

RECONSTRUCTION OF REGULATIONS FOR THE LEGAL PROTECTION OF CHILD AS A CRIMINAL ACT OF VIOLENCE AGAINST CHILDREN BASED ON THE VALUES OF JUSTICE

Ihram Kustarto
Hartiwiningsih
Anis Mahdurohaturun

ABSTRACT

The purpose of this research is to examine and analyze the weaknesses of the regulation of legal protection of children as perpetrators of criminal acts of violence against children based on the value of justice, and to reconstruct the regulation of legal protection of children as perpetrators of crimes of violence against children based on the value of justice. The research method uses constructivism paradigm, sociological juridical research approach, descriptive juridical research type, primary and secondary data types, library data collection methods, observations and interviews. Qualitative data analysis methods. The results of the study are: Weaknesses in the regulation of legal protection of children as perpetrators of criminal acts of violence against children at this time, from the aspect of legal substance there is still no firm legal formulation that regulates the protection of perpetrators and sanctions for perpetrators of criminal acts of child violence. In terms of the legal structure, the synergy between law enforcement officers is not yet optimal, so synergy is needed from the police, prosecutors, and the judiciary. From the aspect of legal culture, it is necessary to socialize about legal protection so that children who are in conflict with the law do not get a bad stigma as perpetrators of crime. Reconstruction of legal protection regulations for children as perpetrators of criminal acts of violence against children based on the value of justice in Article 59 A of Law Number 35 of 2014 and Article 18 of Law Number 11 of 2012.

Keywords: Violence; Children; Legal Protection; Justice;

INTRODUCTION

Children are not to be punished but must be given guidance and coaching, so that they can grow and develop as normal children who are healthy and fully intelligent. Sometimes children experience difficult situations that can lead them to act against the law. However, children who violate the law do not deserve to be punished, let alone put in prison. Because the presence of children in places of detention and imprisonment placed together with adults will place children in situations that are prone to become victims of various acts of violence¹.

When looking at the framework of the Indonesian state, realizing quality Indonesian human resources and being able to lead and maintain the unity and integrity of the nation within the unitary state of the Republic of Indonesia based on Pancasila and the 1945 Constitution² of the Republic of Indonesia, the development of children is an integral part in those efforts. Therefore, problems regarding children in conflict with the law must be resolved appropriately in order to protect children's rights so that they are able to become quality Indonesian human resources as mentioned above.

On this basis, this concern for children is outlined by the formation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in lieu of Law Number 3 of 1997 concerning Juvenile Court. The replacement of this law is considered necessary, because the old law is no longer relevant to the legal needs in society and has not comprehensively provided legal protection to children in conflict with the law. The purpose of the enactment of this new law is to create a judiciary that truly guarantees the protection of the best interests of children in conflict with the law. Sentencing should be a last resort, so that in its implementation this new law prioritizes the restorative justice model, namely restoration to its original condition, which needs to be prioritized by other means outside the court. One of them is by diversion, namely the transfer of the settlement of children's cases from the criminal justice process to a process outside of criminal justice.³ This diversion is the most appropriate solution so that children are not brought to court. For this reason, this diversion must be an obligation in handling children in conflict with the law, both at the level of investigation, prosecution, to examination of cases in court.

It is proper for law enforcement officers to provide appropriate sanctions for perpetrators of violent crimes so that the law is truly enforced and order is created in society. However, apart from that, law enforcement officers must also pay attention to other, more comprehensive considerations in imposing sanctions when the perpetrator of the crime is a child. Because sanctions

¹ Agus Irawan Yustisianto, Sri endah Wahyuningsih, & Anis mashdurohaturun, Reconstruction of Legal Protection Regulations against Victims of Crime of Household Violence Based on Justice Value, Sch Int J Law Crime Justice, Dec, 2022; 5(12).

² Ahmad Faisol et. al, Law Enforcement against the Criminal Action of Little Theft, Law Development Journal, Volume 2 Issue 4, December 2020, pp.647 – 657. Bambang Suprabowo et. al, The Inhibiting Factors On Legal Protection For Recipients Of Fiduciary Warranties With Inventory Guaranteed Objects, International Journal of Business, Economics and Law, Vol. 13, Issue 4 (August),2017,pp.212-220

³ Norasya Verdiana, Limitation of a Person's Maturity or Proficiency in Performing Legal Actions in Indonesia in the Perspective of Justice, Journal of Law, Policy and Globalization, www.iiste.org, Vol.128, 2023,pp.48-57.

are not only expected to have a deterrent effect on children as perpetrators of criminal acts so that they do not repeat their actions and prevent others from committing these crimes, but also must pay attention to the best interests of children.⁴

A similar study was conducted by Meily in 2019 entitled "Legal Protection of the Rights of Children Perpetrators of Rape in the Criminal Justice System". The results of the study stated that the form of fulfilling the rights of children as perpetrators of the crime of rape is to prioritize the settlement of cases outside the court, so that children can be kept away from punishment. By serving a sentence that exceeds the imprisonment sentence, it can actually make the rights of the child not fulfilled; and, that the legal protection of children's rights as perpetrators of the crime of rape has not been fulfilled, because the state has not been able to prevent children from criminal penalties.

The next research was a study conducted by Mumammad Yogie Adha in 2020, entitled "Law Enforcement on Violent Crimes Perpetrated by Children in the Yogyakarta Police Region". This study states that the law enforcement process carried out by the Yogyakarta City Police regarding investigations and investigations as well as conducting socialization to the community regarding violent crimes committed by children in the city of Yogyakarta is basically in accordance with the existing laws, namely Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). The occurrence of criminal acts of violence committed by children is basically caused by several factors, factors that often trigger cases of violent crimes committed by children in the jurisdiction of the Yogyakarta City Police, namely external cultural influences, electronic technology advancement factors, family factors themselves and social factors. /group.

The research conducted by Taufik Makarano in 2013 entitled "Legal Assessment of the Application of Restorative Justice in the Settlement of Crimes Perpetrated by Children", states that the restorative criminal justice process holds the view that realizing justice is not only a matter for the government and the perpetrators of crime, but more than that, it must provide justice in totality that cannot ignore the interests and rights of the victims and the community.

The case of MP (initial name), a child who was detained at the Palopo Police Headquarters, South Sulawesi for narcotics cases, was quite concerning. Because he was involved in a narcotics case, he was actually detained in an institution that was not supposed to be a place of detention for children. Whereas under the Juvenile Criminal Justice System Act (Indonesian abbreviation as SPPA) a child is not allowed to be in a detention institution, let alone detention for adults. This case is also an example faced by some Indonesian children who are still forced to enter detention institutions (adults) because they are accused of being criminal perpetrators.

Another example is the Decision Number 5/Pid.Sus-Anak/2017/PN Semarang, that the defendant Syaiful Galih Pratama (17 years old) Bin Sumarno. That in this case it is stated that the child of SYAIFUL GALIH PRATAMA Bin SUMARNO has legally and convincingly been guilty of committing the crime of theft in aggravating circumstances, violating Article 363 Paragraph (1) 3, 4 and 5 of the Criminal Code, as stated in the indictment. Sentencing the defendant Child SYAIFUL GALIH PRATAMA Bin SUMARNO with imprisonment for 4 (four) months with a probationary period of 8 (eight) years. Evidence in the form of 1 (one) unit two-wheeled motorcycle Suzuki Shogun, Nopol: H-6399-GW.

Another case is in Decision Number 09/Pid.Sus/2016/PN SMG, Declaring that the children of IQBAL ARYA RAMADHAN alias SEMPUK Bin HARI HASTANTO and MUHAMMAD AFI AMINUDIN Alias AFI alias PIYOT Bin M. SHOLEHAN were legally and convincingly proven guilty of committing the crime Criminal: "Intentionally committing a ruse to persuade the child to have intercourse with him together" Imposing a criminal sentence to the Child therefore with imprisonment for 2 (two) years each and job training for 4 (four) months.

The following is data from the Indonesian National Police for the Central Java Region regarding the handling of cases against children:

Table 1.1.
Data on Handling Cases of Violence Against Children in 2020 and 2021

NO	TYPES OF CRIME	2020	2021
1	Child Discrimination	0	1
2	Abandonment/Mistreatment	3	5
3	Physical/Psychological Violence	45	64
4	Intercourse	193	289
5	obscenity	95	127
6	Economic Exploitation	0	8
7	Sexual Exploitation	3	3
8	Escape the Minors	1	4
9	Pornography	0	0
10	Child Marriage	0	0
11	Murder	5	10
12	Child Abortion	2	9
13	Involving Children in Drugs	4	0
14	Persecution	20	45
	TOTAL	389	592

Meanwhile, below is the data of the Indonesian National Police for the Central Java Region regarding the handling of cases of children in conflict with the law (ABH) as follows:

⁴ Wa Ode Khatija Rasia, Legal Protection On Children As Victims Of Human Trafficking Based On Justice Values, Jurnal Pembaharuan Hukum, Volume IV No. 2 Mei - Agustus 2017, pp.148-160.

Table 1.2.
Data on Handling Children in Conflict with the Law (ABH) 2020 and 2021

NO	TYPES OF CRIME	2020	2021
1	Persecution	30	59
2	Intercourse	180	218
3	Rape	5	3
4	obscenity	75	104
5	Escape the Minors	1	4
6	Pornography	1	0
7	Insult	1	3
8	Nozzle	2	12
9	Theft	35	51
10	Murder	5	10
11	beating	23	36
	TOTAL	358	500

On the basis of the thoughts and descriptions above, the authors are interested in conducting in-depth research on the Regulation of the Legal Protection of Children as Perpetrators of Criminal Acts of Violence Against Children Based on the Value of Justice.

RESEARCH METHOD

The research method used constructivism paradigm, sociological juridical research approach⁵, descriptive juridical research type, primary and secondary data types, library data collection methods, observations and interviews⁶. Qualitative data analysis methods.⁷

RESEARCH RESULTS

1. Regulation of the Legal Protection of Children as Criminals in Foreign Countries

The implementation of Law Number 11 of 2012, cannot be separated from the Convention on the Rights of the Child (KHA) and Law Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection. Because the purpose of Law Number 11 of 2012 is to respect, protect and fulfill the rights of children, especially children who are in conflict with the law, including children in conflict with the law. The implementation of a special criminal justice system for children must be oriented and centered on respecting, protecting and fulfilling children's rights, including children in conflict with the law through diversion efforts.⁸

The United Nations defines restorative justice as a way of responding to criminals behavior by balancing the needs of the community, the victims and the offenders.⁹ (A solution to criminal behavior by realigning harmonization between the community, victims and perpetrators).

The diversion policy towards children as perpetrators of criminal acts should be able to provide legal certainty. Legal certainty is a question that can only be answered normatively, not sociologically. Normative legal certainty is when a regulation is made and promulgated with certainty because it regulates clearly and logically. It is clear in the sense that it does not cause doubt (multi-interpretation) and logical in the sense that it becomes a norm system with other norms so that it does not clash or cause norm conflicts. Norm conflicts arising from uncertainty in the rules can take the form of norm congestion, norm reduction or norm distortion. Legal certainty refers to the application of a clear, permanent, consistent and consequent law whose implementation cannot be influenced by subjective circumstances. Legal certainty will be achieved if the law is as much as possible in the law. The law contains contradictory provisions (the law is based on a logical and practical system). Laws are made based on rechtswerkelijkheid (true legal conditions) and in the law there are no terms that can be interpreted differently.

⁵ Mahyuni, Land Acquisition of Toll Roads for Public Interest in The Kendal District, Jurnal Akta, Volume 6 Issue 1, March 2019, pp. 153-158, Anis Mashdurohatun, Zaenal Arifin, The Inconsistency of Parate Execution Object Warranty of Rights in Banking Credit Agreement in Indonesia, International Journal of Applied Business and Economic Research, Vol.15 Issue.20. 2017

⁶ Carto Nuryanto, Gunarto, Anis Mashdurohatun, Reconstruction Of Criminal Sanction And Rehabilitation Combating On Narcotic's Victims Based On Religious Justice, The 5th International Conference and Call for Paper Faculty of Law 2019, Sultan Agung Islamic University, 2019, pp.91-95. See too Wawan Setiyawan and Anis Mashdurohatun, The Reforming Of Money Politics Cases In Election Law As Corruption Crime. Law Development Journal, Volume 3 Issue 3, September 2021, pp.621 – 629.

⁷ Yeltriana, Ideal Reconstruction Of Protection For Layoff Victim At The Industrial Relations Court Based On Justice, International Journal of Law, Government and Communication, Volume: 4 Issues: 14 [March, 2019]. pp.32-49. Irwansyah, Ahsan Yunus, Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel, Mirra Buana Media , Yogyakarta. 2020.

⁸Hardi Widioso et al., A Juridical Review of the Truth of Criminal Stelsel that has not been A Juridical Review of the Truth of Criminal Stelsel that has not been oriented on the Basis of Balance in the Penal Code, Saudi J. Humanities Soc Sci, June. 2019, 4(6): pp.441-445

⁹ Handbook on Restorative Justice Programme, New York: United Nations, 2006, page. 6.

The following are the legal protection regulations for children as perpetrators of criminal acts in several countries:

2. America

The child criminal system in America has similarities and differences with the criminal system in Indonesia, the similarity lies in the procedural law, namely in the American juvenile court both use a single judge, when in trial children are accompanied by lawyers, parents, and BAPAS members, who can be submitted Juvenile court is a child under the age of 18 years, and of course the court is closed to the public. Then the difference lies in the sentencing, in American juvenile justice there is what is known as Pre Trial-Justice, so in this Pre Trial-Justice the child is determined by the jury whether this child deserves to be punished or not.

A significant difference is seen in the sentencing, if a child in Indonesia commits a crime that can be punished with death or life imprisonment, it is reduced and only subject to a maximum of 10 years in prison. , if the child commits a crime that carries a death penalty or life imprisonment, the child is almost certainly sentenced to death or life imprisonment, all of this because the United States has not ratified the Convention on the Child. America is the only country that can criminalize a 12-year-old for life without parole. However, not all states in the United States carry out maximum adult sentences for children, one of which is the State of Nebraska and Massachusetts. In these states children who commit crimes will be rehabilitated and not subject to imprisonment, imprisonment is the last alternative in the state.

3. The United Kingdom

Criminal liability is given to children aged 10 (ten) years but not for participation in politics. Children can only participate or have political rights if they are over 18 (eighteen) years old. In the UK, children who commit delinquency are caught by the police, but only some are eventually brought to justice.

According to historical records in England, the police have long exercised discretion and diverted children to non-formal processes, such as in the case of handling children who use toys that endanger others. The first record of special treatment for children for their crimes was in 1833, namely by conducting an informal process outside the court. Furthermore, the division of justice for minors was regulated in the Children Act of 1908. According to the rules of the Children Act of 1908, the police were given the task of dealing with children before going to court with more attention to providing welfare and justice to children who were perpetrators of crimes. The provision of special treatment to children who are perpetrators of this crime includes a diversion program.

In England, the development of the implementation of diversion against children continued to be carried out until it was finally recorded at the end of the 19th century, namely, the United Kingdom which was the country that carried out the most diversion of children by using special courts for children or juvenile courts.

4. Japan

In Japan, criminal acts or offenses committed by less than 14 years old are not punishable. Japan has long included diversion provisions in handling delinquent perpetrators. Japan is one of the safest countries in the world. Based on article 2 of the Children's Law number 168 of 1948, those who are categorized as "Children" (Shoonem) are those who are less than 20 (twenty) years old. A child who is classified as a delinquent who can be submitted to court is classified into three criteria, namely:

- 1) Juvenile offenders, namely children aged over 14 (fourteen) years to 20 (twenty) years who commit crimes.
- 2) Child offenders, namely children who have not reached the age of 14 (fourteen) years who commit crimes.
- 3) Pre-delinquent juveniles, namely children who have one of the tendencies of nature, and can be seen as going to commit a crime or act of violating the law. The traits/attitudes that predelinquent children tend to have include:
 - a. Disobeying parental supervision and guidance;
 - b. Leaving the house without a valid reason.
 - c. Associating with immoral offenders or frequent visits to inappropriate places for children.
 - d. Doing acts that harm yourself or others.

The difference between child offenders and children who violate the law lies in the age limit before 14 (fourteen) years and after 14 (fourteen) years.

This is based on the provisions regarding the ability to take responsibility as regulated in Article 41 of the Japanese Criminal Law (UHP) Number 1907. In this article it is emphasized that people who are less than 14 (fourteen) years old are considered unable to be responsible for their actions. . Although every child who commits a crime will be given treatment, children who violate the law are not sent to the family court, but are handed over to the Center for Child Guidance and Treatment based on the Child Welfare Act.

According to the UUA in Japan, there are different procedures for handling children who commit crimes called "Procedures for Protection" this procedure is very different from the "Criminal Procedures" that are applied to adults who commit crimes. Because the handling of children is based on the objective of finding the most suitable action for the protection and development of children, it is recognized that even these actions are considered as actions that limit children's rights and are beneficial for children. Therefore, the handling of the case of the judge's child determines the following options:

1. There is no action, where the judge for certain reasons settles the case against the child without any action. This kind of handling occurs because the judge considers the alleged actions to be unproven, or the case is considered light.
2. Protective Measures consist of:
 - a. Handing over the child to the Children's Education School
 - b. Handing over to the Children's Training and Training Center
 - c. Submitting children to the community with supervision and guidance by social workers.
3. Handing it back to the prosecutor's office is a case that will be handled with the same criminal procedure as an adult case.

4. Handing over to the Governor or Head of the Child Guidance Center is a welfare event.

In the case of a child who commits a crime punishable by death, imprisonment or imprisonment, the family court judge is of the opinion that it is more appropriate to send the case back to the prosecutor's office for prosecution, according to the severity of the crime committed. Based on Article 20 UUA, such action is only applied to children over the age of 16 years. Even though the child is proven guilty, the criminal sanctions imposed are adjusted to the provisions that apply to the child.

If the child is sentenced to deprivation of liberty, namely imprisonment or imprisonment, it means that the child is sentenced to a sentence whose sentence is not fixed. Except for conditional punishment, the child is accommodated in a juvenile prison which is separate from the institution for adults.

5. The Netherland

In the Juvenile Criminal Justice System (SPPA) in the Netherlands, there are several provisions relating to diversion, namely in article 74c paragraph (1) (2) and (3) WvS (Wetboek van Strafrecht), namely that criminal acts in certain cases can be resolved by sensibly by investigators. The authority is reserved for perpetrators of criminal acts aged 12 years and under 18 years.

In article 77e paragraphs (1) and (2) WvS (Wetboek van Strafrecht) sees the child perpetrator as a recidivist or not, while in article 77b the public prosecutor has the authority to resolve with his own policy related to criminal acts which are threatened with imprisonment of six years and violation cases.

The public prosecutor is more directing the interests of the child defendant than the interests of the child trial organizer by formulating one or more requirements to prevent criminal prosecution. There are three types of alternative sanctions in the SPPA in the Netherlands, namely community service, loss recovery, and participating in training.

In realizing an ideal SPPA requires a change in the view that children who have problems with the law should be imprisoned. Considerations in sentencing children must also be oriented to social, cultural and moral aspects, and there is no justification for sentencing, but looking for alternative settlements of other cases and placing punishment as a last resort (*ultimum remedium*) against children as long as there are other methods that can be used.

The historical track records that the regulations that apply in Indonesia are one of the products of the Netherlands and it can be seen that efforts to diversify between Indonesia and the Netherlands have similarities. However, in its implementation, Diversion efforts in Indonesia require hard work from all authorities from upstream to downstream.¹⁰ Regulations on the legal protection of children as perpetrators of criminal acts in foreign countries in several countries can be seen from the table below:

Table 5.1.
Regulation of the legal protection of children as perpetrators of criminal acts in foreign countries

Country	Strength	Weaknesses
America	The punishment of children in America has similarities and differences with the criminal system in Indonesia, the similarity lies in the procedural law, namely in the American juvenile court both use a single judge, when in trial children are accompanied by lawyers, parents, in the American juvenile court there is what is known as Pre Trial Justice, so in this Pre Trial Justice the child is determined by the jury whether this child deserves to be punished or not.	The United States does not recognize the existence of reduced sentences, if the child commits a crime that carries a death penalty or life imprisonment, the child is almost certainly sentenced to death or life imprisonment, all this is because the United States has not ratified the Convention on the Child. America is the only country that can criminalize a 12-year-old for life without parole.
The United Kingdom	In England, the police have long made diversion efforts and divert children to non-formal processes, such as in the case of handling children who use toys that endanger others. The first record of special treatment for children for their crimes was in 1833, namely by conducting an informal process outside the court. Subsequently, a judicial separation for minors was made which was regulated in the Children Act of 1908.	Criminal liability is given to children aged 10 (ten) years
Japan	Japan has long included diversion provisions in the handling of children as criminals. Japan is one of the safest countries in the world.	The difference between child offenders and children who violate the law lies in the age limit before 14 (fourteen) years and after 14 (fourteen) years.
Netherlands	In the Netherlands, there are several provisions relating to Diversion, namely Article 74c paragraph (1) (2) and (3) WvS (Wetboek van Strafrecht), namely that criminal acts in certain	The culture in the Netherlands is different from Indonesia, so education is easier in the Netherlands

¹⁰ <http://www.ditjenpas.go.id/upaya-diversi-kasus-anak-dari-kacamata-hukum-indonesia-belanda>, accessed on August 3, 2022, at 11.00 WIB.

	<p>cases can be resolved wisely by investigators. The authority is reserved for perpetrators of criminal acts aged 12 years and under 18 years.</p> <p>The public prosecutor is more directing the interests of the child defendant than the interests of the child trial organizer by formulating one or more requirements to prevent criminal prosecution. There are three types of alternative sanctions in the SPPA in the Netherlands, namely community service, loss recovery, and participating in training.</p> <p>Excess in the Netherlands, children are financed by the state and if they commit a crime, they are returned to their parents. For victims there is mental and social recovery and rehabilitation. The perpetrators will be assisted by a special psychologist</p>	
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Based on the diversion table in several countries above, what is appropriate and needs to be adopted is from the UK, in the UK the police have long carried out diversion efforts and diverted children to non-formal processes such as in the case of handling children who use toys that endanger others. The first record of special treatment for children for their crimes was in 1833, namely by conducting an informal process outside the court. Subsequently, a judicial separation was made for minors as regulated in the Children Act of 1908. As for the age of children in the UK it is 10 years, while in Indonesia it is 12 years. Thus, it can be said that the most successful country in implementing restorative justice is England.

However, it is possible to adopt from other countries such as the Netherlands, where in the Netherlands children who commit, crimes are told to choose to return to their parents or be financed by the state.

2. Reconstruction of the Value of Legal Protection for Children as Perpetrators of Criminal Acts of Violence Against Children Based on the Value of Justice

Criminal cases with child perpetrators provide an understanding of punishment which is interpreted as an effort to awaken the perpetrators of criminal acts to regret their actions, and return them to be good citizens, obey the law, uphold moral, social and religious values, so as to achieve a society that is safe, orderly and peaceful. Given the specificity of the child's behavior and actions, efforts must be made so that the punishment of children, especially the imposition of imprisonment, is a final measure if other efforts are not successful. Criminal sanctions that can be imposed on children who are perpetrators of criminal acts must basically refer to the principles stated in the Beijing Rules and also the Convention on the Rights of the Child, in particular with regard to:

- a. Placing the best interest of the child as the main thinking base in determining sanctions;
- b. Deprivation of liberty is only a measure of the last resort.

For this reason, it is better to look for alternatives to imprisonment, such as by imposing a fine or a conditional sentence. Many types and types of criminal sanctions are determined by this Draft Criminal Procedure Code, but it is not yet known whether the provisions contained in this draft are good or not, because these provisions can still be changed to suit existing circumstances, situations and conditions. The most important is that children in conflict with this law can immediately learn about the real relationship between their actions and the social reactions that arise as a result of their actions.

Sentencing for children is a limitation of freedom and is the toughest thing for children. Because the punishment for restricting freedom is the heaviest crime, this punishment is imposed as a last resort (*ultimum remedium*). In addition, the conditions are also determined in detail, so that the judge can choose the right reason for imposing a criminal restriction on independence. compared to other crimes. Normatively, the juvenile justice system relies on Law no. 11 of 2012 concerning the Juvenile Criminal Justice System. When referring to this regulation, even though the Police institution is still the first institution that will act in dealing with perpetrators of child crimes, there is a legal requirement that the Police request a community research report made by a correctional officer from the Penitentiary Office. Correctional officers in conducting community research play an important role in the fate of children who are caught in the Juvenile Justice System. However, the community research should be a scientific analysis that can be justified, such as a doctor's diagnosis of a patient.

Therefore, it is necessary to improve the community research instruments used by community officers, as well as to increase the professionalism of the community officers who carry them out. In the community research, it must at least be concluded whether the child who is submitted to the Juvenile Justice System is categorized as a primary deviant or has become a secondary deviant. This status is important so that the judge can later give the right decision for the child. Although in practice community research reports are used in the Juvenile Justice System.

For a judge who will decide criminal sanctions for children who do this act requires deep considerations. In addition to the judge's belief, the important determining factor here is the existence of community research reports made by litmas and correctional officers. The litmas clearly states the personal data of children and other important factors. This Litmas cannot be ignored and must be considered by the judge before deciding on a child case. So that the imposition of criminal sanctions is appropriate.

This happens because there is no perception among them. Besides there is no common perception among apparatus in the juvenile justice system, laws and regulations related to the implementation of the juvenile justice system have not shown synchronization between one another where the tendency of judges in child cases to impose imprisonment rather than take action against children in conflict with the law reflects more understanding of retaliation in punishment rather than understanding of rehabilitation or resocialization. Whereas the teachings of penology in criminal law always emphasize that punishment is the ultimum remedium and not as the main choice.

Policy steps in an effort to minimize the use of imprisonment for children do not only begin when the child is placed in a correctional institution, but also includes before the criminal justice process is applied to a child. Even before the crime committed by the child occurred. This is stated by the author to show that at the policy stage, the Government (policy makers) should start from:

- a. Policy determination at the formulation stage, the objectives of which are:
 - 1) Formulating a crime that can be categorized as a child crime;
 - 2) Provide the basis for the operation of components in the Criminal Justice System.¹¹
- b. Policy determination at the application stage. At this stage, the policies needed are policies that are oriented towards the creation of the Juvenile Criminal Justice System as a unified and integrated system,¹² which will be able to minimize the use of imprisonment for children.
- c. Policy in execution stage. At this stage the policy that should be formulated is a policy that is oriented to the fulfillment of the rights of children sentenced to imprisonment as the realization of the judge's decision.

The Restorative Justice model is based on the Due Process. Model of the Criminal Justice System, which highly respects the legal rights of each suspect, such as the right to be suspected and treated as an innocent person if the Court has not found him guilty, the right to defend himself and the right to receive a punishment that is proportional to the offense that has been committed. In the case of children who violate the law, they are entitled to assistance from their lawyers during the judicial process. In addition, the interests of the victims should not be ignored. However, it is still necessary to pay attention to the human rights of children as suspects. These children should as much as possible be kept away from the usual punishments for adult criminals. Actions that can be taken against children who have been found guilty are, for example, the provision of conditional sentences.

Thus, in the Restorative justice model, the proportionality of punishment for children is very important. This model is very visible in the provisions of The Beijing Rules and in the United Nations Regulations for the Protection of Children who are deprived of their Freedom. When sharing efforts that previously had to be done seriously to prevent children from being faced with the judicial process, their rights as suspects and their rights as children must be protected.

In the future, it is hoped that cases of children involved in the legal process and brought in the judicial process, are limited to serious cases, beyond that children's cases will be resolved through non-formal mechanisms based on standard guidelines. Forms of non-formal handling can be done by requiring children who are in conflict with the law to attend education or training at certain institutions, work socially, work under the supervision of volunteers, be involved in activities in their community and so on. In connection with this, extensive cooperation with various communities must be established that can assist this activity. In the end, non-formal handling can be carried out properly if it is balanced with efforts to create a conducive justice system.

Referring to Article 39 of the Convention on the Rights of the Child which states parties must take appropriate steps to promote spiritual and physical recovery and reintegration into society. Recovery and reintegration as mentioned above must be carried out in an environment that fosters the health, self-respect and dignity of the child concerned. It is undeniable that the involvement of children in delinquency is closely related to environmental conditions in which children in particular live or family environment. In cases where children are in conflict with the law, the family environment or place of residence of the child has so far not received attention. The family and the neighborhood where they live are involved only in the process of completing the data on the preparation of the Litmas by the Bapas officers. Ideally, it is necessary to carry out an intervention program for the child's environment to prepare for the integration of the child back into his family. An explanation of the rights and obligations of parents to provide protection for children must be socialized.

This is important because how good the coaching is done in the institution, if the family and community environment refuses to accept the child back after undergoing coaching at the institution, it can be a trigger for children to repeat violations of the law and prevent "recidivism" in the case of children, then as the intervention program implemented oriented to the provision of skills, training and in particular the availability of employment opportunities for children who are out of the judicial process or sentencing institutions, have proven to be the most effective. This program will of course be successful if it is supported by the respect of the community and families who support these children, not the other way around, treating them as petty criminals or as outcasts, by placing a stigma on every step the child takes.

Freedom after completing training in institutions does not always bring happiness to children. Children who feel giddy or awkward don't know where to go. Returning to parents' homes is not easy, apart from families who are not ready to accept them back, the newly released child does not have transportation costs to return home. Children whose parents live far from the institution where they are being nurtured face great difficulties. If they still want to go home without spending money, they must present a letter of release from the institution, so that they can be free to not pay the transportation fare. Here it is clearly seen that the child is faced with a difficult choice where his identity as an individual who has just finished undergoing training must be informed to other parties who are not interested in knowing it.

So the reconstruction of the value of the regulation of legal protection of children as perpetrators of criminal acts of violence against children must be fair.

¹¹ Material criminal law is actually the starting point for the administration of justice, while other fields of law, namely formal criminal law (law of criminal procedure) and criminal law enforcement, are essentially a continuation of the operationalization of the substantive criminal law. start. Projections of Indonesia's Material Criminal Law in the Future. Professor Inauguration Speech. Semarang, February 24, 1990

¹² Muladi, 2015, *Kapita Selekta Sistem Peradilan Pidana*, BP-UNDIP, Semarang, page. 8.

3. Reconstruction of Legal Protection Norms for Children as Perpetrators of Criminal Acts of Violence Against Children Based on the Value of Justice

Indonesia as a country that has ratified the Convention on the Rights of the Child through Presidential Decree Number 36 of 1990 is bound by the obligation to provide protection for children, including providing special protection to children in conflict with the law. One form of protection is to implement a special criminal justice system for children in conflict with the law. Article 40 paragraph (1) of the CRC states that "States parties recognize the right of every child who is declared as an accused or recognized as having violated the criminal law to be treated in a manner that is in accordance with increasing the respect and dignity of the child, which reinforces the child's respect again, to the human rights and freedoms of others and which takes into account the age of the child and the desire to promote the reintegration of the child and the return of the child to a constructive role in society".¹³ This State obligation is also reaffirmed in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, that the objectives of juvenile justice are: the criminal justice system for children/adolescents will prioritize the welfare of adolescents and will ensure that any reaction to juvenile offenders will always commensurate with the conditions both for the violators of the law and for the violations of the law.

In Law Number 11 of 2012 concerning the Juvenile Criminal Justice System Article 1 paragraph 6 which reads: "Restorative Justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a solution, just by emphasizing restoration to its original state, and not retaliation."

Law enforcement officers, especially from the Police, from the beginning of handling cases where the perpetrators are minors, should be able to act according to procedures and objectively find the initial source of the incident, not only on the location but also the background of the incident. Law No.1 of 1974 Article 47 paragraph (2) concerning Marriage, namely: "Parents represent the child regarding all legal actions inside and outside the Court." It is also a matter that can be used in the future as a basis for prosecution against parents if the handling of the incident is related to the negligent nature of the parents of the perpetrator and results in a major event which is also contained in Law no. 1 of 1974 concerning marriage, in Article 45 paragraph (1) concerning the obligations of parents. So that restorative justice here does not necessarily make cases where the perpetrator is a minor into diversion and escape from criminal snares in order to provide an optimal deterrent effect so that the value of justice can be shared between the perpetrator and the victim and their family.

Children as part of the younger generation are the successors to the ideals of the nation's struggle and human resources for national development. In the context of realizing quality Indonesian human resources who are able to lead and maintain national unity and integrity within the unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia, continuous guidance is needed for survival, growth and physical, mental and social development and protection from all possibilities that will endanger them and the nation in the future.¹⁴ Providing opportunities for children so that through coaching, their identity will be obtained to become independent, responsible, and useful human beings for themselves, their families, communities, nations and countries. The task of parents is very important in the growth and development of children in mental and spiritual so that there are many negligence from parents that lead to child delinquency, so that the risk of children becoming perpetrators of crimes is so great.

Disclosure of legal facts in a criminal act is part of the criminal law enforcement process that cannot be considered easy and simple. Likewise, in realizing civil society, of course it is not as easy as turning the palm of the hand, when law enforcement is faced with a criminal act whose level of proof is very difficult and complex, it is not impossible that the resulting court decision product can result in wrong or inaccurate results. If this happens, it will have an impact on the law enforcement process that can injure the sense of justice for the parties involved or certain communities. As a result, a wave of public discontent emerged, culminating in legal reform. In line with the principle adopted in criminal procedural law, namely equal treatment of everyone before the law, this principle is better known as *isonamia* or equality before the law. Universally, these principles or principles are recognized as the embodiment of a state of law (*rechstaat*), and Indonesia as a state of law as affirmed in Article 1 paragraph (3) of the 1945 Constitution, the recognition of these principles illustrates that Indonesia upholds human rights. man.

In such an elitist statutory legal situation, if the Policy Formulation of statutory law is carried out by using the concept of law as understood in the legal-positivism tradition of thinking which views the law as only limited to the circle of laws and regulations and which carries out the meaning of the legislation, formally-textually; By ignoring social values in society, what will happen is a law that serves the interests of the elite, not the interests of the wider community, so that the purpose of law to realize justice will be further away from what is expected. If the state of law (*rechstaat*) has been read by perpetrators and law enforcement as a state of law and state of procedure, then this country is experiencing a serious decline.¹⁵ For this reason, the Policy Formulation of law requires the existence of other legal concepts, which are more likely to achieve the legal objectives of realizing justice and the welfare of the Indonesian people.

The community's need for the role of law in providing benefits, legal certainty and justice is increasingly far from reality, given the many legal issues that are not resolved properly. The number of corruption cases that were revealed in the public but did not get a satisfactory solution became the main trigger for the birth of progressive legal thought. People's trust in the law is fading so that the law is no longer considered the commander in chief in every problem that befalls this nation. It is very ironic for a country that bases itself on the law but cannot enforce the law because there is no trust from the people.

As we know that diversion is the authority of law enforcement officers who handle criminal cases to take action to continue the case or stop the case, take certain actions in accordance with their policies.¹⁶ Based on this, there is a policy whether the case is continued or terminated. If the case is continued, then we will be dealing with the criminal system and there will be

¹³ Attachment to Presidential Decree Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child (*Convention on the Rights of the Child*).

¹⁴ General Elucidation of Law Number 3 of 1997 concerning Juvenile Court.

¹⁵ Mahmud Kusuma, *Menyelami Semangat Hukum Progresif "Terapi Paradigmatik Bagi Lemahnya Hukum di Indonesia*, Antonylib, Yogyakarta, 2009, page. vi

¹⁶ Marlina, *Pengantar Konsep Diversi dan Restorative Justice dalam Hukum Pidana*, Medan, USU Press, 2010, page. 1.

criminal sanctions that must be carried out. However, if the case is not continued, then from the beginning the investigation stage of the case will be terminated for the benefit of both parties, in which the principle is to restore the relationship that occurred because of a crime for the future interest of both parties. This is the principle why diversion is carried out, especially for child crimes, which is to realize the welfare of the children themselves. Through diversion, it can provide opportunities for children to become new figures who are clean from crime records and do not become recidivist.

The essence of justice is an assessment of a treatment or action by examining it from a norm. So in this case there are two parties involved, namely the party who makes the treatment or action and the other party who is subject to that action, in this discussion, the parties in question are the authorities or the government, as the party that regulates people's lives through legal instruments, and the community as a party whose procedures for acting in the state are regulated by legal provisions.

The principle of justice in the formation of law and the practice of law, has a position in official documents on human rights. Even long before the human rights documents were issued, the principle of justice had been used as the moral basis for organizing people's lives. Natural law philosophers such as Augustine taught that the eternal law that lies within God's mind is also found in the human soul. Participation of the eternal law is seen in a sense of justice, which is an attitude of the soul to give to everyone what is their due. This principle indicates that the essence of the demand for justice is that for any purpose, a person's human rights must not be violated, human rights must be respected, this right is inherent in humans not because they are given by the state, but because of their dignity as human beings. This means that if someone has the right to something, other people also have the same right.

Starting from this thought, the regulation of people's rights and freedoms using the criteria of justice, shows that in humans, there is a feeling of justice that leads people to an assessment of the factors that play a role in the formation of law. This realization of the feeling of justice is not only owned by citizens but also by the authorities. Therefore, by building on the principles of justice, justice can be referred to as legal principles or legal ideas. This is in accordance with the teachings of Immanuel Kant which says that justice is based on human dignity. Thus the formation of law must reflect a sense of justice and aim to protect human dignity. Justice is a fundamental normative principle for the state.¹⁷

On this basis, the criteria for the principle of justice are fundamental and fundamental, because all countries in the world always try to apply the principles of justice in the formation of their laws. The principle of justice has a special place in the entire history of legal philosophy. In the concept of modern states, the emphasis on the principle of justice is given by stating that the real purpose of law is to create justice in society.

Another theory that talks about justice is the theory put forward by John Rawls.¹⁸ In theory, it is argued that there are three things that are solutions to the problem of justice. First, the principle of equal liberty for everyone (principle of greatest equal liberty), about this is formulated by John Rawls as follows: Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty of others. This formulation refers to Aristotle's formulation of equality, therefore also equality in obtaining rights and using them based on natural law. This formulation is inherent in the notion of equal, which is the same or equal among human beings. This comparison effort is also indirectly an acknowledgment or confirmation that humans always live together which according to Aristotle is called social beings, so that the determination of rights or justice that is applied is justice that pays attention to the social environment or in other words it must be social justice.

For the Indonesian people, the link between this theory and social justice based on Pancasila is that the conception and perception of justice must be in accordance with the feelings of a nation. Accordingly, when we talk about law, we are also talking about justice. Law is something that binds and if the bond is associated with humans, then the bond must reflect a sense of justice. Justice as a conception is justice in the "Sollen" world, however, Sollen's world of justice should be formulated in an effort to translate the world of ideas into the world of "Sein" or reality. Therefore, the regulation of citizens' rights and freedoms must be built on the principles of justice based on Pancasila.¹⁹ For this reason, the desired law is a law that provides protection for members of the community, including protection of the rights of citizens to associate and assemble. Protection in this case means that the sense of justice that exists in the conscience of the citizens must be fulfilled.

Underlining the principle that Indonesia is a state based on law, the 1945 Constitution as the basic law places the law in a decisive position in the Indonesian constitutional system. In this regard, the concept of the Indonesian state, among other things, determines that the government adheres to a constitutional understanding, namely a government that is limited by the provisions contained in the constitution. In countries with a constitutional system or based on basic law, there is a legal hierarchy, where the Constitution is at the top of the pyramid while other provisions are under the constitution. Such a constitution is known as Hans Kelsen's "stufenbau theory".

Hans Kelsen argues about this legal order in the process of law formation which is hierarchical and dynamic. The legal order according to Hans Kelsen is referred to as²⁰: The legal order is a system of norm. The question then arises: what is it that makes a system out of multitudes of norm? This question in close connection with the question as to the reason of validity of a norm. He views the rule of law as a "stufenbau" of several stages of law formation. The existence of law formation by a lower level, namely the formation of law to which authority has been delegated, in Kelsen's view depends on the existence of a higher law formation, namely the formation of law by the delegate.

In the end, regarding the enactment of the entire legal order, it can be returned to something rooted in a "grundnorm". About this Kelsen said: A norm the validity of which cannot be derived from a superior norm we call a "basic" norm. all norms whose validity may be traced to one and the same basic norm a system of norms, or an order.²¹ Through this "grundnorm" there is

¹⁷ Franz Magniz Suseno, *Etika Politik*, (cetakan ke-tiga) (Jakarta: Gramedia, 2003), page. 334.

¹⁸ John Rawls, *Teori Keadilan Dasar-dasar Filsafat Politik Untuk Mewujudkan Kesejahteraan Sosial Dalam Negara*, (judul asli *A Theory of Justice*), Translation of Uzair Fauzan and Heru Prasetyo, (Yogyakarta: Pustaka Pelajar, 2006), page. 502.

¹⁹ Bahtiyar Efendi et.al, *The Reconstruction Of Values In Handling Terrorism Based On Pancasila*, Ijlr: International Journal Of Law Reconstruction, Volume 6, Number 1, April 2022, pp.29-40.

²⁰ Hans Kelsen, *General Theory of Law and State*, (New York: Harvard University Press, 1991), page. 110.

²¹ Ibid page.112

unity in the dynamic process of law formation and in the legal order that is indeed created by the "grundnorm". This means that "grundnorm" is a norm that cannot be deduced from other sources.

The following is a summary of the reconstruction of the legal protection of children as perpetrators of crimes of violence against children based on the value of justice:

Table. 5.2
Reconstruction of Legal Protection for Children as Perpetrators of Criminal Acts of Child Violence Based on the Value of Justice

No.	Construction	Weaknesses	Reconstruction
1.	<p>Article 59 A of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection which reads:</p> <p>Article 59 A Special Protection for Children as referred to in Article 59 paragraph (1) is carried out through efforts:</p> <p>a. prompt treatment, including physical, psychological, and social treatment and/or rehabilitation, as well as prevention of disease and other health disorders;</p> <p>b. psychosocial assistance during treatment until recovery;</p> <p>c. providing social assistance for Children who come from underprivileged families; and</p> <p>a. d. providing protection and assistance in every judicial process.</p>	<ul style="list-style-type: none"> Children as the nation's next generation, have the right to grow and develop for their future, for this reason, it is necessary to take child protection seriously. There are no clear sanctions for children who commit crimes 	<p>Reconstruction in Article 59 A of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, by adding letters e and f so that Article 59 A reads: Article 59 A : Special Protection for Children as referred to in Article 59 paragraph (1) is carried out through efforts:</p> <p>a. prompt treatment, including physical, psychological, and social treatment and/or rehabilitation, as well as prevention of disease and other health disorders;</p> <p>b. psychosocial assistance during treatment until recovery;</p> <p>c. providing social assistance for Children who come from underprivileged families; and</p> <p>d. providing protection and assistance in every judicial process.</p> <p>e. Child victims who experience violence for the actions of perpetrators of child crimes are required to provide compensation (restitution) proportionally, based on the ability of the perpetrator's parents.</p> <p>f. The legal protection and rehabilitation in question, must be accompanied by parents and state institutions such as the Witness and Victim Protection Agency (LPSK), the Indonesian Child Protection Agency (LPAI), and the Correctional Center (Bapas).</p>
2	<p>Article 18 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which reads:</p> <p>Article 18 In handling cases of Children, Child Victims, and/or Child Witnesses, Community Counselors, Social Workers, Investigators, Public Prosecutors, Judges, and Advocates or other legal aid providers must pay attention to the best interests of the Child and strive to maintain a family atmosphere.</p>	<ul style="list-style-type: none"> Unfair case handling 	<p>Reconstruction of Article 18 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, by replacing the word endeavor to create so that Article 18 reads:</p> <p>Article 18 In handling cases of Children, Child Victims, and/or Child Witnesses, Community Counselors, Social Workers, Investigators, Public Prosecutors, Judges, and Advocates or other legal aid providers must pay attention to the best interests of the Child and create a family atmosphere that is maintained.</p>

CONCLUSION

The weakness of the regulation on the legal protection of children as perpetrators of criminal acts of violence against children today is that each of them has weaknesses both in terms of legal substance, legal structure, and legal culture. From the aspect of legal substance, there is still no firm legal formulation that regulates the protection of perpetrators and sanctions for perpetrators of child violence. In terms of the legal structure, the synergy between law enforcement officers is not yet optimal, so synergy is needed from the police, prosecutors, and the judiciary. From the aspect of legal culture, it is necessary to socialize about the legal

protection of children as perpetrators of violent crimes so that parents can optimally accompany and educate children, because crimes committed by children in general are a process of imitating or being influenced by other people or from the influence of the media. seen and read by children, and so that children who are in conflict with the law do not get a bad stigma as perpetrators of crime.

Reconstruction of legal protection regulations for children as perpetrators of criminal acts of violence against children based on the value of justice are; Reconstruction of Article 59 A of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, by adding letters e and f so that Article 59 A. and Article 18 of Law Number 11 of 2012 concerning the Judicial System Child Crime.

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Ihram Kustarto
Sultan Agung Islamic University, Semarang, Indonesia.

Hartiwiningsih
Sebelas Maret University, Surakarta, Indonesia.

Anis Mahdurohatun
Sultan Agung Islamic University, Semarang, Indonesia.
email: anism@unissula.ac.id