal aid provider, the Public Counselor, and the Public Prosecutor and the court waib provide a copy of the verdict no later than 5 (five) days since the decision is made to the child or advocate or give other legal assistance, the Community Counselor, and the Public Prosecutor.

#### **IV. CONCLUSION**

The parties involved in the criminal proceedings of the child shall pay attention and enforce the law enforcement process by always prioritizing the interests of the Child. And in imposing a crime against a child with the purpose of punishment to give a deterrent effect and so that the child does not repeat his actions again. As for the author's suggestion is expected to the parents to further increase the awareness and supervision to the child. And to law enforcement officers to pay attention to the provisions of the rules that apply to the defendant who in this case is categorized as a child, in the case of imposition of more sanctions

towards the education and character development of children so that prison criminal penalties become the last alternative in imposing sanctions for children.

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