



## Reconstruction of Legal Protection Regulations for Children in Conflict with the Law in the Indonesian Criminal Justice System Based on the Values of Justice

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### **Abstract**

The Indonesian government guarantees the protection and welfare of children through the establishment of Law Number 23 of 2002 concerning Child Protection. This research aims to: 1) examine the regulation of legal protection for children in conflict with the law in Indonesia's criminal justice system; 2) identify its weaknesses; and 3) explore the reconstruction of these regulations based on the value of justice. The research uses a constructivism paradigm with a statute, case, and conceptual approach. It is descriptive, using secondary data (primary, secondary, and tertiary legal materials) collected through literature review and analyzed qualitatively. The results of the study are: 1) The protection regulations for children in Indonesia's criminal justice system are unfair, with diversion intended for case resolution instead being used to negotiate sanctions for children; 2) The weaknesses in the regulation of legal protection for children in conflict with the law in Indonesia's criminal justice system include: Legal substance issues, where Law Number 11 of 2012 remains repressive, failing to ensure diversion and overlooking children's welfare; Legal structure challenges, such as insufficient qualified law enforcement personnel and poor coordination among institutions handling child crime cases; Legal culture issues, where some people equate justice with punishment, rather than focusing on rehabilitation and the welfare of children; 3). The reconstruction of legal protection for children in conflict with the law in Indonesia aims to shift from an unjust system to one rooted in justice, ensuring fair treatment and prioritizing the welfare of children within the criminal justice system. The reconstruction of regulatory norms for child protection in the Indonesian criminal justice system focuses on revising Law Number 11 of 2012, particularly Articles 1(3), 71(3), and 81(4), to align with the value of justice for children in conflict with the law

**Keywords:** *Reconstruction; Regulation; Legal Protection; Children*

## Introduction

The problem crime in Indonesia is becoming attention since dozens years ago. Because of the level of such a crime jumped in 1970 the government of the Republic of Indonesia issued Instructions President of the Republic of Indonesia Number 6 of 1971. Instructions the about countermeasures problem national, namely mischief teenagers, abuse narcotics, counterfeit money, smuggling, subversion and surveillance towards foreigners.

Improvement amount crimes committed by members public every nation viewed by experts as natural thing. Some bachelor believes " everyone has opportunity For do action deviate, because crime is symptoms that concern everyone " <sup>1</sup>. Therefore, that crime viewed in a multidimensional and multidisciplinary manner by all party. More carry on Soerjono Soekanto<sup>2</sup> say that man own desire for life in a way orderly, harmonious, in tune with society and applicable laws, will but Because reason certain cause somebody violate applicable law, which is a violation the happen Because intention and also negligence.

Need man for life orderly, harmonious, in tune, peaceful and calm still awake in accordance with rule applicable law in frame for give security to every citizen. However, for give security to every Citizenship is required action apparatus enforcer law with carry out legal processes to perpetrator act criminal. Implementation of legal processes to perpetrator act criminal is at in a system consisting of from related subsystems called with the judicial system criminal *justice system*.

According to Marjono Reksodiputro <sup>3</sup>judicial system criminal is a system in public For to overcome problem crime, aimed at For control crime to be within the limits of tolerance as well as system For finish report or complaint people who are victims of crime with submit perpetrator crime to hearing court to decide guilty so that get sanctions criminal.

Judicial system criminal *justice system* consists of from four components that is police, prosecutors, courts and institutions correctional. Fourth component the Work The same in to uphold justice. Stages in the judicial process criminal that is stages prejudgment which includes investigation and inquiry, stages judicature which includes examination and verification to demands prosecutor prosecutor common in court court as well as stage post-judicial which includes implementation the decision that has been read out in trial.

Judicial system criminal *justice system* becomes device law in to overcome various form crime in society. Use system justice criminal *justice system* is considered as form State response in to overcome crime and existence business from enforcement law criminal. Therefore that, that system expected capable finish problem the crime that occurred in the middle public.

According to Davies in Marlina, the term <sup>4</sup>judicial system criminal *justice system* describes *the word system covers an impression of a complex to end* (the word system shows existence a impression

<sup>1</sup> Ninik Widiyanti and Yulius Warsita, 1987, *Crime in Society and its Prevention*, Jakarta, Bina Aksara, p.6

<sup>2</sup> Soerjono Soekanto, 1989, *A Sociology law Regarding Social Problems, Bandung*, Citra Aditya Bakhti, p. 7. According to Soerjono Soekanto that " during his life man own desire for life regular, but sometimes somebody Once violate law. Violation law That Can intentional or no. Violation heavy, due to reasons certain. See also in book Purnadi Purbacakara and Soerjono Soekanto, 1979, *Legislation and Jurisprudence*, Bandung, Alumni, p. 1. Soerjono Soekanto say " inside" aspect life personal, human have objective main that is harmony in socializing life with fellow human beings who include field polite polite and harmonious with order and tranquility which includes in field law.

<sup>3</sup> Marjono Reksodiputro, 1997, *Human Rights Human In The System Justice Criminal*, Jakarta, Service Center Justice and Legal Service of Institutions Criminology, University of Indonesia, p. 84

<sup>4</sup>Marlina, Op.cit, p. 6

from a complex object consisting of from parts and each sub- part with part other each other relate One each other and walk from beginning until end.

Based on understanding said, it is clear that purpose of the justice system criminal justice *system* will come true if to four agency enforcer law the cooperate in a way integrated *criminal* justice administration because to four agency enforcer law the Work like a " vessel" related " even though each agency That stand alone and have their respective superiors.

The principles of The Beijing Rules above not yet fully done although in Constitution Number 11 of 2012 which revokes Constitution Number 3 of 1997 Concerning Juvenile Justice (System) Justice Child Criminal Procedure). Among them are the Public Prosecutor in handle case child Still give demands criminal No action. As the result in special judge trial the expected child can give justice to child, in fact still have a view for give punishment. This is can We Look with Still the amount the fall law criminal prison to child compared to with punishment action, return to parents / guardians, coaching by the foundation or department social and care provided by the state.<sup>5</sup>

The Drop criminal prison to child is not something wrong, will but should previously to drop decision criminal prison judge weighs return whether decision in the form of punishment prison sentence imposed has given protection to child and has given benefit as Spirit Birth Constitution protection child. Question This appear after child finished operate the punishment, can child the being a good person or not do act criminal Again or can child after promise law can accepted with Good in society?

There are several problems in implementation of the judicial system criminal children in Indonesia, demanding importance for under review return draft diversion and restorative justice in implementation of the judicial system criminal children in Indonesia. The theory used in analyze draft diversion and restorative justice in the justice system criminal is theory policy countermeasures crime as well as Spirit Birth *The Beijing Rules* and Laws Number 11 of 2012 which revokes the Law on Number 3 of 1997 Concerning Juvenile Justice (System) Justice Child Criminal Act).

The Republic of Indonesia must think and take quick and precise action for look for solution in solve problem against the justice system criminal children in indonesia. Maker policy must start think in a way observant and careful Have you done it? provision international about protection child in convention right Children and Beijing Rules ratified in a way perfect in regulation legislation that regulates protection children in Indonesia. Which is wrong important is related existence convention diversion and restorative justice as One a concept that seeks give protection to children facing each other with law.

Draft diversion and restorative justice can have carried out by the authority enforcer law with operate right its discretion, while restorative justice can be developed with turn on return values equality, unity, deliberation and consensus in decide a punishment to children facing each other with law.

According to G. Pieter Hoefnagels, involvement public in make policy countermeasures crime (*criminal policy*) is very important, because policy countermeasures crime (*criminal policy*) is rational effort from public as reaction to crime. Next it is said that policy countermeasures crime is knowledge for to overcome crime. <sup>6</sup>Therefore that, policy countermeasures crime done with rational and comprehensive planning as response to crime. The policies implemented including How designing behavior human being who can considered as crime.<sup>7</sup>

<sup>5</sup> See Article 24 of the Law Number 11 of 2012 concerning Changes to the Law Number 3 of 1997 Concerning Juvenile Justice (System) Justice Child Criminal Act)

<sup>6</sup>G. Pieter Hoefnagels, 1972, *The Other Side of Criminology, an Inversion of the Concept of Crime*, Hollan, Kluwer Deventer, p. 57

<sup>7</sup>Ibid, p. 99

Prevention efforts crime with non-penal approach is form effort countermeasures in the form of prevention without use law criminal with influence view public to crime and punishment through mass media. Concept diversion and restorative justice are alternative form of solution act directed criminal to settlement informally with involving all related parties in act crime that occurred. Settlement with draft diversion and restorative justice are a form settlement act crime that have been develop in several countries in to overcome act criminal including the Unitary State of the Republic of Indonesia.

The problem the biggest from children facing each other with law is Because Constitution Number 11 of 2012 concerning System Justice Child Criminalization does not relevant with Spirit Birth Constitution that makes it prison is effort last (ultimum remedium). Because the child who is facing with law, children in conflict with law Still directed for completed through penalty path, the consequences is will There is mental and psychological pressure to child in conflict with law the so that bother grow flower child.

Children must be handled in a way different with adults. Constitution Number 11 of 2012 concerning System Justice Child Criminal Procedure, in paradigm of handling model children facing each other with law Still using the justice model retribution ( *retributive justice* ), namely punishment as choice main or revenge on act crimes committed.

Based on the principles of the SPPA Law as explained above, diversion does not need to limit the threat of imprisonment to less than 7 (seven) years and not a repetition of the crime, but diversion efforts must be implemented for all crimes committed by children. Legal treatment of children must not be differentiated as regulated in Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which stipulates that everyone has the right to recognition, guarantees, protection, and certainty of fair law and equal treatment before the law.<sup>8</sup> In the judicial process criminal law in general and the judicial process criminal law in Indonesia in particular, there are a number of stages or the process that must be passed for the seekers justice good at level investigation, inquiry, prosecution, court hearing until stage the fall judge's decision.<sup>9</sup> Remember If associated with child do act criminal the is a very important element, and must completed with accountability law.<sup>10</sup>

Based on description above, author interested for to study matter the more in with do study for writing dissertation entitled: " Reconstruction Regulation Legal Protection for Children in Conflict with Law In The System Justice Indonesian Criminal Code Based on Justice Values".

## Research Methods

Writer in study This use paradigm constructivism, a paradigm that views that knowledge law That only deal with regulation legislation solely. Law as something that must be done applied, and more tend for No to question mark justice and its usefulness for society. Legal studies and their enforcement only range about what is right and what is not right, what is wrong and what is not wrong and more other forms nature prescriptive.

Study This is study empirical normative law. So that the approach used in study This is approach Law (*statute approach*), approach case approach, and case study approach conceptual (*conceptual approach*).

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<sup>8</sup> Ernis, Y. (2016). *Diversion and Justice Restorative In Resolution Case Action Child Criminalization in Indonesia*. Journal Scientific Legal Policy, Vol.10, (No.2), pp.163-174.

<sup>9</sup> Kristian and Christine Tanuwijaya, *Settlement of Criminal Cases with the Concept of Restorative Justice in the Integrated Criminal Justice System in Indonesia*, Jurnal Mimbar Justicia, Vol. 1 No. 2, 2015, p. 602

<sup>10</sup> I Wayan Gede Phalosa Jitaksu Wahendra and I Wayan Parsa, 2019, "Criminal Accountability for Perpetrators of New Types of Narcotics Abuse in Indonesia", *Scientific Journal of Law Students, Udayana University Volume 8 Number 6*, 2019

Types of research used in finish dissertation This is method study legal descriptive analysis, namely research conducted with method research material library ( secondary data ) or study law library<sup>11</sup>, then described in the analysis and discussion. The types of data used are primary and secondary data. To obtain primary data, researchers refer to data or facts and legal cases obtained directly through field research including statements from respondents related to the object of research and practices that can be seen and related to the object of research. While secondary data is done by means of literature study. This secondary data is useful as a theoretical basis for the analysis of the main problems in this study.

The analysis method used is method qualitative, is a method research that produces descriptive data analysis, namely what was stated by the respondent in a way written or verbal and also his real behavior researched and studied as something whole.<sup>12</sup>

## **Discussion**

### **1. Regulation Protection Towards Children Who Are Facing With Law In The System Justice Indonesian Criminal Justice is Not Yet Just**

Fulfillment on rights child said, will can prevent happened - it happened mischief child. As protection law of a nature preventive, namely in the form of effort prevention before the occurrence act criminal. On the fulfillment of rights said, then will created justice for child. Protection Not only when child do act criminal, but also must give as form fulfillment on right basic man.

Related with justice for child in conflict with law, then important thing is to be sure all child for to obtain services and protection optimally from system justice and legal process. Both face to face with law in position as a victim, or a child conflicted with law when child positioned as suspect or defendant perpetrator act criminal.<sup>13</sup>

Mechanism diversion used for settlement case crimes committed by children as set up in Constitution Number 11 of 2012 more tend give protection law in a way repressive, because done after the occurrence act criminal. Diversion is also not can done to all act criminal although done by children Because existence restrictions or condition he did diversion.

Protection for child No only when child face to face with law, but protection Children are also influenced by the environment around. When the child No get protection from family, then child will be looking outside home. Here importance institutions that can help child in finish the problem, and become place reference child for consult and be heard his complaint.

Constitution Number 11 of 2012 is indeed has push the birth of 4 (four) institutions, namely the Development Institute Special Children's Institution (LPKA), Institution for Implementing Welfare Social (LPKS), Service Room Special Children (RPKA) and Temporary Child Placement Institutions (LPAS) as replacement place detention, correctional and correctional institutions child. LPKA is institution or place child serving his sentence, while LPAS is place temporary for child during the trial process ongoing.<sup>14</sup> Institutions the only functioning as replacement place detention, guidance and institutions child protection.

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<sup>11</sup> Ed iwarm an, 2010, *Mon o g r a f, Me t o d o l o g i S t u d y L a w*, M e d a n: P r o g r a m P o s t g r a d u a t e U n i v. M u h a m m a d m a d i y a h S u m a t e r a N o r t h, M e d a n, h l m. 2 4.

<sup>12</sup> *Ibid.*

<sup>13</sup> Erna Dewi, et al., *op.cit.*, p. 34.

<sup>14</sup> *Ibid.* p.73

As effort protection law preventive, then Already should settlement case criminal child carried out outside court, which in matter This there is place for discuss related problem child and decide what is that best for interest child said. Diversion is not emphasize matter said, so that implementation diversion in settlement case criminal child Not yet can it is said in accordance with values Pancasila justice.

In the Constitution Child Protection mentioned that child need protection special in various circumstances, one of which when face to face with law. Against children facing each other with law, the state provides legitimacy hope change behavior children and involvement Lots party in Constitution Number 11 of 2012 concerning System Justice Child Criminal Act or later known with SPPA Law. With bring paradigm new in procedural law in Indonesia, namely Restorative Justice or prioritize recovery to condition beginning No with revenge make public as booster change and recovery beside apparatus enforcer the law that must be willing removing the stigma and how to the old view is retributive or revenge. In Law Number 11 of 2012 concerning System Justice Child Criminal Procedure mandates that regulation technical to Constitution the must explain about the processes that are of a nature technical like mechanism diversion, handling child who has not 12 years old until mechanism coordination between stakeholders involved in Handling case children facing each other with law. Even though has set up such that appearance in the The SPPA Law is still Lots interpretation related with principle protection law to the child who did act criminal like about detention and custody child in the explain the case process criminal, assistance law until the reintegration process has not been completed in a way explicit set up in Constitution so that need regulation more technical details. Up to moment This regulation technical as derivative The SPPA Law That is Regulation Government (PP) regarding Guidelines Implementation of Diversion and Handling of Children Under 12 (Twelve) Years of Age and Regulations Government of the Republic of Indonesia Number 8 of 2017 Concerning Implementation Procedures Coordination, Monitoring, Evaluation, and Reporting System Justice Child Criminal. However Still Not yet can answer about How protection in a way integrative provided to the child who did act criminal.

Article 28 letter G of the 1945 Constitution of the Republic of Indonesia is meaningful that every citizen has the right on protection from Good Country for himself myself, family, honor and also dignity and wealth the thing he have under his power. Everyone has the right for a sense of security and protection from existence threat for do or act that is not in accordance with right basic human. Protection the law in question solely for interest justice for seeker justice. Justice formed by right thinking, carried out in a way fair and honest as well as responsible answer on action taken. Sense of justice and law must enforced based on Positive Law For to uphold justice in law in accordance with reality the community that wants achievement a safe and peaceful society. Justice must be built in accordance with ambition law (Rechtidee) in a state of law (Rechtsstaat), not a state of power (Machtsstaat).

Enforcement law and justice must use track right thinking with tool evidence and goods proof for to realize justice law and content law must be determined by belief ethical, fair whether or not a case. Legal issues become real if the devices law carry out with Good as well as fulfill, comply the rules that have been standardized so that No happen misappropriation rules and laws that have been done in a way systematic, meaning use codification and unification law for the sake of realization certainty law and justice law.<sup>15</sup>

Enforcement law done when somebody considered violate provision law criminal material or provision in Regulation legislation. The term act criminal originates from well known terms in law Dutch criminal law, namely strafbaarfeit. Although term This there is in WvS Netherlands and based on principle concordance term This also applies to WvS Dutch East Indies (Criminal Code). But No There is explanation official about What do you mean with Therefore that, the experts law try For giving meaning

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<sup>15</sup>Ibid., p. 44

and terms that, however until moment This Not yet There is uniformity opinion about What do you mean with strafbaarfeit.<sup>16</sup>

Perpetrator act criminal can be convicted if fulfil condition that act the crime he committed fulfil the elements that have been determined in Law. Viewed from corner the occurrence prohibited action, someone will accountable on actions said, if action the oppose law as well as No There is reason justifier or abolition characteristic oppose law for the crime he committed. And seen from corner ability responsible answer so only someone who is capable responsible answer that can accountable on his actions.

Constitution The Juvenile Court uses the term “Naughty Child” for the child who did act criminal and also action others who violate regulation written and also No written (law) custom). Based on provision law positive that regulates about child naughty, problematic child behavior (child) conflicted with law) is called with “Bad Boy”. Actions deviant and violating children law called " Juvenile Delinquency ". Juvenile Delinquency is the actions carried out by the child are good Alone and also together in violation terms and conditions law criminal or No law criminal and also do actions by society considered as action despicable.<sup>17</sup>

Child terms naughty the Then replaced by the term Children in conflict with law or what is called the child who did act criminal as poured out in Article 1 number 3 of the Law Number 11 of 2012 concerning System Justice Child Criminal Procedure or abbreviated as SPPA. The term child naughty replaced Because term the in a way No direct giving stigma and labeling negative to self child. System terms justice criminal child is translation from the term The Juvenile Justice System, namely a terms used defined with a number of affiliated institutions in courts, which include police, prosecutor prosecutor general and advisory law, institution supervision, centers detention children, and facilities coaching child.<sup>18</sup>

System Justice This Child Crime make the officers enforcer law for involved active in the process of completing case without must through criminal proceedings so that produce decision criminal. Investigator police is one of apparatus enforcer the law in question in This SPPA Law, apart from That There is prosecutor general or prosecutors, and there are judges. This SPPA Law also regulates related institutions in process outside justice child for example There is Bapas, Professional Social Worker, Development Institution Special Child Placement Institution (LPKA), Temporary Child Placement Institution (LPAS), Child Care Implementation Institution Social Welfare (LPKS), Family or Guardian and Advocate or giver help law others who participated play a role in it. The justice system criminal experience development from time to time until in 2012, namely with birth Constitution Number 11 of 2012 Concerning System Justice Child Criminal. Before birth Constitution said, has There is product law which is special arrange Juvenile Court, namely Law Number 3 of 1997. Before Constitution Number 3 of 1997 has also There is many kinds of provision or regulations governing the judicial process for child as it is in the Circular Supreme Court, Instructions Supreme Court and Minister of Justice Regulations.

System Juvenile Justice is made guidelines for enforcer law for take a a wise decision in matter whether the fall sanctions criminal to child is the right decision For interest best for child or on the contrary. Sudarto in Sambas's book explains that criminal is intentional suffering charged to the person who did it act of fulfilling terms and conditions certain. While criminalization is a consequence from violation law in the form of criminal. Criminalization children in general different with adult criminalization. Criminalization to child more prioritize interest best for child. Threat criminal to child is

<sup>16</sup>Adami Chazawi, 2007, Criminal Law Lesson II, Raja Grafindo Persada, Jakarta, p. 67

<sup>17</sup>Tri Andrisman. Juvenile Justice Law. Law Department, Faculty of Criminal Law. University of Lampung. 2013. Page 6

<sup>18</sup>1 Setya Wahyudi, 2011, Implementation of the Idea of Diversification in Updates System Justice Child Criminalization in Indonesia, Yogyakarta, Genta Publishing, p.35

1/2 (one half) of threat adult criminal except act the criminal penalty that is threatened with criminal dead or criminal prison lifelong live, then the sentence imposed is criminal imprisonment for a maximum of 10 (ten) years. This is one of example difference treatment child with adults in general.

Regulation protection to children facing each other with law in system justice criminal Indonesia Not yet fair that diversion that should be can made into receptacle to deliberate for finish case child, even become place to negotiate sanctions for children. When the victim's child and his family No accept results diversion and diversion considered failed, even on the contrary If child the perpetrator and his family No can fulfil the wishes of the victim and his family, then Want to No Want to child perpetrator must continue stages to level prosecution and examination trial in court. Diversion in system justice criminal child, in its implementation Not yet can give protection law for children facing each other with law. Involvement enforcer the law in it, makes child perpetrator become stressed in a way psychological, and children perpetrator tend only follow the wishes of parents, victims and their families and law enforcement the law involved. The perpetrator's child more Lots cornered, and his opinion not enough heard Because child perpetrator Already considered guilty do act criminal.

## **2. Weaknesses Regulation Protection Towards Children Who Are Facing With Law In The System Justice Current Indonesian Criminal Law**

### **a. Weakness Aspect Legal Substance**

Weakness aspect substance law namely in the Law Number 11 of 2012 is still nature repressive, because Not yet can give guarantee settlement case child through diversification, and tends to ignore welfare child in a way overall. Imprisonment Still become type decision the biggest from the judge, the use of action or criminalization alternatives outside prison Not yet too significant used.

### **b. Weaknesses of Aspects Legal Structure**

Weakness aspect structure law that is lack of quality and quantity source Power man apparatus enforcer the law that deals with case act crimes committed by children, and the lack of coordination between apparatus enforcer law and also institution related to handling case act criminal child. Whether it is good or not A system stays still home Because the willingness and ability of the implementers for prioritize interests and protection as well as give the best to children facing each other with law.

### **c. Weaknesses of Aspects Legal Culture**

Weakness aspect culture law that is public Still some people think that giving verdict or criminal penalties for perpetrators is form justice. This is also what hinders implementation justice restorative and diversion in settlement case act criminal child. Settlement case criminal more formally to direction for get justice retributive and justice restitution, which is justice the rated No can prevent and reduce emergence crime. Different with justice restorative, where the interest's perpetrator and victim alike be noticed.

### **3. Reconstruction Regulation Protection Towards Children Who Are Facing With Law In The System Justice Indonesian Criminal Code Based on Justice Values**

#### **a. Comparison With Foreign Country Protection Towards Children Who Are Facing With Law In The System Justice Criminal**

##### **1) Philippines**

Departmental Council in the Philippines is called Justice and Welfare for Children (JJWC) is given mandate For ensure effectiveness from RA 9344 and good coordination between department good at level national and also area related intervention justice and welfare for children, its policies and programs. This is very good. Because with thus create a sense of responsibility answer for carry out each portion because work inside One receptacle mutual coordination relate with leaving behind each sectoral ego.

Philippines there are Barangays, namely a government smallest and one of the form organization masses (mass organizations) that function as a representative from society, if in Indonesia it is similar like sub-district that takes care of its territory. Barangay is element important in system justice criminal children in the Philippines. Many coaching programs has carried out by Barangay as intervention model to coaching child and succeed. Success the due to Because awareness government local for can support government work and programs center although without big financing even tend self-reliance public.

Justice restorative in the Philippines is very much underway with good and detailed. Implementation Handling child has built awareness to the function and role of each institution. The government pays close attention to fulfillment need children and very respectful, appreciative as well as uphold tall right basic child, therefore That National Human Rights Commission Humans in the Philippines formed special institution handle protection right basic children, namely The Child Rights Center.

The Child Rights Center considered as a special ombudsman for child on duty do investigation, assistance law / consulting law, education / advocacy, assistance and facilitation. In the Philippines, there are also one educational model that can developed in Indonesia, namely the National Training School for Boys (NTSB).

##### **2) Singapore**

Department of Home Affairs in January 2004, issued response on Amnesty International report about punishment died in Singapore.

Crimes that are threatened with sanctions punishment dead in the Singapore Criminal Code it is regulated in "The Penal Code of Singapore" or known as the Penal Code of Singapore. "The Penal Code of Singapore" has experience several times changes (amendments), and changes final that is in 2012.

Other crimes threatened with punishment death is also regulated outside "The Penal Code of Singapore" through Constitution individually, including are : ( i ) ownership and trade weapon fire based on the "Arms Offences Act" Weapons ); (ii) exporting, importing, and possessing narcotics exceed the amount that has been determined in Article 2 of the " Misuse of Drugs Act" Narcotics), including producing narcotics ; (iii) possession weapon fire, ammunition and materials explosives in the area security based on the "Internal Security Act" (UU Internal Security); and (iv) kidnapping for ransom as offense main based on the " Kidnapping Act."

### 3) United States of America

Arrangement act the criminal penalty that is threatened with punishment died in the United States set up in the United State Code (USC). The United State Code (USC) is law crimes that have been codified. Arrangement punishment dead the set up in a way special in Title to 18. about Crime and Criminal Procedure chapter 228.

In the United States of America there is a number of type the method used for execute punishment dead convicts, including with method punished hanging, bored dead, shoot death, gas chamber and electrocution. For make it easier understand method what is used in each country for do execution dead.

Based on description about setting and implementing waiting periods execution criminal died in Malaysia, Singapore, Saudi Arabia and the United States above, then in a way general can concluded that the countries of Malaysia, Singapore, Saudi Arabia and the United States still maintain criminal dead in law nationally, the same as it is with the State of Indonesia which is still maintain criminal dead.

The difference is, namely lies in the procedure execution of a crime dead. Malaysia and Singapore executed convict dead with method hung up until dead in the room hanging inside prison, in Saudi Arabia executed dead with method stoned or qisas, then in the United States done with method hanging, bored dead, shoot death, gas chamber and electrocution, while in Indonesia they execute convict dead with method shot until dead and usually held on Nusakambangan Island Cilacap.

#### **b. Reconstruction of Regulatory Values Protection Towards Children Who Are Facing With Law In The System Justice Indonesian Criminal Code Based on Justice Values**

Reconstruction desired value achieved in study This that Regulation Protection Towards Children Who Are Facing with Law In The System Justice Indonesian criminal law that used to be Based on Justice Values, now based on mark justice

#### **c. Reconstruction of Regulatory Norms Protection Towards Children Who Are Facing With Law In The System Justice Indonesian Criminal Code Based on Justice Values**

Indonesian government guarantees protection and welfare child through formation Constitution Number 23 of 2002 concerning Child Protection. For adjustment to a number of provision so done change to articles certain become Constitution number 35 of 2014 concerning change on Constitution Number 23 of 2002 concerning Child Protection. We can Look all the proof is in the Law the.<sup>19</sup>

Based on the principles of the SPPA Law as described above, diversion does not need to limit the threat of imprisonment to less than 7 (seven) years and not a repetition of the crime, but diversion efforts must be implemented for all crimes committed by children. Legal treatment of children must not be differentiated as regulated in Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which stipulates that everyone has the right to recognition, guarantees, protection, and certainty of fair law and equal treatment before the law.<sup>20</sup> In the judicial process criminal law in general and the judicial process criminal law in Indonesia in particular, there are a number of stages or the process that must be passed for the seekers justice good at level investigation, inquiry, prosecution, court hearing until

<sup>19</sup>Fitriani, Rini, 2016, *Role Organizer Child Protection in Protecting and Fulfilling Children's Rights*, Samudra Keadilan Law Journal 11, No.2: 250-258

<sup>20</sup>Ernis, Y. (2016). *Diversion and Justice Restorative In Resolution Case Action Child Criminalization in Indonesia*. Journal Scientific Legal Policy, Vol.10, (No.2), pp.163-174.

stage the fall judge's decision.<sup>21</sup> Remember If associated with child do act criminal the is a very important element, and must completed with accountability law.<sup>22</sup>

Based on description above, then presented reconstruction table like under:

Table 5.1.Reconstruction Summary Regulation Protection Towards Children Who Are Facing With Law In The System Justice Indonesian Criminal Code Based on Justice Values

| No. | Construction                                                                                                                                                                                                                                                                         | Its weaknesses                                                           | Reconstruction                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1   | Constitution Number 11 of 2012 Concerning System Justice Child Criminal article 1<br>Number 3<br>Children in Conflict with the following Law called Child is child who has 12 ( twelve ) years old, however Not yet aged 18 ( eight) twelve ) years of age allegedly do act criminal | Age child in conflict with law considered still relatively young         | Reconstruction Constitution Number 11 of 2012 Concerning System Justice Child Criminal<br>Article 1 Number 3 with change limitation the original age age 12 (twelve) years to be 15 (fifteen) years, so reads:<br>article 1<br>Number 3<br>Children in Conflict with the following Law called Child is child who has 15 ( fifteen ) years old, however Not yet aged 18 ( eight) twelve ) years of age allegedly do act criminal                                                                          |
| 2   | Constitution Number 11 of 2012 Concerning System Justice Child Criminal Article 71<br>Verse 3<br>If in law material threatened criminal cumulative in the form of prison and fines, criminal fine replaced with training Work                                                        | Not yet available alternative sanctions criminal like Work social        | Reconstruction Constitution Number 11 of 2012 Concerning System Justice Child Criminal Procedure, in Article 71 Paragraph 3 with add social verbs, so that reads:<br>Article 71<br>Verse 3<br>If in law material threatened criminal cumulative in the form of prison and fines, criminal fine replaced with training work and work social                                                                                                                                                               |
| 3   | Constitution Number 11 of 2012 Concerning System Justice Child Criminal Article 81<br>Verse 4<br>The child who has undergo 1/2 ( one) half ) of duration coaching at LPKA and behavior Good entitled get liberation conditional.                                                     | Not yet available role as well as parent post undergo sanctions criminal | Constitution Number 11 of 2012 Concerning System Justice Child Criminal Procedure, in Article 81 Paragraph 4 with add sentence at the end chapter returned to parents, and parents must for educate and do supervision to child said, so that reads:<br>Article 81<br>Verse 4<br>The child who has undergo 1/2 ( one) half ) of duration coaching at LPKA and behavior Good entitled get liberation conditional, then returned to parents, and parents must For educate and do supervision to child the. |

<sup>21</sup> Kristian and Christine Tanuwijaya, *Settlement of Criminal Cases with the Concept of Restorative Justice in the Integrated Criminal Justice System in Indonesia*, *Jurnal Mimbar Justicia*, Vol. 1 No. 2, 2015, p. 602

<sup>22</sup> I Wayan Gede Phalosa Jitaksu Wahendra and I Wayan Parsa, 2019, "Criminal Accountability for Perpetrators of New Types of Narcotics Abuse in Indonesia", *Scientific Journal of Law Students, Udayana University Volume 8 Number 6*, 2019

## Closing

## Conclusion

Regulation protection to children facing each other with law in system justice criminal Indonesia Not yet fair that diversion that should be can made into receptacle to deliberate for finish case child, even become place to negotiate sanctions for children. When the victim's child and his family No accept results diversion and diversion considered failed, even on the contrary If child the perpetrator and his family No can fulfil the wishes of the victim and his family, then Want to No Want to child perpetrator must continue stages to level prosecution and examination trial in court. Weaknesses aspect substance law namely in the Law Number 11 of 2012 is still nature repressive, because Not yet can give guarantee settlement case child through diversification, and tends to ignore welfare child in a way overall. Imprisonment Still become type decision the biggest from the judge, the use of action or criminalization alternatives outside prison Not yet too significant used. Weaknesses aspect structure law that is lack of quality and quantity source Power man apparatus enforcer the law that deals with case act crimes committed by children, and the lack of coordination between apparatus enforcer law and also institution related to handling case act criminal child. Weakness aspect culture law that is public Still some people think that giving verdict or criminal penalties for perpetrators is form justice. This is also what hinders implementation justice restorative and diversion in settlement case act criminal child. Settlement case criminal more formally to direction for get justice retributive and justice restitution, which is justice the rated No can prevent and reduce emergence crime. Reconstruction regulation protection law to children facing each other with law in system justice Indonesian criminal law based on mark justice consists of from reconstruction value and reconstruction norm. Reconstruction mark regulation protection law to children facing each other with law in system justice Indonesian criminal law based on mark justice that is regulation protection to children facing each other with law in system justice Indonesian criminal law which was formerly Not yet fair now has based on mark justice. Reconstruction of regulatory norms protection law to children facing each other with law in system justice Indonesian criminal law based on mark justice in Reconstruction Constitution Number 11 of 2012 Concerning System Justice Child Criminal Procedure Article 1 Number 3 and the Law Number 11 of 2012 Concerning System Justice Child Criminal Procedure, in Article 71 Paragraph 3 and the Law Number 11 of 2012 Concerning System Justice Child Criminal Procedure, in Article 81 Paragraph 4.

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