

The Politics Of Criminal Law On The Fulfillment Of Children's Rights In Conflict With The Law In The Juvenile Criminal Justice System

Lisa Lidya

Universitas Islam As-Syafi'iyah
E-mail: angielidya@gmail.com

Abstract

Children in conflict with the law in Indonesia are still not ideal from the perspective of human rights because they still have various kinds of problems such as the development process in juvenile prisons and the restorative justice system that has not been evenly distributed. Therefore, this study intends to determine the ideal human rights arrangements for children in conflict with the law, the application of a restorative justice system in the juvenile criminal justice system, and the urgency of changing the law on the juvenile criminal justice system through legal politics in the DPR. This research methodology uses normative juridical. The results of this study are, 1) the regulation of human rights for children in conflict with the law is still not ideal so that the rights of children in conflict with the law are not accommodated properly 2) restorative justice has been regulated in the Juvenile Justice Criminal System Act for criminal acts. certain crimes such as violations, minor crimes and complaint offenses. Meanwhile, for serious crimes that result in loss of life, disability for life and others, a restorative justice system is not applied, 3) the Juvenile Justice Criminal System Law needs to be revised because it has several problems, such as a) juvenile prisons that have overcapacity, b) Child juvenile prisons are not evenly distributed in every area, c) facilities and infrastructure for juvenile prisons are not ideal, and d) a restorative justice system that is only applied to certain criminal acts. Therefore, the DPR needs to amend this Law as soon as possible by using the omnibuslaw system so that the legal politics running in the DPR can more easily and can regulate other matters or themes in one text, namely the Juvenile Justice Criminal System Act.

Keywords: Criminal Justice System, Child Convicts, Child Correctional Institutions, Legal Politics.

I. INTRODUCTION

The flow of globalization raises all kinds of new concerns about children. In today's era, many children do not get their rights so that they cannot improve the condition of themselves and their families. Moreover, children who are dealing with legal cases or convicted children. There are so many children who do not get proper education, good treatment, and adequate nutritional intake when they are in correctional institutions or prisons. This treatment certainly leads to the juvenile justice system in Indonesia which is not yet ideal. As a result, it is very difficult for children who are dealing with the law to change themselves for the better and benefit society and the state because many of their rights are ignored. This certainly needs special attention from both the community and the government.

The best interests of children in the future must be the basis for formulating a justice system for children. Because, if a child experiences inappropriate treatment under the age of 18 years (ACEs), then it is likely

to be detrimental to their development and well-being as adults. (Testa, 2021) said Neglect when following the legal process in childhood is also one of the influencing factors. Through the analysis of nationally representative data, it has been empirically proven that the relationship between ACEs and formal criminal justice extends to adulthood. The more children receive inappropriate treatment, the more children will be involved in criminal acts and be caught in legal processes that are detrimental to their growth and development in the future.

In Indonesia, the juvenile justice system is a progressive legal political breakthrough to protect the rights of children in conflict with the law. This is also the same as legal politics in the United States which makes the juvenile justice system one of the most popular American legal innovations. In 1899 in Illinois, juvenile courts began to emerge and thrive in most of the United States in 1925 (Anthony, 2019). Shortly after, juvenile courts spread beyond US borders and became global policy. Even in an era of mass incarceration and crime-fighting politics, no country has completely abolished the juvenile justice system. For more than a century, the juvenile justice system has been widely adopted. However, on the other hand, in practice juvenile justice has become the focus of criticism from researchers in America. As early as 1912, a progressive-minded pair of social reformers and academics, Breckinridge and Abbott, surveyed juvenile courts in Chicago, expressed optimism about future improvements, but later sharply criticized the court's lack of resources to do its job adequately. In 1967, the United States Supreme Court issued its first decision in juvenile court, in the landmark case *In re Gault* that children need reasonable protection, given that "in practice," juvenile justice "has not been wholly satisfactory." Over time and under political pressure, many states have narrowed the jurisdiction of juvenile courts by making it easier to try children as adults. The reason for this is that American society does not see all juveniles involved in legal cases as children, and does not view all children as children.

Therefore, the aspect of implementing guidance and rehabilitation in the juvenile justice system needs special attention and requires efforts to improve in practice. Japan has a special training and rehabilitation system for prisoners, especially for children who are in conflict with the law. Japan applies a system of therapeutic jurisprudence. This system is widespread in the justice system in Japan. In this country, there are two types of coaching officers for prisoners undergoing probationary periods, namely professional officers and volunteer officers. The officer from the volunteer element is called "Hogo Shi". The role of volunteer officers is quite unique. These officers do not come from official professional officers, but citizens with high social status. A volunteer officer is nominated twice a year by the selection committee in each community. Currently, there are more than 48,000 volunteer officers in Japan. They are involved in rehabilitation measures and create awareness about rehabilitation through community relations services. Volunteer officers meet with juvenile delinquents and release adult detainees twice a month. Volunteer officers are concerned about the lives of children who have legal cases, especially health, family and work aspects. Officers advise them during the coaching meeting process. In short, volunteer officers facilitate the rehabilitation and integration of prisoners, both adults and children, to be able to return to society (Ibusuki, 2019).

More in-depth observations are needed to analyze and criticize the implementation of the Juvenile Justice Act in the framework of protecting the best interests of children and in the perspective of legal politics in order to obtain an ideal formulation, especially in the implementation of various rights that children deserve

during the juvenile justice process, such as the right to receive rehabilitation, the right to obtain education and training, as well as other rights regulated in the Juvenile Justice System Act. The framework of the juvenile justice system for the best interests of the child is reflected in the implementation of restorative and diversion justice, which is intended to achieve the welfare of the child based on the principle of the best interest of the child. In other words, diversion is based on child protection and the fulfillment of children's rights. The Declaration of the Rights of the Child in 1959 became a reference for interpreting the principle of the best interests of the child. The second principle states that children should enjoy special protection and be given opportunities and facilities through legal and other means so as to enable the child to develop physically, mentally, morally, spiritually and socially in realizing the freedom and honor of the child. The purpose of diversion efforts is to prevent children from being detained, to avoid being labeled as criminals, to prevent repetition of criminal acts committed by children, and to hold children accountable for their actions. In addition, necessary interventions are carried out for victims and children without having to go through a formal court process. With the diversion system, this will prevent children from participating in the judicial system process which can have a traumatizing effect and keep children away from the negative influences and implications of the judicial process.

The ideal approach as mentioned above needs to be regulated in such a way in positive law in Indonesia. The problem that occurs is that currently positive law in Indonesia does not provide or at least does not heed the rights of child offenders so that they do not get proper treatment. Given that Indonesia has so far been using the negative *wettelijke bewijstheorie* theory or conventional evidence for almost all crimes in Indonesia (Bagus Surya, 2021). This is certainly very necessary to be enacted considering that the only thing that can do this is the parliament together with the executive. Even so, many do not understand how the ideal or best way to apply the rules regarding child crimes in the juvenile criminal justice system in Indonesia. Not to mention that there are many laws or regulations that overlap each other so that there is a lot of disharmony and overlapping of regulations that result in legal uncertainty (Bagus Surya, 2021). If this rule is ignored, it will cause danger and actually eliminate the essence of fulfilling the rights of children's crimes themselves. For this reason, this research is considered very important and urgent due to the following factors: first, the absence of ideal rules in the juvenile criminal justice system, causing various kinds of violations of children's rights, secondly, the juvenile criminal justice system in Indonesia is outdated and does not pay attention to the principles or principles of juvenile justice. the current concept that exists in all parts of the world, the three children are assets and successors of the nation so that it should be considered as well as possible by using the concept of restorative justice in the juvenile criminal justice system. For this reason, the formulation of the problems that will be discussed in this journal are: 1) How should the regulation of human rights for children in conflict with the law be? 2) How the restorative justice rules in the juvenile justice system law? and 3) What is the urgency of changing the law on the juvenile criminal justice system in Indonesia?

II. LITERATURE REVIEW

This scientific journal uses some literature or theory to support a more in-depth discussion. Among them are 1) the theory of legal politics, 2) the theory of justice, and 3) the theory of children. To find out more clearly the author's opinion about these three theories, the author will briefly describe them as follows:

What is meant by legal political theory is, according to Mahfud MD, is a legal policy or policy on law that will be enforced in the future either by making or changing laws in order to achieve state goals (Mahfud, 2014). Thus, legal politics is a choice of law to be repealed or not enforced, all of which are intended to achieve state goals. Definitions that have been put forward by several experts include Padmo Wahjono. Padmo said that legal politics is a basic policy that determines the direction, form and content of the law to be formed (Padmo, 1986). In another article, Padmo said that legal politics is the policy of state administrators regarding what criteria are used to punish something in it, such as the formation, application, and enforcement of the law (Padmo, 1986). Teuku Mohammad Radhie defines legal politics as a statement from the government about the law that will apply in its territory and about the purpose and development of the law to be built (Teuku Mohammad, 1973).

While the theory of justice according to John Rawls put forward as follows,

“For us the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation (Rawls, 2003).”

Gustav Radbruch said that there are 3 basic legal values namely certainty, expediency and justice. But of the three, the value of justice is more dominant to be used as a measure in making laws. This cannot be separated from the role of the value of justice which gives normative and constitutive nature to the law (Rismawati, 2015). Justice is normative, because justice is a requirement in making wise positive laws so that they can contain a broad understanding and look far ahead. However, justice is also constitutive, which means that justice is an absolute element that must exist in the body and soul of a law. Without justice, a rule does not deserve to be a law (Bernard, 2019).

As for the theory of children, the author refers to the positive law that exists in Indonesia. According to Law Number 4 of 1979 concerning Child Welfare, a child is someone who has not reached the age of 21 (twenty one) years and is not married. Judging from the juridical aspect, the definition of a child in Indonesian positive law is commonly defined as a person who is not yet an adult (minderjarig/person under age), underage people are often referred to as children under the supervision of a guardian (minderjarig ondervoordij). Starting from this aspect, when examined in the Indonesian Criminal Code, there is no standard provision for a child's age limit (Suwarnatha, 2011). The terminology of children has a general meaning and has an important position in the realm of science. Not only that, children also get an important position from other aspects, such as aspects of religious norms, law and sociology, so that the understanding and scope of children are more rational and actual in the realm of knowledge and in the social environment (Maulana Hasan, 2021).

III. METHODOLOGY

This study uses a qualitative research approach. Qualitative analysis is used to analyze the unique findings in the study. The qualitative research approach that will be used is using juridical-normative research, namely research methods that include research on the identification of laws and legal events based on the legal aspects of a law and its application in the field. The theme that the author takes in this study is how to apply the legal politics of child protection in the juvenile justice system within the framework of the best

interests of the child as regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, so that in his research he can directly review various mechanisms of the criminal justice system. children to find patterns of child protection so that better policies can be formulated in the future. In this study, the author uses normative juridical legal research, so the data and legal materials used have two types, namely primary data and secondary data. In addition, this study uses primary and secondary data collection techniques.

IV. RESULT AND DISCUSSION

1. REGULATION OF HUMAN RIGHTS AGAINST CHILDREN IN CONTACT WITH THE LAW

Children in a general sense get attention not only in science, but can be considered from the centralistic point of view of life, such as religion, law and sociology which makes children more rational and actual in the social environment (Ibid). Understanding of the sociological aspect of children is defined as a creature created by Allah SWT who always interacts in the community, nation and state. In this case, the child is positioned as a social group that has a lower social status than the community in which they interact. The meaning of the child in this social aspect is more directed at the protection of the child's own nature (Beni, 2007). In the preamble to the Convention on the Rights of the Child, November 20, 1989, which was ratified by Indonesia with Presidential Decree No. 36/1990, it was explained that children must be fully prepared to live life. The definition of children in the Indonesian legal system does not yet have uniformity, each legislation provides a different age limit for children. So from sharing the definition of child above, a common thread can actually be drawn that describes what or who is actually meant by a child and the various consequences that he gets as the titleholder of the child (Waludi, 2009). Legal understanding of children, where the notion of children is placed as an object as well as the main subject in a process of legitimacy, generalization and systematic rules governing children.

This legal protection will provide legal protection for the existence and rights of children, namely:

- a. Children as legal subjects. Children are classified as creatures who have human rights that are bound by laws and regulations.
- b. Equal rights and obligations of children A child will have the same rights and obligations as adults in accordance with the provisions and legislation.

The external elements in the child are:

- a. The existence of legal provisions with the principle of equality in law (equality before the law)
- b. The existence of special rights (privilege) from the government through the 1945 Constitution.

The definition of child protection is all efforts made to create conditions so that every child can carry out his rights and obligations for the development and growth of children naturally, physically, mentally and socially. Child protection is the embodiment of justice in a society; thus, child protection is sought in various fields of state and social life. Child protection activities have legal consequences, both in relation to written law and unwritten law. The law is a guarantee for child protection activities.

Efforts to protect children need to be carried out as early as possible, from the fetus in the womb until the child is eighteen years old. Starting from the concept of complete, comprehensive, and comprehensive child protection, the law places the obligation to provide protection to children based on the principles of non-

discrimination, the principle of the best interests of the child, the principle of the right to life, survival and development, and the principle of respect for the views/opinions of children.

Child protection can be divided into 2 (two) parts, namely:

- a. Juridical child protection, which includes: protection in the field of public law and in the field of civil law.
- b. Non-juridical child protection includes: social protection, health, education.

According to Ahmad Kamil, Child Protection is the responsibility of parents, family, community, government and state which is a series of activities that are carried out continuously for the protection of children's rights (Kamil & Fauzan, 2008). Extra supervision of children, both personally and as part of the community, needs to be done. This is intended to protect children's rights and prevent the entry of negative external influences that can interfere with children's growth and development (Harjon, 2007). Child protection as stated in Article 1 point 2 of the Law on Child Protection can be realized if it gets support and responsibilities from various parties. The support needed to realize the protection of children's rights in Indonesia is regulated in Article 20 of the UUPA which states that the state, government, local government, community, family, and parents or guardians are obliged and responsible for the implementation of child protection.

The Juvenile Criminal Justice System is the entire process of resolving cases of children who are in conflict with the law, starting from the investigation stage to the stage of mentoring after serving a criminal Law Number 11 of 2012 concerning the Juvenile Criminal Justice System article (1) number 1. Number 3 of 1997 concerning Juvenile Court. The Law on Juvenile Court was replaced because it did not pay attention to and guarantee the interests of the child, both the child of the perpetrator, the child of the witness, and the child of the victim. The Child Protection Act only protects children as victims, while children as perpetrators are sometimes positioned the same as adult perpetrators. This SPPA Law emphasizes the diversion process where in this judicial process it is very concerned about the interests of the child, and the welfare of the child. At each stage, namely investigations at the police, prosecution at the prosecutor's office, and examination of cases in court, it is obligatory to seek diversion based on Article 7 paragraph (1) of the SPPA Law. The term juvenile criminal justice system is a translation of the term The Juvenile Justice System, which is a term used to define a number of institutions that are members of the court.

Children in conflict with the law actually have the same rights as children in general. Talking about rights, rights are something that is inherent in humans since they are born into the world, as well as a child, then their rights are:

- a. Right to Survival (Survival Rights)

It is the right of the child to preserve and maintain life and to obtain the highest standard of health and the best possible care. Consequently, according to the Convention on the Rights of the Child, the state must guarantee the survival of the child's right to life, survival and development. In addition, the state is obliged to guarantee the right to the highest level of health that can be reached and to provide health services and treatment, especially primary health care.

- b. Right to Protection (Protection Rights)

Protection of children from discrimination, acts of violence, and neglect for children who do not have families and for refugee children. The right to protection from discrimination, including the protection of children with disabilities to obtain special education, care and training, as well as the rights of children from minority groups and indigenous peoples in the life of the state community.

c. Right to Growth (Development Rights)

All forms of education (both formal and non-formal) and the right to achieve an adequate standard of living for the physical, mental, spiritual, moral and social development of children. The child's right to education is regulated in Article 28 of the Convention on the Rights of the Child which states that:

- The state guarantees the obligation of basic education and provides it free of charge
- Encourage the development of various forms of education and are easily accessible to every child.
- Provide information and guidance on education and skills for children
- Take steps to encourage regular attendance at school and a reduction in dropout rates.

d. Right to Participate (Participation Rights)

The right to express opinions in all matters affecting children's rights. Against children who commit criminal acts, the arrest and detention of children must be in accordance with the existing law, which is used as a last resort. Children who are deprived of their freedom must also have access to legal aid and the right to fight the legitimacy of the revocation of freedom (Saraswati, 2009).

In addition to the Law on the Criminal Justice System, there is also a rule in Law No. 23 of 2002 on Child Protection, which indirectly accommodates the Principles of Child Rights as regulated in the Convention on the Rights of the Child. In this law, it is stated that there are 4 (four) General Principles of Child Protection which are the basis for bringing every State to carry out child protection, including:

- a. The principle of non-discrimination All rights recognized and contained in the Convention on the Rights of the Child (CRC), must be applied to every child without any distinction.
- b. The Best Interest of the Child Principle Reminds all child protection providers that the considerations in making decisions regarding the future of the child, are not based on the size of adults, let alone focus on the interests of adults. What according to the size of an adult is good, is not necessarily a good measure of the interests of the child. It may be that adults mean to help and help, but what really happens is the destruction of the child's future.
- c. Principles of the Right to Life, Survival and Development (The Right to Life, Survival and concerning the Development period) The state must ensure that every child will be guaranteed their survival because the right to life is something that is inherent in him, not a gift from the state or individuals. To guarantee the right to life, the state must provide a conducive environment, adequate living facilities and infrastructure, as well as access for every child to obtain basic needs. In connection with this principle, it has also been described in the previous discussion relating to children's rights.
- d. The principle of respect for the views of the child This principle emphasizes that children have personality autonomy. Therefore, he cannot only be seen in a weak, accepting, and passive position, but in fact he is an autonomous person who has experiences, desires, imaginations, obsessions, and aspirations that are not necessarily the same as adults (Refika, 2013). The protection of children's rights is very important, because violations of the protection of children's rights are essentially a violation of human rights, because violations of children's rights can be a big barrier to the survival and development of children (Saraswati, 2011). So it can be concluded that the perspective of protecting children's rights is a way of looking at all issues by

placing the position of the child as the first and foremost. The implementation of this perspective is when we always put children's affairs as the most important thing.

- e. The Principle of Child Protection, Hadi Supeno, said that actually children need certain parties, both parents/families, society, government, and the state as regulators (regulator bodies), implementers of the fulfillment of children's rights (executive body), and bearers of state obligations (state responsibilities). obligations).

Meanwhile, Peter Newel, in Child Protection, stated several subjective reasons in terms of the existence of children, so that children need protection, including:

- a. Recovery costs due to failure to provide child protection are very high. Much higher than the costs of having children covered.
- b. Children have a direct and long-term influence on the actions (actions) or the absence/doing of actions (actions) from the government and other groups.
- c. Children always experience separation or gaps in the provision of public services.
- d. Children have no voting rights, and no lobbying power to influence the government's policy agenda.
- e. Children in many circumstances do not have access to the protection and arrangement of children's rights.
- f. Children are more at risk of exploitation and abuse Protection of children and children's rights is very necessary because there are many factors that state that children are at risk of experiencing violence, neglect, exploitation, and other mistreatment, such as:
 - Methods of Parenting Using Violence That Are Applied Across Generations Such parenting usually still uses a military approach or an authoritarian approach. This type of parenting provides children with experiences of violence.
 - Poverty that Affects Urbanization, Changes in Lifestyle, and Changes in Expectations on Quality of Life The government which is unable to provide job opportunities to parents will have an impact on children dropping out of school because there is no money, and helping their parents.
 - Exploitative and Discriminatory Community Values There are still some parents in the community who think that children are theirs so that children's rights tend to be ignored.

Legal System That Does Not Support Child Protection Legal protection for children is still far from expectations. Not only are the rules for children contradicting each other, but this is also influenced by law enforcement officials who still do not have empathy or knowledge about children's rights in dealing with and solving children's problems (Ibid). Although it is generally regulated in the law, in reality it is very far from expectations.

We can see that in the law above, it is not regulated in detail or in more detail Especially regarding the child juvenile prisons (LAPAS), which is currently in the placement of a child who has received imprisonment or imprisonment which is referred to as a Correctional Student (Undang-Undang Dasar, 1995)., where the placement of the prison is joined or mixed with inmates whose age range is no longer categorized as the age of a child, namely someone who is an adult or old enough, this is felt to be quite ironic to see a child who should still be under the supervision and protection of his parents in particular in terms of daily interactions, but instead they are mixed and combined with convicts whose age category is no longer children or adults, can it be guaranteed in the prison that the rights of the child are protected and

protected and are they guaranteed after During his prison term in a correctional institution, the child can regret his actions and can become a better person in the future? Meanwhile, in his daily life in prison, he hangs out and interacts with older inmates and of course it can lead to more negative things that are not exemplary by the child or even violence or oppression of the child in the prison. And not to mention if we look at the problems or problems that occur within the Indonesian Penitentiary, namely where there is an accumulation or excess capacity (over capacity) contained in the Correctional Institution. Thus, what kind of legal protection system is guaranteed by the state for a child who commits a crime, especially in the fulfillment of children's rights or children's human rights in correctional institutions with the problems as above.

Actually in Indonesia there is a regulation regarding the Child Special Penitentiary (LPKA) which is regulated in Law no. 12 of 1995 concerning Corrections, but not every region and city or regency has its own child prison, LPKA is only found in every provincial capital where the position is deemed to require long distances and difficult access for parents to always supervise and visit the child who are in the prison, even though one of the rights of a child is to always receive supervision and protection from his parents in accordance with the 1945 Constitution, in article 34 mandates that: The poor and neglected children are cared for by the state paragraph (1) social security for all people and empowering the weak and incapable in accordance with the human dignity of paragraph (2). The state is responsible for the provision of proper health service facilities and public service facilities, paragraph (3). This mandate is a guarantee for the child because he does not yet have the ability to stand alone, both spiritually, physically and socially, it is the obligation of both parents, family, community and nation and state in meeting their needs, especially aspects of their welfare. By fulfilling their welfare aspects, children will grow and develop into the next generation that can be relied on in building families, communities, nations and countries (Abdulsalam & Andri, 2014). Then in Law no. 23 of 2002 concerning Child Protection Article 13 states that:

- (1) Every child while in the care of parents, guardians or any other party responsible for the care, has the right to receive protection from discrimination, economic or sexual exploitation, reasoning, cruelty, violence and abuse, injustice and other mistreatment.
- (2) In the event that a parent, guardian or child caretaker performs all forms of treatment as referred to in (paragraph (1), the perpetrator is subject to a heavier sentence.

Then Article 20 states that the State, government, community, family, and parents are obliged and responsible for the implementation of child protection. Whereas in this case where the State develops a protection system for children, especially in prisons, in reality there are still many Child Correctional Institutions which are in one complex with adult Penitentiary, even though a dividing fence has been made, but on certain occasions children can be harmed because of interacting with the residents of the Institution. Correctional adults can even get violent. Facilities and infrastructure for children living in prisons in Indonesia can be said to be concerning (Gultom, 2012).

The obligations and responsibilities for the protection of children are borne by: the state, government, society, family, and parents, as mandated by article 20 of the Child Protection Law. Protection for children can be interpreted as legal protection against various freedoms and children's rights. There are 10 children's rights that need to be considered, namely:

1. The right to play;
2. The right to education;
3. The right to protection;

4. Right to identity;
5. The right to obtain nationality status;
6. The right to obtain food;
7. The right to get access to health;
8. The right to recreation;
9. Right to get Equality; and,
10. The right to have a role in development.

A study by the State Ministry for Women's Empowerment and Child Protection of the Republic of Indonesia in 2010 stated that the urgent matters to be fought for for the rights of children living in prisons are:

- a. No opportunity to go to school because they had to be detained;
- b. Inadequate access to health services;
- c. Children's living conditions are very unfavorable, for example inadequate beds;
- d. The available sanitation is also not good;
- e. Children detained with adults are vulnerable to violence;
- f. Detention of children often makes children become stressed.

This is certainly ironic in this country because the legal system is not good and also the wrong application is the root of the problem in the application of human rights, especially for child convicts. In fact, the regulation and implementation of good human rights reflects the ideal state of law. According to Sudargo Gautama, there are 3 characteristics or elements of a rule of law, namely (Fadjar, 2004):

- a. Power Limit
There are restrictions on state power over individuals, meaning that the state cannot act arbitrarily. State actions are limited by law, individuals have rights to the state or people have rights to rulers.
- b. Legality Principle
Every state action must be based on a pre-established law which must also be obeyed by the government or its apparatus.
- c. Separation of Powers
In order for these human rights to be truly protected, the separation of powers means that the body that makes laws and regulations, implements and adjudicates must be separated from each other and not in one hand.

The Southeast Asian and Pacific jurists as stated in the book "The Dynamics Aspects of the rule of law in the Modern Age", stated the following requirements for the rule of law (Yunas, 1992):

- a. Constitutional protection in the sense that the constitution apart from guaranteeing individual rights must also determine the procedural way to obtain the protection of guaranteed rights;
- b. an independent and impartial Judiciary;
- c. Freedom of expression;
- d. Free elections;
- e. Freedom to organize and oppose;
- f. Civic education (citizenship).

From the definition of the state, it can be said that it is appropriate and mandatory for the rule of law to uphold human rights both in general and against child prisoners in prisons and children who are in conflict with the law. Therefore, it is necessary to change the law through good legal politics between the DPR RI and the Government of the Republic of Indonesia in order to get a solution to policies related to the

fulfillment of the rights of children who are dealing with the law which is still not ideal until now. Because if the legal politics in the DPR does not work well and this violation continues to be allowed, then this will certainly harm children who are dealing with the law both physically and psychologically.

2. PENERAPAN KONSEP RESTORATIVE JUSTICE TERHADAP PELAKU KEJAHATAN ANAK

Restorative justice is a thought that responds to the development of the criminal justice system by focusing on the need for community involvement and victims who feel excluded from the mechanisms that work in the current criminal justice system. In addition, restorative justice is also a framework that can be used in responding to a crime for law enforcement. Handling criminal cases with a restorative justice approach offers different views and approaches in understanding and handling a criminal act. In the view of restorative justice, the meaning of crime is basically the same as the view of criminal law in general, namely attacks on individuals and society and social relations. However, in the restorative justice approach, the main victim for the occurrence of a crime is not the State, as in the current criminal justice system. Therefore, crime creates an obligation to fix the damaged relationship due to the occurrence of a crime. Meanwhile, justice is defined as the process of finding solutions to problems that occur in a criminal case where the involvement of victims, communities and perpetrators is important in efforts to repair, reconcile and guarantee the continuity of the repair business.

Without ignoring the mechanisms that work in the formal legal system, settlement mechanisms through deliberation institutions also work in the community. In various principles and models of the restorative justice approach, the dialogue process between the perpetrator and the victim is the basic moral and the most important part of the application of this justice. Direct dialogue between the perpetrator and the victim allows the victim to express what she feels, expresses hopes that the rights and desires of a criminal case will be fulfilled. Through dialogue, the perpetrator is also expected to be moved to correct himself, realize his mistake and accept responsibility as a consequence of a crime committed with full awareness. From this dialogue process, the community can also participate in realizing the results of the agreement and monitoring its implementation. Therefore, basically restorative justice is also known as settlement of cases through mediation (penal mediation). Penal mediation in criminal law has a noble purpose in resolving criminal cases that occur in society. Conceptually, Stefanie Tränkle said in Barda Nawawi Arief: The penal mediation developed was based on the following ideas and working principles:

- a. Conflict Handling (Konfliktbearbeitung): The task of the mediator is to make the parties forget the legal framework and encourage them to be involved in the communication process. It is based on the idea that crime has created interpersonal conflict. That conflict is aimed at by the mediation process.
- b. Process Orientation/Prozessorientierung: Penal mediation is more oriented to the quality of the process than results, namely: making the perpetrators of criminal acts aware of their mistakes, resolving conflict needs, calming victims from fear, etc.
- c. Informal Process (Informal Proceeding/Informalität): Penal mediation is an informal process, not bureaucratic in nature, avoiding strict legal procedures.
- d. Active and autonomous participation/Parteiautonomie/Subjektivierung: The parties (perpetrators and victims) are not seen as objects of criminal law procedures, but rather as subjects who have

personal responsibility and the ability to act. They are expected to act of their own free will (Barda, 2009).

Therefore, in penal mediation and in restorative justice, the concept of mediation is put forward in the dialogue process, known as a communication medium, which is the main capital in the organization of mediation institutions. The whole process can be found in the model of implementing restorative justice, as stated by Hj. DS. Dewi and Fatahillah A. Gratitude:

- a. Victim Offender Mediation (VOM: Mediation between perpetrators and victims) is a forum that encourages meetings between perpetrators and victims who are assisted by mediators as coordinators and facilitators in the meeting
- b. Conferencing is a forum that is the same as VOM, but in this form there are differences, namely the involvement of the settlement not only involves the perpetrator and the direct victim (primary victim), but also indirect victims (secondary victim), such as family or close friends of the victim and the family and friends of the victim. close friend of the perpetrator. The reason for the involvement of the parties is because they may be directly or indirectly affected by the crime that occurred or they have a high concern and interest in the outcome of the deliberation and they can also participate in pursuing the success of the process and its ultimate goal.
- c. Circles is a model for the application of restorative justice with the widest involvement compared to the previous two forms, namely a forum that is not only victims, perpetrators, families or mediators but also community members who feel interested in the case. The three basic models of the application of the restorative justice approach are basically forms that are variations of the dialogue model which is the implementation of the form of deliberation and consensus. From this basic value, restorative justice as the implementation of the basic values that exist in Indonesian society has a strong value foundation (Dewi & Syukur, 2011).

Criminal cases that can be resolved out of court through penal mediation or restorative justice are as follows:

1. Violations of the criminal law are included in the category of complaint offenses, both absolute complaints and relative complaints.
2. Violation of the criminal law has a fine as a criminal threat and the violator has paid the fine (Article 80 of the Criminal Code).
3. Violation of the criminal law is included in the category of "violation", not "crime" which is only threatened with a fine.
4. Violations of the criminal law include criminal acts in the field of administrative law which place criminal sanctions as the ultimum remedium.
5. The violation of the criminal law is categorized as light/mild and law enforcement officers use their authority to exercise discretion.
6. Violation of ordinary criminal law which is terminated and not processed by the Attorney General (deponir) by the Attorney General in accordance with his legal authority.
7. Violations of the criminal law include the category of violations of customary criminal law which are resolved through customary institutions.

Settlement of juvenile criminal cases that is oriented to the interests of the perpetrator as the goal of the restorative justice approach, in accordance with the provisions of Article 10 paragraph (1) of the Covenant on Civil and Political Rights which guarantees that everyone who is deprived of his freedom must be treated humanely with respect for his inherent dignity. Restorative justice is an effort to treat children in conflict

with the law according to their dignity. Restorative justice is a process of transferring from a formal to an informal criminal process as the best alternative for handling children as criminals by means of all parties involved in a particular crime together solving problems to deal with the consequences of children's actions in the future. Criminal prosecutions from public prosecutors rarely find criminal charges, but actions so that if the child accused is proven guilty, he is sentenced to return to his parents or at least according to the length of time the child accused is in temporary detention. Efforts to carry out legal orders so that the imposition of imprisonment on children is a last resort (*ultimum remedium*), the best decision is in the form of actions to return the child accused to his parents to be educated and fostered properly.

The existence of efforts to implement restorative justice does not mean that all children's cases must be given a decision in the form of actions being returned to their parents, because judges must of course pay attention to certain criteria, including:

1. the child has committed a delinquency for the first time (first offender);
2. the child is still in school;

The crime committed is not a serious crime of morality, a crime that results in the loss of life, serious injury or lifelong disability, or a crime that interferes with / harms the public interest. The juvenile justice system itself is actually good, but a bad system still returns to the willingness and ability of its implementers to prioritize decisions and protection and provide the best for children who are in conflict with the law with the principle of the best interest of the children.

3. URGENSI PERUBAHAN UNDANG – UNDANG SISTEM PERADILAN PIDANA ANAK DI INDONESIA

According to the author, there are several things that need to be changed from Law no. 11 of 2012 concerning the Juvenile Criminal Justice System. First, there needs to be a change in the restorative justice system. In Article 9 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System which states that: investigators, public prosecutors, and judges in conducting diversion must consider: the category of crime, the age of the child, the results of community research from the father and the family and community support. The diversion or restorative justice agreement must obtain the consent of the victim and/or the victim's child's family as well as the willingness of the child and his family, except for: a crime in the form of a violation, a minor crime, a crime without a victim; or the value of the loss of the victim is not more than the value of the local provincial minimum wage. The explanation of article 9 paragraph (1) letter a states that diversion or restorative justice is not intended to be carried out against perpetrators of serious crimes, such as murder, rape, drug dealers, and terrorism, which are punishable by a sentence of more than 7 (seven) years. According to the author, all or all child crimes should be allowed or restorative justice can be done. Because according to the principle of *ultimum remidium*, that imprisonment for children should be the last resort or the last resort if there is no other legal remedy. Because it is closer to the goodness and welfare of the convict child himself. In addition, with this regulation, it can reduce the potential for overcapacity of correctional institutions so that children's rights can be guaranteed.

Second, there is a need for clear and detailed arrangements for juvenile correctional institutions in the Juvenile Criminal Justice System Act. In Indonesia, not every Province and City-Regency has its own Child Correctional Institution. There are still many juvenile prisons that are in the same complex as adult prisons, even though a dividing fence has been created, but on certain occasions children can be harmed because they interact with adult prison residents and can even get violent. Facilities and infrastructure for children

living in Correctional Institutions in Indonesia can be said to be apprehensive. For children aged 12 to 18 years, besides they need friends to hang out with, they also need privacy. Whereas the Correctional Institutions for children that exist to accommodate their occupants ideally are not sufficient, so they live in rooms crowded together. The food they consume also does not meet their needs (Gultom, 2012). Children aged 12 to 18 years are known as children in puberty, where physical changes become very fast, the reproductive glands have begun to function, so that secondary sex signs in children grow, such as changes in voice, growing whiskers in boys, enlarged breasts and buttocks in girls, wet dream experiences for boys and menstruation for girls. These events cause worry and anxiety for them and even emotional shocks. The consequences of self-changes that occur during puberty include: children want their privacy to be respected, so they want to be alone, bored easily, incoordination, social antagonism, heightened emotions, loss of self-confidence, and being too simple in acting. In addition, teenagers are also restless because they find the incompatibility of the moral values taught with the behavior of adults in their environment. As a result, teenagers spill their anger in their way, when in fact teenagers have great attention to the community in their environment (Hurlock, 1991).

Therefore, the author strongly recommends changing and adding the rules in the SPPA Law, namely:

- a. Making rules related to the overcapacity of child correctional institutions;
- b. Create child correctional institutions in each area;
- c. Make rules for the improvement or standardization of facilities and infrastructure of correctional institutions;
- d. Creating a restorative justice system for all criminal acts of children.

It is these factors and suggestions that make the author push for immediate changes in the SPPA Law so that children involved in the law can have their rights fulfilled. To change it, the House of Representatives (DPR) can use the omnibus law system so that all matters relating to the juvenile criminal justice system. Because, only with the omnibus law system is a rule or law able to regulate more than one material or topic in one manuscript.¹ The author imagines that if the SPPA Law regulates all kinds of things that can fulfill human rights for children without exception, then children who are in conflict with the law will receive proportional sanctions without erasing or eliminating the child's future. But in reality, our DPR is currently not in optimal condition considering that currently the political parties from both the opposition and the government coalition are getting ready and competing to win in the upcoming 2024 Legislative and Presidential Elections. They (political parties) are busy thinking about who they will nominate in the upcoming presidential election.

Furthermore, to the author's knowledge, the DPR currently has not included this (change in the SPPA Law) as a national legislation program/PROLEGNAS that must be discussed and determined by the target every year. Based on the Law on the Establishment of Legislations, Prolegnas is a priority scale of the law-making program in the context of realizing a national legal system.² The preparation of the National Legislation Program is carried out by the DPR, DPD, and the Government.³ The National Legislation Program is

¹ Bagus Surya Prabowo, Reformasi Pembentukan Undang-Undang Dengan Metode Omnibus Law Dalam Mencapai Pembangunan Nasional Yang Berkelanjutan, *Prosiding Kusumaatmadja Law Simposium*, Yogyakarta, Fakultas Hukum Universitas Islam Indonesia, p. 112.

² Article 17 of the Law concerning the Establishment of Legislation.

³ Article 20 paragraph (1) of the Law concerning the Establishment of Legislation.

determined for the medium and annual terms based on the priority scale for the formation of the Draft Law.⁴ The preparation and determination of the medium-term Prolegnas is carried out at the beginning of the membership of the DPR as Prolegnas for a period of 5 (five) years.⁵ Before preparing and determining the medium-term Prolegnas, the DPR, DPD, and the Government evaluate the medium-term Prolegnas for the previous DPR membership.⁶ The preparation of the National Legislation Program within the DPR which is coordinated by the DPR's apparatus which specifically handles the field of legislation (DPR RI Legislation Body) is carried out by considering proposals from factions, commissions, members of the DPR, DPD, and/or the public.⁷

Seeing these rules, a law that is about to be revised by either the DPR or the Government's initiative must go through a process that is not easy. This means that the SPPA Law that wants to be revised or amended must be included in the national legislation program when the members of the DPR for the latest period, namely the years 2024-2029 are elected in the next period. The amendments to the SPPA Law cannot be included in the period of members of the DPR who are currently in office because the planned national legislation program from 2019 is ongoing and there are still many laws that have not been ratified by the DPR, such as the Law on the Protection of Sexual Violence or, most importantly, the Book of The new Criminal Law Act. Even if the SPPA Law revision is elected in the National Legislation Program in the coming period, it is not certain that this can be immediately ratified considering that this Law has no direct benefit or interest to political parties in the DPR. Even so, we still have to think positively and try our best so that the law can be revised immediately so that the rights of children who are in conflict with the law can be fulfilled. If this right is fulfilled, it is certain that children who are in conflict with the law can become much better children, benefit society and religion and can make Indonesia proud in the international world one day.

V. CONCLUSION

From the discussion above, the conclusions are as follows:

1. The regulation of human rights for children in conflict with the law is not very good because there are still many things that need to be addressed, such as poor facilities and infrastructure, mixing between Child and Adult Prisons, the uneven existence of Child Juvenile Prisons in each region, as well as Child Juvenile Prisons who have overcapacity, causing violations of children's rights both physically and psychologically.
2. The rules of restorative justice have actually been regulated in the Juvenile Justice Criminal System Act (SPPA). However, it is only regulated for certain criminal acts such as violations, minor crimes and complaint offenses. As for serious crimes that result in loss of life, disability for life and others, a restorative justice system is not applied.

⁴ Article 20 paragraph (2) of the Law concerning the Establishment of Legislation.

⁵ Article 20 paragraph (3) of the Law concerning the Establishment of Legislation.

⁶ Article 20 paragraph (4) of the Law concerning the Establishment of Legislation..

⁷ Article 21 paragraph (2) and paragraph (3) of the Law concerning the Establishment of Legislations.

3. The Juvenile Justice Criminal System Law (SPPA) needs to be revised because it has several problems, such as a) Child Juvenile Prisons that are already overcapacity, b) Child Juvenile Prisons are not evenly distributed or existed in each region, c) Child Juvenile Prisons facilities and infrastructure are still very poor. minimal, and d) a restorative justice system that is only applied to certain criminal acts. Therefore, the DPR needs to amend this Law as soon as possible by using the omnibuslaw system so that the legal politics running in the DPR can more easily and can regulate other matters or themes in one text, namely the Juvenile Justice Criminal System Act.

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