

LEGAL PROTECTION TO CHILDREN AS AN ACTOR OF RAPE CRIME IN INDONESIA BASED ON JUSTICE VALUE

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ABSTRACT

Children as a part of the young generation are the successors of the ideals of the nation's struggle and they are human resources for development. As the perpetrators of child crime, they must also get a proper protection. Therefore the purpose of this study was to examine the legal protection for children as perpetrators of rape according to laws in Indonesia today. Research method was done by using sociological juridical method, data source used were primary and secondary data. Primary data obtained by conducting interviews with respondents were judges and perpetrators as perpetrators of rape crime. The determination of the sample used purposive sampling method. Secondary data were obtained by conducting literature review. The data obtained were analyzed qualitative by using descriptive method. The result of legal protection research for children as perpetrators of rape crime in Indonesia has been regulated in the Law. No.11 of 2012 on the Criminal Justice System of Children, it mentions that perpetrators of criminal acts are treated differently compared to adult offenders from the stage of investigation, prosecution and proceedings at the hearing.

Keywords: Reconstruction, legal protection, children, crime of rape

A. INTRODUCTION

Children as part of the young generation are the successor of the ideals of the nation's struggle and they are human resource for the future national development.¹ Therefore, continuous guidance is required for the sake of survival, physical growth and development, mental and social development and protection from any possibility that endangers or damages the future of the child, including the child as a criminal offender. The State of Indonesia has paid attention to the protection of the Child as it is contained in the 1945 Constitution, as defined in Article 28B paragraph (2) stating that: "Every child has the right to survival, growth and develop and is entitled to protection from violence and discrimination".

Secretary of the Indonesian Child Protection Commission (KPAI), Hadi Supeno stated that based on data from the Police during 2016 abortion crime occurred about 3.3 million cases and rape cases increased 200%, while data in LPA (Penitentiary Children) Tangerang shows that crime sex ranks second after the drug, of which about 75% of sex offenders confess to rape after watching pornographic VCDs and children have been heavily involved both as perpetrators and victims.²

Cases of child crime rape committed quite a lot, raising concerns of various parties, not only for community groups of children but also almost all concerned to worry about the state of children in the future. Therefore, it needs an immediate action to resolve the crime of rape committed by children as perpetrators. It is really possible that future generations will become a fragile generation.

At a young age, some children who are in conflict with the law have become recidivists. This condition causes a child after trauma to grow and revenge and do not believe in social values. Various efforts to handle children in conflict with the law, which often end up in jail must be of considerable concern regarding the rights of children.³

Legal protection of children in conflict with the law can be done by renewing the substance, structure and legal culture⁴, one of the efforts to protect the law is by formulating the provisions of the implementation provisions of the diversion that reflect the

¹Ediwarman, *Peradilan Anak di Persimpangan Jalan dalam Perspektif Victimology* (Belajar dari kasus Raju), Volume 18 Nomor 1, Pekan Baru, Jurnal Mahkamah, April, page8.

²Hadi Supeno, KPAI, Materi Pornografi Bersifat Adiktif Bagi Anak, dalam <http://www.kapanlagi.com/h/0000220794.html.diposting> pada Kamis, 05 februari 2009.

³Yanuar Firda Wismayanti, *Model Penanganan Anak Berkonflik Dengan Hukum*, Jurnal "Informasi" Vol III No 3, September – Oktober 2007, page 42.

⁴Abintoro Prakoso, *Dikresi Pada Tahap Penyidikan Dalam Mewujudkan Perlindungan Hukum Bagi Anak Nakal*, Dissertation,, Universitas Brawijaya, Malang, 2010.

principles of protection and welfare for children in conflict with the law⁵. It can be done by considering the aspects of criminological psychological aspects⁶. For the sake of the mental growth and development of children, it is necessary to determine the different treatment in the procedural law and the threat of punishment.⁷

Criticisms of the implementation of the criminal justice system continue to flow. Many say that the implementation of the child criminal justice system in its implementation is still far from the desire to be able to support the goal of child welfare and the best interests of the child.⁸ Several studies on the implementation of child criminal justice have the fact that the criminal justice process for children has a negative impact on children, namely the emergence of stigma or label that puts the status of children in the community as ex-prisoner. The label may result in a child's misbehavior continuing in the future.⁹

Internationally, the implementation of juvenile justice is guided by the Minimum Rules Standards for the Administration of Juvenile Justice (The Beijing Rules), which contains the following principles:¹⁰

1. The social policy of promoting the welfare of adolescents maximally minimizes the intervention of the criminal justice system.
2. Nondiscrimination against child offenders in the criminal justice process.
3. Determining the age limit of criminal liability for children.
4. The imposition of imprisonment is a last resort.
5. Diversion is committed with the consent of the child or parent/guardian.
6. Fulfillment of the rights of the child in the criminal justice process of the child.
7. Protection of the privacy of child offenders.
8. Child criminal justice legislation should not conflict with international unity.

Based on the above description, the discussion session discussed how the legal protection of children as perpetrators of rape criminal acts in Indonesia today.

B. RESEARCH METHODS

Approach method in this research was socio-legal research by using primary and secondary data source, primary data obtained by interview with investigator, prosecutor, judge and prison officer of child. The method of determining the sample used in this study was purposive non random sampling method. The secondary data were obtained by conducting literature studies on primary legal materials in the form of legislation and secondary legal materials in the form of books, journals, and scientific articles. The results were then analyzed using qualitative descriptive analysis method.

C. RESULTS AND DISCUSSION

Protection of children as perpetrators of criminal acts seen in the process of criminal justice of children namely:

a. Courts handling Child crime cases

The juvenile court pursuant to Law No.11 of 2012 on the Criminal Justice System of the Child states that the Juvenile Justice is a judicial executive who is in a public court organized to deal specifically with the case of children. In the law, it is not expressly stated to handle criminal cases, Article 3 only states: The Court of Juvenile Court, hereinafter referred to as the Children's Session, has the duty and authority to examine, decide and settle the case of children as defined in this Law". Thus the absolute competence of the Juvenile Court is in the public court.

⁵Erny Herllin Setyorini, *Kebijakan Formulasi Pengaturan Ketentuan Pelaksanaan Diversi Di Luar Sistem Peradilan Pidana Anak Dalam Rangka Perlindungan dan Kesejahteraan Anak*, Dissertation, Universitas Brawijaya, Malang, 2015.

⁶Agus Sudaryanto, *Kebijakan Kriminal Terhadap Tindak Pidana Pornografi yang Melibatkan Anak (Dalam Perspektif Perlindungan Anak Yang Berhadapan Dengan Hukum)*, Dissertation, Universitas Brawijaya, Malang, 2011.

⁷DarwanPrinst, *Hukum Anak Indonesia*, PT Citra AdityaBakti, Bandung, 1997, page 202.

⁸Setya Wahyudi, *Implementasi Ide Diversi Dalam Pembaharuan Sistem Peradilan Pidana Anak di Indonesia*, Yogyakarta; Genta Publishing, 2011, page 3

⁹Riza Alifianto Kurniawan, *Asas Ultimum Remedium Dalam Pemidanaan Anak Nakal*, <http://www.journal.lib.unair.ac.id/index.php/YRD/articel/download.diakses tanggal 3 maret 2012>.

¹⁰ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (*The Beijing Rules*) KutipanMarlina, Op Cit, page 11.

In the Act regulates the provisions of formal and material criminal penalties for children, the intent and purpose of establishing this court is for the child criminal court. As we know that the Juvenile Court Law is a *Lex Specialis* of the provisions of the Criminal Procedure Code and the Criminal Code. In the Juvenile Justice Act has regulated its own procedural law, and also regulates a number of criminal sanctions against children involved in crimes.

Nevertheless, according to its legal basis and Law No.11 of 2012 the provisions of Article 2 mention that the juvenile court is the executor of judicial power which is in the general court. The scope of the examination conducted by the Child Crime is in accordance with Article 1 Number (1) of Law no. 11 Year 2012 on the Child Criminal Justice System which mentions children's understanding of persons who in the case of Naughty Children has reached the age of 12 (twelve) years but has not reached the age of 18 (eighteen) years.

As for the definition of the naughty children is regulated in Article 2 of Law No.11 of 2012 which mentions misbehaving children are children who commit criminal acts or perform acts declared forbidden for children, either according to laws and regulations according to other rules of law that live and apply in society.

Regarding the Procedural Law of Juvenile Justice remains as applicable in the general court of the Criminal Procedure Code (KUHAP) decisions used by law enforcement officials as well as by those regulated¹¹ as stated in Article 40 of Law no. 11 Year 2012 on the Criminal Justice System of the Child states that "The applicable Law of Procedure is also applied in the Juvenile Court event, unless otherwise provided in this Law".

b. Polri (Indonesian Police) Investigation

The investigation is a series of investigative actions during the preliminary hearing to seek evidence of a criminal offense. They include summoning and examining witnesses, seizing evidence, searching, summoning and checking suspects, arresting, arresting, and so forth.¹²

In the Criminal Procedure Code there are two kinds of investigators, namely Indonesian State Police officers (Police Investigators) and certain Civil Service officials who are given special authority by the Act (PNS Investigator), in accordance with Article 6 KUHAP.

Investigators from the POLRI (Police Investigator) shall have minimum the rank of Second Lieutenant (*Pelda*), while the investigator from the civil servant shall be at least of the rank of youth Regulator (*PengaturMuda*) I/II-b, the appointment of the investigator shall be conducted by the Chief of Police of the Republic of Indonesia or authorized for it. In reality in every Department there are Civil Servant Investigators (PPNS) who served in their respective fields, such as taxation conducted by the Ministry of Finance and so forth.

Criminal cases committed by children in general terms that are violated are criminal regulations contained in the Criminal Code, the investigation is carried out by the general investigator in this case Police investigators. In line with this, with the enactment of the Law on the Juvenile Justice System has been emphasized, that the investigation of the naughty child cases is done by Police investigators.

The legal basis is the Article 41 Paragraph (1) of Law No.11 of 2012 on the Criminal Justice System of the Child which mentions "Investigation of Naughty Children", is conducted by the 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 Indonesia".

Although the investigator is a police investigator, but not all police investigators can conduct an investigation into the case of naughty children. In the Child Juvenile Justice Act it is known to be a child investigator, this investigator is authorized to conduct an investigation. The child investigator is appointed by the Chief of Police with his own decision letter for that purpose.¹³

¹¹ Muhammad Khambali, Teguh Prasetyo, Sri Endah Wahyuningsih, *Reconstruction of Criminal Procedural Law (KUHAP) about the Detention Based on Justice*, The 2nd Proceeding "Indonesia Clean of Corruption in 2020", Unissula Press, 2017, https://scholar.google.com/citations?user=Ae4jOAoAAAAJ#d=gs_md_cita-d&p=&u=%2Fcitations%3Fview_op%3Dview_citation%26hl%3Den%26user%3DAe4jOAoAAAAJ%26citation_for_view%3DAe4jOAoAAAAJ%3A2osOgNQ5qMEC%26tzm%3D-420, page. 513.

¹² Darwan Prinst, *Hukum Anak Indonesia*, Citra Aditya Bhakti, Bandung, 2003, page 37

¹³ Gatot Supramono, *Hukum Acara Peradilan Anak*, Rajawali, Jakarta, 2007, page 38.

To be appointed as a child investigator, the Juvenile Justice Act through Article 41 Paragraph (2) specifies the conditions to be fulfilled by a member of the Police, as follows:

- a. has experienced as a criminal investigator conducted by an adult
- b. have interest, attention, dedication, and understanding of children's problems.

Being a child investigator is not enough to just have an adequate rank, but also a person's experience in conducting an investigation, so it is very supportive from the technical aspect of the investigation. Besides, something that needs consideration is the interest, attention, dedication and understanding of children's problems, these things will encourage child investigators to gain knowledge about the problem of children, so that in carrying out their duties investigators will pay attention to the interests of children.¹⁴

The investigation of the naughty child takes place in a familial atmosphere, and for that investigator must ask for consideration or suggestion from the Social Supervisor. It is in accordance to Article 42 of Law Number 11 Year 2012 on Child Criminal Justice System, the naughty children examined in a family atmosphere, meaning at the time of examining the child suspect, the investigator not wearing uniforms, and approaching effectively, actively and sympathetically. The familial atmosphere also meant no coercion, intimidation, or the like during the investigation.¹⁵

If it is deemed necessary, the investigator may also seek advice from an educational expert, mental health professional, religious expert, or other community officer, while for the child's own interest the investigation process must be kept confidential, because it is feared the child will experience depression, finally difficult to accept environment.

The existence of family atmosphere and investigators do not wear official clothing/uniform plus the need for investigators to request consideration or suggestion from the social guidance as in Article 42 of Law No.11 of 2012 on the Criminal Justice System of Children. It is a characteristic or special characteristic in the juvenile court, because in the adult court of justice such provisions do not exist.

The adult justice process refers to the provisions contained in the Criminal Procedure Code, while the child suspects in addition to referring to the Criminal Code provisions of law enforcement must also observe the provisions as referred to in Law Number 11 Year 2012 on the Criminal Justice System of the Child.

In the process of investigating the child, an investigation base is still underway based on Rule 5.1 The Beijing Rule which states as follows:

The Juvenile justice system will emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall be in proportion to the circumstance of both the offenders and the other.

Based on Rule 5.1 The Beijing Rules above, it can be extrapolated that the juvenile justice system should focus on the welfare of children and ensure that any reaction to children in conflict with the law should always be proportional to two circumstances, ie between the perpetrator and the offense what he did.

c. Detention

Detention is the placement of a suspect or defendant in a certain place by an investigator, or public prosecutor or judge, to which there shall be a detention order from the investigator or the prosecutor or the appointment of a detention from a judge, who, when executing the detention is handed over to the accused/to his family. The detention itself in accordance with Article 21 Criminal Procedure Code can be:

- a. Detained at the State Detention Center (RUTAN), which includes:
 1. Penitentiary
 2. Police Station
 3. Prosecutor's Office
 4. And others.
- b. House prisoner, or
- c. City prisoner (Article 22 KUHAP).

The detention must meet the formal requirements and material requirements, as for the formal conditions of detention; carried out by the investigator, public prosecutor or judge, and provided with an arrest warrant or detention from an investigator, a public prosecutor or a judge.

¹⁴ Ibid, page 39

¹⁵ Darwan Prinst, Op.Cit, page 38

Article 21 of the Criminal Procedure Code states: The suspect is alleged to have committed a crime based on sufficient initial evidence, the defendant is feared to run away, more, or do certain criminal acts.

Period of detention for each level of examination ranging from investigation, prosecution, and trial in a court of debate is limited by law. Therefore, the officer who has detained the suspect or defendant, if it is necessary for examination, then the period of detention may be requested for extension to a certain institution for a limited period.

Child detention is a temporary physical restraint against a child based on a court decision or during a child in a criminal justice process.

A child of the perpetrator of a criminal offense during detention must receive assistance in order to provide protection and fulfillment of the child's psychological needs. As for the detention of a child who has committed a crime of rape, his place must be separated with a place of detention for an adult. Under the provisions of Law No.11 of 2012 on the Child Criminal Justice System in Article 32:

- (1) Detention of a Child shall not be exercised in the event that a Child receives a guarantee from a parent/guardian and/or institution that the Child will not remove or damage the evidence, and/or will not repeat the offense.
- (2) Detention of a Child may only be made under the following conditions:
 - a. Children are 14 (fourteen) years old or older; and
 - b. allegedly commits a crime with imprisonment of 7 (seven) years or more.
- (3) The terms of detention as referred to in condition (2) shall be expressly stated in the detention order.
- (4) As long as the Child is detained, the physical, spiritual, and social needs of the child shall remain satisfied.
- (5) To protect Child safety, Child can be done in LPKS. Children's detention rooms should be separated from adult custody

As long as the child in the period of detention must be kept in mind all the needs of both the temporal and the spiritual, this provision is based on Article 32 Paragraph (4) which reads: "As long as the child is detained, the physical, spiritual, and social needs of the child shall remain full". with the enactment of Law No.35 / 2014 on Child Protection contained in Article 17 Paragraph (a) "Every child deprived of liberty shall have the right to be treated humanely and his placement separated from the adult".

The existence of this special space or place of detention is a form of specificity applied to child offenders, since the law mandates law enforcers to separate the detention of children from adults.

In handling child cases, the police should take careful consideration to arrest a child who is according to preliminary investigation as a suspect of a criminal offender. Police may conduct investigations without having to arrest a child by supervising the child and requiring the child to periodically report to the police officer during the investigation conducted against him/her.

The police can refer cases of children to other pillars in the juvenile justice system so that various interventions on childhood can be implemented immediately. Efforts to avoid the detention of children can be done by continuing to give freedom to children in the supervision of their parents or other appropriate and responsible persons, such as police, prosecutors, courts, correctional offices, Social Department and others.

Supervision given to the child is done to ensure that the child in the investigation who is released without detention is not only detached from the detention alone, but has the guidance and supervision and protection of the victim's or the victim's family's actions.

Juvenile Court Judge

The appointment of a juvenile delinquency shall be conducted by a judge especially the child judge. The appointment of a child judge shall be stipulated by the Chief Justice of the Supreme Court by decree, taking into account the proposal of the President of the Court of Appeal where the judge is tasked through the President of the Court of Appeal (Art. About the Juvenile Court), the appointment of a child judge by the Chief Justice of the Supreme Court is not by the Minister of Justice, as it concerns the judicial technical courts and is the appointment of special judges (Specialists).

Conditions to be stipulated as a child's judge in Article 10 of Law no. 11 Year 2012 about the Child Criminal Justice System determines as follows:

- a. Has experience as a judge in a court within the general judiciary.
- b. Have an interest, care, dedication, and understanding of a child's problem.

In order to implement the above provisions, there should be an implementation regulation concerning how long a judge's experience in a district court is considered eligible to be appointed as a child judge.

Regarding the judges who examined the case of juvenile delinquency at the District Court level, Appeal and Cassation were conducted by a single judge. As stipulated in Articles 11, 14 and 18 of Law Number 11 Year 2012 on the Criminal Justice System of the Child. In performing his duties, the judge is assisted by a clerk. In order that the juvenile court hearing may proceed in accordance with the Act, the President of the Court of Appeal provides guidance and supervision over the course of the jurisdiction in its jurisdiction (Article 15 of Law No.11 of 2012), the guidance is directive without prejudice to the freedom of judges.

In addition, the President of the Court of Appeal may also provide warnings, reprimands, and directives to judges in his jurisdiction. This is done if the concerned does not perform the task in accordance with the procedures established by the Act.

In this regard, the Supreme Court also exercises supreme supervision over the child hearing (Article 19 of Law No. 11 of 2012 on the Criminal Justice System for Children), this is an administrative task in addition to the daily duties of the judiciary.

In the trial process of children in conflict with the law, the judge is not allowed to wear a toga or uniform, it aims to create a family atmosphere so that children do not experience depression and suffer mentally that can lead to trauma in children ultimately disrupt the growth and development of the child itself in the future.

At the trial of the child's case has not yet begun/opened, the Judge ordered the Community Guidance to submit a report on the results of the community research of the accused child in the hearing (Article 56 of Law No. 11 Year 2012 on the Criminal Justice System of the Child). The report is one of the materials used as the basis for decision-making by a Judge as stipulated in Article 59 Paragraph (2) of the Criminal Justice System Law.

When a hearing takes place, the prosecutor, legal counsel, community counselor, parent, guardian or foster parent and witness must attend in order to ensure that the atmosphere reflects kinship and prevents the child from being frightened or traumatized.

Regarding the Judge who examines the case of the juvenile delinquent, the Court of Appeal and Cassation shall be conducted by a single judge, as provided in Articles 11, 14 and 18 of Law No.11 of 2012 on Juvenile Court. A juvenile justice court is authorized to examine a child criminal case, so other issues beyond a child criminal case are not the jurisdiction of a child's court to review them.

To the children as perpetrators of criminal acts in Law Number 11 Year 2012 About Child Criminal Justice System also applied some principles, namely:

- a. Age restriction (Article 1 point 3 jo Article 4 Paragraph (1): whereas the Court of Appeal Court shall be a minimum age of 14 (fourteen) years old up to a maximum of 18 (eighteen) years old.
- b. The scope of the problem is limited (Article 1 point 2), the issues that can be examined in the Juvenile Court hearing are limited to the case of naughty children.
 1. Handle by special officials (Article 1 number 5, 6 and 7), Law no. 11 Year 2012 to determine the Case of Mischievous Children must be handled by special officials such as:
 - a. At the level of investigation by child investigators
 - b. At the prosecution level by the child prosecutor
 - c. At the court level by child judges, appellate judges and cases judges.
 2. The Role of a Community Guidance (Article 1 point 13): There is an important role of community counselors, social workers and volunteer social workers.
 3. The atmosphere of familial inspection (Article 18), the examination of the case in the juvenile court is conducted in a familial atmosphere, therefore the judge, prosecutor and legal counsel may not wear a toga.
 4. The necessity of Spitsing (Article 24):

Children who become perpetrators of crime should not be tried together with adults of both civil and military status. If a child commits a criminal offense along with an adult, the child must be tried in a juvenile court hearing, while an adult is tried in an ordinary hearing.

5. Closed Examination (Article 54)

The examination of the children's trial is conducted in private. This is in the child's own interest. However, the judge's ruling should be read out in a public hearing as the principle of justice is open to the public

6. Examined by a single judge (Article 44)

Judges who examine the case of a child, whether State Court, Appeals, or Cassation are conducted by a single judge.

7. A shorter period of detention (Articles 30 to 40)

The period of detention of children as set out in Law Number 11 Year 2012 is shorter than the period of detention set forth in the Criminal Procedure Code.

8. Lighter Punishment (Articles 22 to 32).

The punishment imposed on the brat, lighter than the provisions set forth in the Criminal Code. The maximum penalty for a naughty child case is 10 (ten) years.

Based on the results of research on data from the Commission on Child Protection of Indonesia, the case of sexual crimes in Indonesia are:

Table 1
Sexual Criminal Acts in the Commission on Protection
Indonesian Children Year 2011-2016

No.	Year	The Number of Case
1	2011	2178 cases
2	2012	3512 cases
3	2013	4311 cases
4	2014	5066 cases
5	2015	6006 cases
6	2016	3581 cases

Source: Indonesian Child Protection Commission of 2011 - 2016

Based on the above table, it is explained that the case of Sexual Crimes which entered in the Commission of Child Protection Indonesia increased year after year except in 2016 experienced a decline, this is due to the release of PERPU No. 1 Year 2016 as the second change of Law No. 23 of 2002 on Protection Child, with maximum criminal sanction Rp. 5.000.000.000.00 (five billion rupiah) and castrated for sexual offenders.

From the outcome of the court's decision on several cases of sexual crimes committed by children in East Java, in fact most of them were sanctioned by mild prison sentences ranging from 5 months to 1, 5 years in prison and criminal work training for 6 months. So when compared to the threat of punishment contained in the Child Protection Act, it is still quite light.

From the results of research in several villages in East Java, the reality of cases of rape committed by children under just a lot that is settled in kinship. The settlement is done in the following way:

1. In the absence of a result of this rape case, the family of the perpetrator and the victim's family made an agreement by giving compensation to the victim and the family so that the rape case will not reach the police.
2. If there is a result of the rape case, ie pregnancy on the victim, it will be resolved in two ways. The first way, the perpetrator and the victim will be married by the family to cover up the family's disgrace. If married then the family will register the two children to the Religious Court in the case of *Diskah* (DispensasiNikah/marriage dispensation), after the baby is born the victim (daughter), they will file a divorce to the Religious Court. The second way the victim will be taken out the village to wait until the newborn baby and then return to the village where she lived.
3. If the rape is in the family (rape committed by the father, or brother of the victim), it will be resolved by the family itself by marrying the victim with another person called *tambelan* marriage, waiting for the baby to be born then divorce.

The settlement of children's cases in Indonesia is different from Malaysia. In Malaysia, Malaysian rape cases committed by minors between the ages of 14 (fourteen) and 18 (eighteen) years old will be processed in accordance with the Sekyen Sexual Offenses Act 1993¹⁶. As follows:

- a. The Presumption of criminal Law that a boy under the age of fourteen is incapable

¹⁶This Act (Act 1993 c.30) constitutes an Act approved by the British government to abolish the presumption of criminal law on the inability of boys under the age of fourteen to perform sexual intercourse. It took effect on 20 September 1993. See H. Dennis, 2002, *Criminal Law 2002/03; Sweet Maxwell Series, London*; *Sweet & Maxwell*, page 156. See also *Force Policy, Procedure Guideline; Rape & Other Serious Sexual Offence, D226, Crime Department*, 23 December 2003, page 13

- b. Of sexual intercourse (whether natural or unnatural) is hereby abolished.

With the adoption of this Criminal Code, boys under the age of 14 (fourteen) years old no longer have special protection in the context of sexual crimes, some involving ordinary coercion or rape. Therefore, the criminal sanction against children who commit rape have the same status as other crimes in which case they may be charged with rape or other criminal acts, while the criminal responsibility is ten years.¹⁷

CONCLUSION

Legal protection for children as perpetrators of criminal acts of rape in Indonesia is regulated in the Act. No.11 of 2012 on the Criminal Justice System of Children, the perpetrator of a crime is treated differently than the adult offender, from the investigation stage, prosecution and proceedings in the court specifically for the child. The placement of the child during detention and the imposition of a criminal in a penitentiary is also separated from adult perpetrator.

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¹⁷J.C.Smith, 1999, *Smith & Hogan Criminal Law*, Edisike 9, London ,Buteerworth , page 462, . This means that in addition to rape (rapes), children under the age of fourteen may be accused and convicted of an offense with an intent to commit rape (rape), misconduct with animals, illegal intercourse with a girl under thirteen or sixteen years, sexual intercourse with insane or crazy people or other sexual offenses involving admission either through vagina or anus. See *Force Policy & Prosedure Guideline Rape & Other Serious Sexual Offences*, D226, Crime Department , 23 December 2003, page 13.

United Nations Standart Minimum Rules for the Administration of Juvenile Justice (*The Beijing Rules*).

Yanuar Firda Wismayanti, *Model Penanganan Anak Berkonflik Dengan Hukum*, Jurnal "Informasi " Vol III No 3 , September – October 2007.

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