

STRENGTHENING THE LEGAL PROTECTION FOR CHILDREN IN CONFLICT WITH THE LAW IN THE JUVENILE CRIMINAL JUSTICE SYSTEM THROUGH RESTORATIVE JUSTICE APPROACH

ADE AGUSTINA
Setiono
Hartiwiningsih

ABSTRACT

Children are the integral part of human survival and the continuity of a nation and a state. The 1945 Constitution of the State of the Republic of Indonesia explicitly mandates that the state guarantees the right of every child to survive, to grow and to develop as well as to be protected from any violence and discrimination. This obligation is regulated in the Juvenile Criminal Justice System Act year 2012. This law is seen as a more child-friendly law and practically changes the paradigm of how to handle child in conflict with the law by put forward the best interests of the child. However, there are still many drawbacks in the implementation of the law to protect them. Therefore this study aims to examine and thoroughly analyze the legal protection efforts of children facing the law in the criminal justice process of the child which refers to the principle of restorative and diversified justice. In this regard, this study will identify what factors that cause legal protection for children in conflict with the law can not be held maximally, then it will strengthen the efforts to achieve maximum restorative justice. The method used in this research is empirical or non doctrinal method. The data analysis technique used in this research is the method of qualitative normative analysis. The result of the research found that: the criminal justice process is held and is applied differently between child and adult offender. The juvenile justice system that has been being implemented in Indonesia is one of the mechanism for child protection especially for child offender. The whole process of juvenile criminal justice system should be directed to ensure the children welfare and their best interests. With the enactment of Juvenile Criminal Justice System Act, it is time to change the model of handling child in conflict with the law from retributive approach to restorative justice.

Keywords : Legal Protection, Restorative Justice, Criminal Justice System, Children

Introduction

Children are an integral part of the survival of human life and the continuity of a nation and state. In order to be able to be responsible for the sustainability of the nation and state, every child needs to get the widest opportunity to grow and develop optimally, physically, mentally, and socially. Therefore, protection efforts should be made to realize the welfare of the child by providing guarantees for the fulfillment of their rights without any discriminatory treatment¹. In the Preamble of the UN Declaration it is implied that humanity is obliged to provide the children best interest. All parties agree that the role of the child is a nation future hope. The child has an existence as a human child which is the totality of life and humanity.

The state upholds human rights, including the rights of the child, which is marked by the guarantee of protection and fulfillment of the rights of the child in the Constitution of the State of the Republic of Indonesia year 1945² and several provisions of laws and regulations both national and international. This guarantee is upheld through the ratification of the International Convention on the Rights of the Child, namely the ratification of the Convention on the Rights of the Child through Presidential Decree No. 36/1990 on the Ratification of the Convention on the Rights of the Child (Convention on the Rights of the Child)³. In addition,

¹ See General Elucidation of Law Number 35 Year 2014 on Amendment to Law Number 23 Year 2002 on Child Protection.

² The Government's efforts to protect children's rights are written in the 1945 Constitution of the State of the Republic of Indonesia which regulates the rights of children, one of which is entitled to survival, growth and development and is entitled to protection from violence and discrimination. Therefore, various efforts to prevent and overcome child mischief, need to be done immediately. Nandang Sambas. *Renewal of the Children's Penal System in Indonesia*. Yogyakarta: Graha Ilmu, 2010, p. 103. Based on the RPJMN 2010 to 2014, child protection policies are directed to the following: 1. Increasing access to quality services, increasing children's participation in development, and efforts to create a child-friendly environment in order to support growing aquaculture / Children 2000 2. And child survival, Improving child protection from violence and discrimination 3. Increasing the effectiveness of child protection institutions.

³ As the implementation of the ratification, the Government has approved Law No. 23 of 2002 on Child Protection, which substantially has arranged several things, children in conflict with the law, the children as a minority group, the victims of economic and sexual exploitation, Trafficked children, child refugees and children in situations of armed conflict, child protection committed under the principle of non-discrimination, the best interests of the child, respect for the opinion of the child, the right to life, to grow and develop. In order to improve the protection of

the Child Protection Act No. 23 of 2002 is also one of the legal products in Indonesia which shows the state's concern for the protection of children's rights. Children in conflict with the law have also received special attention in the past five years. The high number of criminal offenders is an important issue to be solved because the quality of children within a country reflects the country's future.

Data from the Ministry of Social Affairs mention that the number of children in conflict with the law cases tends to increase in recent years. In 2008 there were at least 6,500 cases of children in conflict with the law and this number increased in 2009 to 6,704 cases. However, only a very few can be handled properly and in accordance with child protection policies. Referring to the data of the Indonesian Child Protection Commission and National Commission on Child Protection, up to 2011 as much as 90 percent of children in conflict with the law cases are processed and ended by criminal convictions or termination. It means that at most only 10 percent of children in conflict with the law cases may have been resolved in accordance with children in conflict with the law's policy of not being brought to a criminal court, but resolved by a restorative court where issues are resolved together between the involved child, family and other relevant parties (e.g. school), facilitated by officers who are oriented towards child protection⁴. Based on data from the Commissioner of the National Commission for the Protection of Indonesian Children Rita Pranawati, stated that in 2013-2014, there are 852 cases of children in conflict with the law throughout Indonesia with details in 2013 there are 420 complaints cases and by 2014 there are 432 complaint case. This shows that there is an increase in the number of children in conflict with the law in Indonesia⁵.

Children in Conflict With The Law in the Criminal Justice System

The ineffectiveness of the protection of minors who commit criminal offenses can be seen from placing children in correctional facility where still found the children placed in the same block with adult prisoners. The problem of placement of children with adult prisoners today is caused by the lack of number of juvenile correctional facilities (JCF) in Indonesia. There are only 18 provinces that have owned JCF, among others: North Sumatra, West Sumatra, South Sumatra, Riau, Jambi, and Lampung, Banten, Central Java, East Java, Bali, NTB, NTT, West Kalimantan, South Kalimantan, South Sulawesi and North Sulawesi⁶. Until the end of 2012 there are still 2,063 juvenile detainees and 3,295 juvenile offenders in Detention Center and adult prisons. The number of juvenile detainees from year to year have been increasing gradually. In the data of Directorate General of Correctional, Ministry of Justice and Human Rights, recorded at the end of 2012 there are 3,295 Children who become inmates. In the same period of 2012, the number of juvenile detainees is 2,063. Because of the limitations of juvenile correctional facilities, there are about 5,358 children in conflict with the law have to live together with adult prisoners.⁷

The above conditions are of course very concerning, because the existence of the child in place of detention and imprisonment with the more mature people, puts the child in a situation prone to be victims of various acts of violence⁸. In addition, the act of placing children in adult prisons can psychologically affect the child's psyche and adversely affect the growth and morals of the child. The occurrence of contact between children and adults in the mindset and behavior, economic exploitation of adults and children, and sexual exploitation will damage their personality. So the reason for inadequate capacity of JCF so as to unite the children with adults in the adult prisons will have a negative impact. Another problem is not optimal child self-managers in prisons and the lack of facilities and infrastructure in prisons that have not met the standard⁹. This condition is exacerbated by the unavailability of a prison facility conducive to the child but still in giving the decision to the juvenile offender, the judge tends to give the prison sentence. Judging from its implementation does not give good benefits for the convicted juveniles and make them increasingly gloomy future because after serving their punishment the worse his behavior. Such conditions will certainly hamper the efforts of treatment in the prisons¹⁰.

Child Protection is an important work that must be done by all elements of our country. But in the long journey to date what is mandated in the law is constrained by the facilities and infrastructure provided by the Government, such as special prison Children who only exist in big cities. This of course causes the non-fulfillment of the rights of the Child as mandated by the law

children, it is necessary to adapt some provisions in Law Number 23 Year 2002 regarding Child Protection. Based on this, Law Number 35 Year 2014 has been enacted regarding the Amendment of Law Number 23 Year 2002 on Child Protection.

⁴ Retrieved from <http://www.theindonesianinstitute.com/index.php/kegiatan/the-indonesian-forum>, at August 23rd, 2013.

⁵ Pranawati, Rita. (2014) in *Seminar Nasional HAM dan Kelompok Rentan*.

⁶ Data from Directorate General of Corrections, Indonesia, 2015.

⁷ Data from Directorate General of Corrections, Indonesia, 2012.

⁸ Achmad, Ruben. *Praktek - Praktek Penanganan Anak Berkonflik dengan Hukum dalam Kerangka Sistem Peradilan Pidana Anak (Juvenile Justice System) di Indonesia: Perspektif Hak Sipil dan Hak Politik*. Retrieved from <http://www.ypha.or.id/files>.

⁹ Samin. (2012). "Minimnya Lapas Anak di Indonesia", cited in website Yayasan Sekretariat Anak Merdeka Indonesia.

¹⁰ In correctional systems, the Correctional Children are entitled to receive spiritual and physical guidance and are guaranteed their rights. To practice their worship, connect with outsiders, family or other parties, obtain information, both through print and electronic media, obtain proper education and Etc. Of course it becomes very risky if the child is placed in adult prisons.

and the Convention on the Rights of the Child¹¹. In addition, the lack of comprehensive and comprehensive socialization conducted to law enforcement officers including the police to the lower ranks has resulted in ineffective provision of legal protection for children¹². In the Indonesian criminal justice system, the adoption of a restorative approach is a relatively new and sector-based policy, but the policy is in line with and in accordance with the UN Declaration convened in 2000, set out in the Principles on the Use of Restorative Justice Programs in Problems, Criminal Matters (United Nations Declaration on the Basic Principles on the Use of Restorative Justice Programs in Criminal Matters).

The Criminal Justice System can be described as a system aimed at tackling crime, one of society's efforts to control the occurrence of crime to be within the limits of tolerance it receives¹³. This system is considered successful if most of the reports and complaints of the people that they have been victimized by a crime can be resolved by bringing the perpetrator to trial and receiving the sentence¹⁴. The criminal justice system is a system that is also oriented toward common goals, according to Mardjono Reksodiputro, the criminal justice system include: preventing people from becoming victims of crime; Resolve the crime so that the public is satisfied that justice has been established and the guilty have been convicted; Trying to keep those who have done evil do not repeat their actions. Therefore, the objective of Juvenile Justice system is not solely to impose criminal sanctions for children who have committed criminal acts (child mischief), but more focused on the premise that the imposition of sanctions as a means to realize the welfare of child perpetrators criminal act. Legal certainty should be endeavored for the sustainability of child protection and to prevent misconduct that brings undesirable negative consequences in the implementation of child protection activities¹⁵.

However, in order for a legislation to function properly, it is necessary to have 4 (four) elements in the implementation of the regulation:

1. The Regulation itself, where there is a possibility of incompatibility of laws and regulations concerning certain legal areas, another possibility that may occur is a mismatch between legislation with the unwritten law or the habits prevailing in society, etc.
2. Mentality officers who implement the law. Legal officers (formally) that include police, prosecutors, judges, counselors, lawyers, etc., should have a good mentality in enforcing a legislation;
3. Facilities, which are used to support the implementation of a law. Where a legislation is good, but (in certain measures) is not supported by the availability of adequate infrastructure, it may also result in obstacles in its implementation;
4. Citizens as objects, in this case required the existence of public legal awareness, legal compliance and behavior of citizens as required by the rule of law¹⁶.

Restorative Justice Approach in Handling Children in conflict With the Law

Principally Law Number 11 Year 2012 has put forward the approach of restorative justice and the process of diversion as an effort to solve the criminal acts committed by the child, because the application of restorative justice will offer answers to important issues in the settlement of criminal cases, namely: first, criticism of A criminal justice system that does not provide a particular opportunity for the victim (criminal justice system that disempowers the individual); Secondly, eliminating the conflict especially between the offender and the victim and the community (taking away the conflict from them); Third, the fact that the feeling of powerlessness experienced as a result of a crime must be overcome to achieve improvement (in order to achieve reparation)¹⁷.

There are three basic principles for establishing restorative justice : there have to be a restoration to those who have been injured, the offender has an opportunity to be involved in the restoration if they desire and the court system's role is to preserve the public order and the community's role is to preserve a just peace. Based on these basic principles, the concept of Restorative Justice includes three main points, which are: recovering those who suffer losses due to crime; the juvenile offender has the opportunity to be involved in the restoration of the situation (restoration); and the courts play a role in maintaining public order and the public's role to preserve a just peace¹⁸. Referring to the above principles, in the process of settlement of crimes committed by the child, restorative justice programs can be used in every stage of the criminal justice system. The process of restorative justice is used with the freedom and volunteerism of perpetrators. In this case including the freedom of the perpetrator and the victim to

¹¹ In relation to the issue of protection of the rights of the child in conflict with the law, Article 40 of the Convention on the Rights of the Child states that: "States Parties recognize the right of every child suspected, accused or declared to be in violation of criminal law, to be treated in accordance with an increase in feelings to strengthen the child's respect for human rights and the fundamental freedoms of others and to consider the age and desire to promote the reintegration of children as well as to create constructive children in society".

¹² Achmad, Ruben. (2005). *Upaya Penyelesaian Masalah Anak yang Berkonflik dengan Hukum di Kota Palembang*, dalam *Jurnal Simbur Cahaya*, Nomor 27, Tahun X, (p.24). Jakarta.

¹³ Reksodiputro, Mardjono. (2007). *Kriminologi dan Sistem Peradilan Pidana*. (p.140). Jakarta: Pusat Pelayanan dan Pengabdian Hukum Universitas Indonesia.

¹⁴ *Ibid*.

¹⁵ Gosita, Arif. (1993). *Masalah Korban Kejahatan*. (p.222). Jakarta: Akademi Pressindo.

¹⁶ Harahap, Yahya. (1993). *Pembahasan Permasalahan dan Penerapan KUHP*. (p.155). Jakarta: Pustaka Kartini.

¹⁷ Aertsen, Ivo, et, al. (2011). *Restorative Justice and the Active Victim: Exploring the Concept of Empowerment*. (p.8-9). *Journal TEMIDA*.

¹⁸ Retrieved from : http://en.wikipedia.org/wiki/Restorative_justice.

withdraw from the agreement at any time during the proceedings. Agreements must also be voluntary and contain reasonable and proportional obligations. According to the Supreme Court Regulation No. 4 year 2014, a diversion meeting is a deliberation between parties involving children and parents / guardians, victims and / or their parents / guardians, Social Guides, Professional Social Workers, representatives and other involved parties to reach a diversified agreement through Approach to restorative justice. Victims and perpetrators must have the right to consult with legal consultants in connection with the restorative justice process. Minors have the right to be assisted by parents or counselors. Prior to agreeing to participate in the restorative justice process the parties should be fully informed of their rights, the nature of the process and its consequences that may result from the decision.

The result of a restorative justice agreement may be: peace with or without compensation, resignation to parents / guardians, participation in education or training to educational institutions, social welfare institutions or social welfare institutions; Or Community service. If the restorative process is inaccurate or impossible, the case must be returned to the criminal justice system officials, and a decision must be taken to immediately process the case without delay. In this case criminal justice officials should endeavor to encourage perpetrators to take responsibility for dealing with victims and affected communities and continue to support the reintegration efforts of victims and perpetrators in society¹⁹. Failure to implement agreements made in the context of the restorative justice process should be returned in a restorative or criminal justice process and the process shall be carried out without delay. Failure to execute an agreement is different from a court decision, can not be used as a justification for imposing a more severe penalty in the subsequent judicial proceedings. The act of diversion can be done by the Police, Attorney, Court, and Fostering Penal Institution. The application of diversions at all levels of the criminal justice system is expected to reduce the negative effects of child involvement in the judicial process. As for the purpose of diversion attempts is to: avoid children from detention; Avoid the negative stigma of a child as a villain; Prevent repeat offenses committed by children; Educate the child to be responsible for his actions; Undertake the necessary interventions for victims and children without having to go through formal processes, avoiding children following the judicial system process and keeping children away from the negative effects and implications of the judicial process.

Law Enforcement Agent in Implementing the Restorative Justice Approach

Implementation of the divergence idea in handling children's problems facing the law is done by applying restorative justice in the criminal justice of children. The juvenile justice system is all elements of the criminal justice system involved in the handling of delinquency cases. First, the police as a formal institution when the first brat is in conflict with the judicial system, which will also determine whether the child will be released or processed further. Secondly, the prosecutor and parole institution will also determine whether the child will be released or processed to the child's court. Third, the Juvenile Court, the stage when the child will be placed in choices, ranging from being released to inclusion in the institution of punishment.²⁰

With the challenges that exist then in the future, the government and other concerned parties concerned must prepare some things that are required in the implementation of the SPPA Act. From the start of the policy framework and supporting regulations especially the Implementing Rules mandated by the Juvenile Justice System Act and technical regulations in sectoral law enforcement institutions; Readiness of Law Enforcement Officials and Human Resources (HR) in related institutions; Infrastructure such as the establishment of Juvenile detention centres, juvenile correctional facilities and social welfare centre and other physical infrastructure; and the socialization for the community especially for legal counselors especially to encourage the development of Legal Aid Organization to open access for greater equity for children. In the future, it is necessary to monitor the readiness of the implementation of the Juvenile Justice System Act in order to ensure that this regulation can be implemented well.

The agreement referred to above is poured into a decision that has been in force since the agreement was reached. Decisions on restorative justice are included in the case file of the child which the prosecutor should consider when making the suit and by the judge at the time of making the decision. The register of child cases with the completion of a restorative justice approach on police, prosecutors, courts, and prisons is tailor-made. Supervision over the settlement process with a restorative justice approach and the implementation of the resulting agreement lies with the direct superior of the responsible official at each examination level.

In the case of a restorative justice agreement not being implemented within the stipulated time period in the agreement, the social adviser immediately reports to the responsible official. The responsible official is required to follow up the report. The child whose parent / guardian's existence is unknown then the caring is the responsibility of the ministry that carries out government affairs in the social field and social offices / agencies. The care is carried out in social welfare providers recommended by ministries conducting governmental affairs in the social and social offices / agencies.

At the police level (pre-adjudication stage), restorative justice approach can be used based on discretionary powers. The discretionary authority is one of the means by which the officials or the state administrative bodies are allowed to take action without being fully bound by the law. Restorative programs at the level of prosecution can be enforced under Article 35 Sub-Article c of Law Number 16 Year 2004 about the Attorney of the Republic of Indonesia. Article 35 Sub-Article (c), authorizes

¹⁹ *ibid*

²⁰ Hidayat, Ferli. (2015). *Diversi Dalam Sistem Peradilan Pidana Anak Di Indonesia*. Retrieved from <https://ferli1982.wordpress.com>.

the prosecutor to dismiss the case in the public interest. The phrase "dismissing the case for the sake of the public can be interpreted as a shift from a retributive justice procedure to restorative justice, from being oriented towards criminal detention to the orientation of the improvement and protection of society, i.e. the interests of the perpetrator, the victim and the public interest. The prosecutor's office under Article 32 of Law Number 16 Year 2004 can directly seek a diversion program in the context of restorative justice. With the Child criminal justice law which requires the use of a restorative justice approach in Children, this means that the juvenile justice law authorizes prosecutors to seek a diversion process within the context of restorative justice.

As a law state, the rights of prisoners should be protected by law and law enforcement, especially the staff of the Penitentiary, so it is necessary for law states to respect the rights of prisoners as citizens who have to be protected even if they violate the law. In addition, prisoners should be protected from unfair treatment, such as getting reasonable facilities and no opportunity to get their rights as citizens²¹. The purpose of the guidance undertaken by the Penitentiary is so that the prisoner does not repeat his actions and can rediscover his confidence and can be accepted to be part of the community members. In addition, coaching is also done to the private of the inmates themselves. The goal is that inmates are able to recognize themselves and Correctional is the final part of the criminal justice system, known as the integration of the Integrated Criminal Justice System.

The treatment that is provided to the juvenile offenders prisoner must be different from the coaching patterns applied to adult inmates. The juvenile offenders who still have a long future than adults. Therefore the punishment of children equated with adult humans, can be said as an attempt to kill the future of children as the successor of the nation. In addition to the excessive public assumption of a child prisoner, the community assumes a negative that criminals without children are human figures who should be excluded from the environment, even though they have undergone such treatment during their sentences in the Juvenile correctional facility²².

For a child forced to enter the criminal justice system, he or she must receive special treatment from the beginning to the end of the criminal justice system. For child prisoners should be adopted a special pattern of child counseling and should not be equated with adults. The concern and development of child behavior in guidance as a prisoner is very different from that of an adult, it needs attention to the thinking and development of this child prisoner guidance pattern. In this case community awareness should be enhanced about the magnitude of the roles and responsibilities of child prisons as the implementing institution for the guidance of child prisoners. However, in fact in the construction of child prisoners in Penitentiary is still equated with adult prisoners.

In providing guidance to children who commit crimes, support from the public and the state is required. Efforts to protect the law are emphasized to ensure the fulfillment of the rights of child offenders. In order for the protection of the child, the perpetrator of this crime is well implemented, the principle of paramount importance (in the interests of the child should be considered as high priority) in every judge's decision concerning the child of the perpetrator of the crime. The child who commits a crime is sanctioned for action then returned to the parent if according to the judge the child can still be nurtured in the family environment. The child who commits a crime which, according to the judge's verdict returned to his/her parents, remains under the supervision and guidance of the community counselor. If in the judge's decision to judge another parent is considered not able to foster children who conduct the crime well then the judge can determine the child is placed in the Child Social Institution to follow the education, training and coaching that will make the child better than the previous. Training in Child Social Institutions aims to provide children with skills training on cooking, sewing, batik making, handicraft making from used goods, making of doormat from sepet, training of coronary care and others. So that if the child after exit from the sentence can practice in real life.

In the context of child protection, the whole process and implementation of this restorative and diversionary justice is essentially a special protective form and measure for Children in Conflict with the Law. Therefore, a juvenile detention centre should also be designed in such a way as to always be in the corridor of the principles of child protection as contained in Article 2 of Law No. 23 of 2002 on Child Protection, namely; a). Non-discrimination; b). Best interests for children; c). Right to life, survival and development; d). Appreciation of children's opinions.

The juvenile detention centre should be designed as a place to ensure special protection for detained children while still fulfilling their rights. Specifically mentioned in article 32 paragraph (4) of the Law on the Criminal Justice System of the Child, that as long as the child is detained, the physical, spiritual and social needs of the child shall remain fulfilled. The child residing in the juvenile detention centre is a child who is in criminal proceedings waiting for his/he trial and during that time the child is entitled to services, education, care and other rights in accordance with the law. From the explanation of the conceptual framework as above, it can be concluded that the principles of child protection, restorative justice, diversion and special protection for Children in Conflict with the Law, are the values that intrinsically must underlie the formation of juvenile detention centres in Indonesia

²¹ Atmowiloto, Arswendo. (1996). *Hak-Hak Narapidana*. (p.31). Jakarta: Elsam.

²² Cahyaningtyas, Irma. (2009). *Pelaksanaan Pembinaan Anak Nakal di Lembaga Pemasarakatan Anak dalam Perspektif Model Pembinaan Anak Perorangan (Individual Treatment Model)*. (p.34). Semarang: Graduate School Thesis, Universitas Diponegoro Semarang.

because it is regulated in Law No. 23 of 2002 on Child Protection, and in detail in Law No. 11 of 2012 on the Juvenile Justice System. Similarly, the UN Regulation on the Protection of Children Deprived of Freedom is very important as a reference for juvenile detention centre's grand design plan, since the norms in the Child Protection Act and the Juvenile Justice System Law have also made this international instrument a reference.

Juvenile Detention Centre ideal design must be designed as a place that ensure special protection for children who were detained during the judicial process while still meeting their rights, whether it's physical needs, spiritual, and social. Therefore, this detention centre is designed to resemble the comfort of the place, the house, and the child's environment. Facilities have to be tailored to the needs of children and this centre has to be built in every regency or city or at least in each province. Personal or officers must understand the problem of the child, have a dedication to the child, and have attention to the child. Kids should really be treated with compassion, guided, educated, cared for and fulfilled in accordance with the needs of growth and development of children, so it would become a good human being and useful for, her, family, community, nation, and state.

Treatment for juvenile offenders should be adopted a pattern of child-specific treatment program and should not be equated with adults. The concern and development of children's behavior in guidance as a prisoner very different from adults, need attention to the thinking and development of this pattern of child prisoners guidance. In this case community awareness should be enhanced about the magnitude of the roles and responsibilities of child prisons as the implementing institution for the guidance of child prisoners. But in fact in Indonesia treatment programs for juvenile offenders at the correctional facilities is still equated with adult prisoners. It is also disclosed Marjono Reksodipuro in a seminar at the University of Indonesia²³.

"Although the concept of correctional prisoner we are already more than 30 years old, but not yet clear whether in the conception of development and the details are already there are also thoughts that distinguish the conceptual conceptual coaching adults with children and between men and women. If there is no application of a special guidance pattern for child prisoners it will result in ineffectiveness of the given coaching, so there is a high probability that the prisoner will repeat his actions.

Related to that according to R.M. Jackson, imprisonment is a relatively less effective criminal type²⁴. In addition, the success of child prisoners' coaching is not solely the responsibility of a mere prison institution, but a joint task of the criminal justice system, Muladi states that: "As a system, criminal justice has a set of structure or sub system that should work coherently, integrally coordinated in order to achieve maximum efficiency and effectiveness. These subsystems involve police, prosecutors, courts and correlation institutions. Considering its impertinent role, legal advisors can also be categorized as subsystems. This what is called the legal structure"²⁵.

Family Group Conferencing (FGC)

Family Group Conferencing (FGC) which is a negotiation between the victim and the perpetrator in the settlement of crime in the community, plays a role in the child-facing legal settlement process to solve child crime issues: providing informal warnings, arresting or holding, and submitting to the child protection unit in the police force. Some decisions that can be handed down to the child are police warning, police diversion, and handed over to FCG, then if the process has not been completed at the FCG level, then the case will be submitted to the next stage. The choice is decided by looking at the child's footing in a crime and what kind of crime the child has committed. The main point of the settlement through the FGC is, as a mechanism to provide recommendations to judges before dropping the verdict. The importance of this recommendation will make the police has limited authority to immediately take the child to court, because the police office has to invite the child to the FGC process, especially for children who have never committed a crime before (first offending). Therefore, the judge may not pass the verdict, if the child's problem has not passed the FGC path. The transfer of judicial processes to non-judicial processes in the settlement of children's cases has the following urgency and relevance²⁶:

1. Non-judicial settlement of children will prevent systematic and patterned violence, especially psychological violence against children by law enforcement officers. The occurrence of systematic and systematic violence against children in the process of examination will cause trauma very deeply for the child. Therefore, non-judicial settlement through the mechanism of child-divergence will preclude the child from negative impacts due to contact between the child and law enforcement officers in the judicial process.
2. Through the mechanism of child diversion remains an opportunity to account for its actions, but through a more elegant mechanism according to the child's perspective. Non-judicial settlement is not intended to free the child from the possibility of a child's accountability for any consequences of his actions. Therefore, through the diversion mechanism

²³ Reksodipuro, Marjono. (1995). *Masa Depan Lembaga Pemasyarakatan Anak dan Lembaga Pemasyarakatan Wanita*. (p.1). Makalah pada Seminar Terpidana III, Universitas Indonesia – Masumoto Foundation Japan.

²⁴ Jackson, R.M. in Nawawi Arief, Barda (1994). *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*. (p.9). Jakarta: CV.Ananta.

²⁵ Muladi. (1995). *Kapita Selekta Sistem Peradilan Pidana*. (p.119). Semarang:Badan Penerbit Universitas Diponegoro.

²⁶ Adi, Kusno. (2009). *Diversi sebagai Upaya Alternatif Penanggulangan Tindak Pidana Narkotika oleh Anak*. (p.122-124). Jakarta:UMM Press.

there will be double gain. On the one hand, children avoid negative impacts due to contact with law enforcement officers, while on the other hand the child can still be accountable due to his actions without having to place pressure on the child's mental.

3. The diversion mechanism can be regarded as a corrective mechanism for the judicial administration of the child which has been going on for so long. The formal mechanisms highlighted in the criminal justice process including the child often have such complex negative impacts, thus becoming a potentially criminogenic factor against child crime.
4. As a diversion of the judicial process to a non-judicial process, diversion is oriented towards an attempt to provide social services to the offender, but rather viewed as a victim in need of various services such as, medical, psychological, spiritual. Because of its nature, its intrinsic diversity is an attempt to prevent the child from possible criminal imprisonment. Thus, diversion is also a process of depenalization as well as decriminalization of child offenders.

Conclusion

The implementation of criminal law against child who commit a criminal act of imposition or a pattern of liability (punishment) is different with an adult who commits a criminal offense, this is a form of protection against children facing the law. The juvenile justice is one of the forms of protection afforded by the law to a child who has committed a crime. The orientation of the whole process of child criminal justice should be aimed at the child's own welfare, based on the best interests for children. The application of restorative justice in the juvenile justice system in Indonesia has obtained a juridical basis with the enactment of Law Number 11 Year 2012 on the Juvenile Justice System. Legal protection for children can be done as legal protection against various freedom and children rights. Child protection also includes interests related to child welfare. Child protection against the law, is a joint responsibility of law enforcement officers. Not only children as perpetrators, but also include children who are victims and witnesses. Law enforcement officers involved in handling children in conflict with the law to refer not only to Law Number 11 Year 2012 on the Juvenile Criminal Justice System or other related legislation, but prioritizing peace rather than formal legal process.

Restorative Justice has the primary objective to rehabilitate the victims 'losses, the perpetrators' confinement for losses due to criminal acts committed, conciliation or reconciliation between victims, perpetrators and the community, the reintegration of perpetrators, and through peaceful resolution of conflicts (peacefully resolved) can be managed public security. The concept of restorative justice is expected to touch on several aspects for children contact with the law: prevention, treatment, rehabilitation and reintegration. The juvenile justice system is all elements of the criminal justice system involved in the handling of children in conflict with the law cases. Police, prosecutors and probation and parole officers or the corrections institutions officers, advocate or aid, the juvenile correctional facilities, the juvenile detention centres and Institute of Social Welfare as an institution or institutions that handle children in conflict with the law. The applicability of restorative justice in the juvenile justice system, starting from the first time the child enters the justice system, determine whether the child would be released or processed into juvenile court until the stage when the child will be placed, ranging from freed up to be included in the institutions of the judgment in the corridor of restorative justice.

Related to the punishment of the child, the criminal justice system is also a series of unity in the enforcement of criminal law. Therefore, in its implementation can not be separated from the development of general conception of punishment. In accordance with the principle of restorative justice, the placement of a child in adult prison is inappropriate and contradicts the concept of legal protection of the Child. The juvenile offender is not an object only, but also subject that is not different from other human being who at any time can make mistakes or errors that can be imposed criminal so as not to be eradicated, which must be eradicated are factors that can cause offenders to do things that breaking the law, religion, morals or other social obligations that may be criminalized. With the enactment of Law Number 11 Year 2012 on the Juvenile Justice System, it is time to change the model of the handling of child in conflict with the law from retributive approach to restorative justice which is an approach model with a focus on the direct participation of the perpetrators, victims and the community in the process of settling criminal cases so that considered can be an alternative to conflict resolution law.

References

Books

- Achmad, Ruben. (2005). *Upaya Penyelesaian Masalah Anak yang Berkonflik dengan Hukum di Kota Palembang*, dalam *Jurnal Simbur Cahaya*, Nomor 27, Tahun X, (p.24). Jakarta.
- Adi, Kusno. (2009). *Diversi sebagai Upaya Alternatif Penanggulangan Tindak Pidana Narkotika oleh Anak*. (p.122-124). Jakarta:UMM Press.
- Aertsen, Ivo, et, al. (2011). *Restorative Justice and the Active Victim: Exploring the Concept of Empowerment*. (p.8-9). Journal TEMIDA.
- Atmowiloto, Arswendo. (1996). *Hak-Hak Narapidana*. (p.31). Jakarta: Elsam.
- Cahyaningtyas, Irma. (2009). *Pelaksanaan Pembinaan Anak Nakal di Lembaga Pemasarakatan Anak dalam Perspektif Model Pembinaan Anak Perorangan (Individual Treatment Model)*. (p.34). Semarang: Graduate School Thesis, Universitas Diponegoro Semarang.
- Gosita, Arif. (1993). *Masalah Korban Kejahatan*. (p.222). Akademi Pressindo, Jakarta: Akademi Pressindo.
- Harahap, Yahya. (1993). *Pembahasan Permasalahan dan Penerapan KUHP*. (p.155). Jakarta:Pustaka Kartini.

- Jackson, R.M. in Nawawi Arief, Barda (1994). *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*. (p.9). Jakarta: CV.Ananta.
- Muladi. (1995). *Kapita Selekta Sistem Peradilan Pidana*. (p.119). Semarang:Badan Penerbit Universitas Diponegoro.
- Reksodipuro, Marjono. (1995). *Masa Depan Lembaga Pemasyarakatan Anak dan Lembaga Pemasyarakatan Wanita*. (p.1). Makalah pada Seminar Terpidana III, Universitas Indonesia – Masumoto Foundation Japan.
- Reksodiputro, Mardjono. (2007). *Kriminologi dan Sistem Peradilan Pidana*. (p.140). Jakarta: Pusat Pelayanan dan Pengabdian Hukum Universitas Indonesia.

On-line Resources

<http://www.theindonesianinstitute.com/index.php/kegiatan/the-indonesian-forum>.

Achmad, Ruben. *Praktek - Praktek Penanganan Anak Berkonflik dengan Hukum dalam Kerangka Sistem Peradilan Pidana Anak (Juvenile Justice System) di Indonesia: Perspektif Hak Sipil dan Hak Politik*. Retrieved from <http://www.ypha.or.id/files>.

Samin. (2012). “*Minimnya Lapas Anak di Indonesia*”, cited in website Yayasan Sekretariat Anak Merdeka Indonesia.

Hidayat, Ferli. (2015). *Diversi Dalam Sistem Peradilan Pidana Anak Di Indonesia*. Retrieved from <https://ferli1982.wordpress.com>.

Other Resources

Pranawati, Rita. (2014) in *Seminar Nasional HAM dan Kelompok Rentan*.

Data from Directorate General of Corrections, Indonesia, 2012-2015

ADE AGUSTINA

Law Doctoral Program, Sebelas Maret University

Setiono, S.H., M.S

Hartiwiningsih, S.H., M.Hum