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# Reconstruction of Types of Sentencing in the Juvenile Justice System in Indonesia (Discussion Against the Criminal Position of Warning)

Nurini Aprilianda<sup>1</sup>  
Liza Agnesta Krisna<sup>2</sup>

<sup>1</sup>Faculty of Law, Universitas Brawijaya, Indonesia. E-mail: [nurini.aprilianda@ub.ac.id](mailto:nurini.aprilianda@ub.ac.id)

<sup>2</sup>Faculty of Law, Universitas Brawijaya, Indonesia. E-mail: [agnes.krisna@unsam.ac.id](mailto:agnes.krisna@unsam.ac.id)

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## Abstract

*The Juvenile Criminal Justice System is implemented with the principle that detention and imprisonment for children is a last resort. One type of criminal sanction is a warning penalty, namely a light sentence that does not result in restrictions on children's freedom. The light crimes in question can certainly be imposed on light cases as well. However, in reality, warning criminal sanctions are placed as the main type of crime. This type of research is normative, namely reviewing and examining the norms in the JCJS Law. There are contradictory circumstances between the aim of avoiding children from court proceedings and the position of warning criminal sanctions as part of the main type of crime. There are no strict parameters for the terms or types of criminal acts that can be called minor crimes. Referring to the purpose of the JCJS Law, based on the category of crime, considering the conditions for the implementation of diversion, and interpreting the term "criminal" itself, the type of warning punishment is appropriate to be placed as part of the sanction of action. Thus, the principle of detention and imprisonment as a last resort in the juvenile criminal justice system is in line with the formulation of the types of sanctions in the law.*

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## 1. Introduction

One of the instruments used in providing protection for children is the law. Legal protection for children can be interpreted as legal protection efforts against various violence and children's rights as well as various efforts related to child welfare. The principle of protection is regulated based on the best interest of the child, namely that in all actions involving children carried out by the government, society, legislative and judicial bodies, the interests of the child must be the main consideration. As with criminal law arrangements for adults, there are also criminal law arrangements for children, namely arrangements that recognize the special position and needs of children who are perpetrators, witnesses or victims of a criminal event.

As with criminal law arrangements for adults, there are also criminal law arrangements for children, namely arrangements that recognize the unique position and needs of children who are perpetrators, witnesses, or victims of a criminal event. Unlike adult criminal proceedings, juvenile court proceedings are often closed to public members, and records in some countries remain confidential, protecting children from stigma and collateral consequences when their records are publicly available.<sup>1</sup>

In Article 37 letter b of the international Convention "Convention on the Rights of the Child" it is stated:<sup>2</sup> (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; whereas in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") point 19.1 it is stated:<sup>3</sup> (c) The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period; later in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty Article 1 stated:<sup>4</sup> The juvenile

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<sup>1</sup> Christy K. Scott et al., "Juvenile Justice Systems of Care: Results of a National Survey of Community Supervision Agencies and Behavioral Health Providers on Services Provision and Cross-System Interactions," *Health and Justice* 7, no. 1 (June 14, 2019): 1–18, <https://doi.org/10.1186/S40352-019-0093-X/FIGURES/4>.

<sup>2</sup> Convention on the Rights of the Child

<sup>3</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)

<sup>4</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty

justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.

The convention on the Rights of the Child (CRC) is the basic document that establishes the legal principles of children's rights. The CRC supports global normative standards on children's rights binding on states and relevant to other actors in the children's rights landscape, including parents, legal guardians, extended families, the wider community, institutions, and organizations working with children.<sup>5</sup>

Understanding the complexities of the juvenile justice system requires knowledge of the locality in which one works. However, there are significant similarities that are useful for understanding the structure and function of systems. In all contexts, the juvenile justice system is a bound (e.g., detention) and unrestricted (e.g., probation) arrangement and space that is responsible for serving juveniles who are charged with illegal offenses (i.e., delinquency), or who are persons who require supervision for a status violation, including truancy or running away from home.<sup>6</sup> As with the adult criminal system, youth involved in the legal system can also be monitored to check the extent to which they comply with the system's orders; non-compliance, in turn, increases the risk of technical breaches.<sup>7</sup>

In Indonesia, Law Number 4 of 1979 concerning Child Welfare (hereinafter referred to as the Child Welfare Law) states the general principles of child protection, namely the principle of non-discrimination, the principle of survival and growth and development, the principle of the best interests of the child and respect for the child's participation. Constitutionally, guarantees regarding children's lives are also regulated in the 1945 Constitution of the Republic of Indonesia, namely Article 28 B

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<sup>5</sup> Wouter Vandenhoe, Gamze Erdem Türkelli, and Sara Lembrechts, eds., "The Right to Life, Survival and Development," in *Children's Rights* (Edward Elgar Publishing, 2019), 88–99, <https://doi.org/10.4337/9781786433138.00016>.

<sup>6</sup> Shabnam Javdani, "Critical Issues for Youth Involved in the Juvenile Justice System: Innovations in Prevention, Intervention, and Policy," *Journal of Prevention & Intervention in the Community* 47, no. 2 (April 3, 2019): 67, <https://doi.org/10.1080/10852352.2019.1575564>.

<sup>7</sup> National Center for Juvenile Justice, *Juvenile Offenders and Victims: 2014 National Report*, ed. Melissa Sickmund and Charles Puzzanchera (Pittsburgh, PA: National Center for Juvenile Justice, 2014).

Paragraph (2) which explains that every child has the right to survive, grow and develop and is entitled to protection from violence and discrimination.

Furthermore, in Article 66 paragraph (4) of Law Number 39 of 1999 concerning Human Rights (hereinafter abbreviated as the Human Rights Law) it is stated as follows: arrest, detention or imprisonment of children may only be carried out in accordance with applicable law and can only be carried out as a last resort. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (State Gazette of the Republic of Indonesia of 2012 Number 153, Supplement to the State Gazette of the Republic of Indonesia Number 5332, hereinafter abbreviated as JCJS Law) Article 3 letter g which contains: Every child in the criminal justice process has the right: (g) not to be arrested, detained or imprisoned, except as a last resort and for the shortest time. The provisions are similarly regulated in Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and amended again by Law Number 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection (hereinafter abbreviated as the Child Protection Law) Article 16 Paragraph (3) states: Arrest, detention, or criminal acts of imprisonment for children only done if it is in accordance with applicable law and can only be done as a last resort.

Likewise, in the law that regulates child law from the criminal aspect in Indonesia, namely Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter abbreviated as the JCJS Law) that detention or imprisonment for children is the last resort that must be taken by law enforcement agencies. Law in dealing with children's problems who violate the provisions of criminal law. This is based on one of the principles in the JCJS, namely the principle of deprivation of liberty and punishment as a last resort. This principle explains that basically children cannot be deprived of their independence, unless they are forced to in the interest of resolving cases.

The JCJS Law regulates separately the sanctions that can be imposed on children that are different from the type of crime as stated in Article 10 of the Criminal Code.

According to Article 69 paragraph (1) of the SPPA Law, there are 2 (two) sentencing decisions against children, namely being punished or subject to action. the basis for the judge's consideration not to impose a sentence or impose an action are: (a) the lightness of the act; (b) the child's personal circumstances; (c) the circumstances at the time the act was committed, or; (d) what happened after taking into account the aspects of justice and humanity.<sup>8</sup>

The reason that underlies the formulation of alternative sanctions for action and criminal sanctions is to avoid the tendency and difficult choices for criminal penalties for naughty children, so this bill needs to contain legal norms that give priority to judges to impose actions rather than criminal, if the legal norms are the basis for judges to prioritize action sanctions over criminal sanctions, then this legal norm can be an obstacle to imposing criminal sanctions on naughty children. Legal norms in the bill can provide flexibility for judges to determine actions with more alternatives than the Juvenile Court Law. Thus, the juvenile criminal justice system is expected to provide the right direction in fostering and protecting children.<sup>9</sup>

Regarding criminal sanctions for children in conflict with the law, in addition to imprisonment, the main punishment that can be imposed on children is a warning penalty. According to Article 72 of the JCJS Law, this crime is a "mild crime that does not result in restrictions on children's freedom". From this explanation, it can be ascertained that a warning penalty is given to light cases or cases with the aim of providing proportional justice. However, the purpose of the warning is contradictory to the position of the sanction as the main type of crime, where the main criminal sanction is aimed at punishing and deterring children. It is known that punishment of this type of crime for children, although sometimes it cannot be avoided, can certainly cause stigma attached to children.

Referring to Ireland's Children Act, the 2001 penal warning may override the penal code if the offense committed by a child under the age of 18, for which they were found guilty, can be automatically removed from the record as if it had never been

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<sup>8</sup> *Ibid.*, p. 92-93

<sup>9</sup> Academic Paper of State Law of the Republic of Indonesia Number 11 of 2012 on the Juvenile Justice System, p. 4

committed after the condition-specific are met. This condition is regulated in section 258 Children Act, of 2001:<sup>10</sup>

- 1) The offence was committed before the child reached the age of 18 years.
- 2) The offence is not one required to be tried by the Central Criminal Court (such as murder or rape).
- 3) At least 3 years have elapsed since the finding of guilt and,
- 4) The child has not been dealt with for another offence in that 3-year period.

If these conditions are met, they are no longer considered to have committed an offense under Irish law. If they have received a warning or have been dealt with under the Probation of Offenders Act 1907, Section 258 Children Act, 2001 also applies.<sup>11</sup>

## **2. Problem Statement**

Based on the descriptions above, the authors propose a problem formulation that has been neglected for years to be studied scientifically: namely, is the position of the warning penalty as the main crime in the juvenile criminal justice system? What is the urgency of the reconstruction of the position of the warning penalty as the main crime?

## **3. Methods**

This research was conducted normatively, normative legal research was intended to examine and examine legal norms in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, focused on the position of the Criminal Warning as the main criminal sanction.

## **4. Discussion**

### **4.1. Juvenile Delinquency Paradigm**

According to Emile Durkheim, crime is a normal phenomenon in every society which is characterized by heterogeneity and social development, therefore it cannot be

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<sup>10</sup> Sinéad Ring, "The Victim of Historical Child Sexual Abuse in the Irish Courts 1999–2006," *Social & Legal Studies* 26, no. 5 (April 11, 2017): 562–80, <https://doi.org/10.1177/0964663917694706>.

<sup>11</sup> Louise Forde, "The Role of the Courts in Protecting Children's Rights in the Context of Police Questioning in Ireland and New Zealand," *The Howard Journal of Crime and Justice* 61, no. 2 (June 1, 2022): 240–60, <https://doi.org/10.1111/HOJO.12472>.

eradicated. Radeliff Brown has defined crime associated with liability that crime is seen as a habit that encourages the implementation of criminal sanctions.<sup>12</sup> Crime from the juridical concept means human behavior that can be punished under criminal law. When viewed in terms of actions, there is actually no difference between criminal acts committed by children and crimes committed by adults, the difference between the two lies in the perpetrators themselves. The difference relates to the issue of motivation for the crime he committed.

Because generally criminal acts committed by children are not based on evil motives (evil will/evil mind), then children who deviate from social norms, against them, social experts are more agreeable to provide an understanding as "naughty children" or the term "bad children". "Juvenile Delinquency" or "child in conflict with the law". With this term, he/she can avoid groups that are categorized as criminals.<sup>13</sup>

This term reflects the sense of community justice that there needs to be a different consideration for violations committed by children or adolescents compared to those committed by adults.<sup>14</sup> Etymologically the term Juvenile Delinquency comes from the Latin *Juvenils* which means children, young people, characteristics of youth, characteristics of the adolescent period, and delinquency which means neglected, ignoring. Then it is expanded to mean being evil, asocial, criminal, violator, rule, usurper, troublemaker, immoral and others.<sup>15</sup> Juvenile delinquency is a term commonly used in the academic literature to refer to a young person who has committed a criminal offense. However, the exact definition may vary according to local jurisdictions. The specific reasons underlying this difference are unclear but may arise from a lack of agreed international standards.<sup>16</sup> What is meant by 'adolescent' in this context is an individual who is legally capable of committing a crime because the

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<sup>12</sup> Abdussalam, *Kriminologi* (Jakarta: Restu Agung, 2017). p. 15

<sup>13</sup> Ayu Darisah et al., "The Reduction of Child Crime Cases According to Islamic Criminal Law in the Banda Aceh Police Department [Upaya Menekan Tingkat Kriminalitas Anak Ditinjau Menurut Fiqih Jinayah: Studi Kasus Di Polresta Banda Aceh]," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 9, no. 1 (June 28, 2020): 110–32, <https://doi.org/10.22373/LEGITIMASI.V9I1.7329>.

<sup>14</sup> Romli Atmasasmita, *Bunga Rampai Kriminologi* (Jakarta: Rajawali, 1984). p. 31-33

<sup>15</sup> Kartini Kartono and Nandang Sambas, *Peradilan Pidana Anak Di Indonesia Dan Instrumen Internasional Perlindungan Anak Serta Penerapannya* (Yogyakarta: Graha Ilmu, 2013).

<sup>16</sup> Susan Young, Ben Greer, and Richard Church, "Juvenile Delinquency, Welfare, Justice and Therapeutic Interventions: A Global Perspective," *BJPsych Bulletin* 41, no. 1 (February 2017): 21, <https://doi.org/10.1192/PB.BP.115.052274>.

age of criminal responsibility is above the minimum age but below the legal age of maturity, when a person is legally considered an adult. The minimum age of criminal liability varies internationally between 6 and 18, but the age of the majority of criminals is usually 18.<sup>17</sup>

If preferred, research conducted by Feng Yao shows that juvenile delinquency is closely related to family, the impact of several events in life, and the context of social change. In addition, family factors are the key to preventing juvenile delinquency.<sup>18</sup>

Kusumanto Setyonegoro, argues that delinquency is individual behavior that is contrary to the requirements and public opinion which is considered acceptable and good by a community environment or the applicable law in a society with a certain culture. The term difficult or naughty behavior (behavior problem). If he is an adult or preadolescent, then the behavior is now called delinquent (delinquent behavior), and if it is openly against the law is called criminal behavior.<sup>19</sup>

According to Bimo Walgito, Juvenile Delinquency is any act which, if committed by an adult, is a crime. So, unlawful acts committed by children, especially teenagers.<sup>20</sup> Wagianti Soetodjo, in the Indonesian Criminal Code, clearly implies that a criminal act (crime) must contain elements, namely: a. The existence of human actions; b. The act must be in accordance with legal provisions; c. There is an error; d. People who do must be held accountable.

Based on the meaning of the description above, in Indonesia the regulation that regulates Juvenile Delinquency is Law Number 3 of 1997 concerning Juvenile Court. The Juvenile Court Law uses the term "Naughty Child" for children who commit

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<sup>17</sup> Mikhail Fedorovich Kostyuk and Elena Vladimirovna Kunts, "The Impact of Deviant Behavior on Juvenile Delinquency: Current State of the Problem," *Ius Humani. Law Journal* 11, no. 1 (January 31, 2022): 15–27, <https://doi.org/10.31207/IH.V11I1.293>.

<sup>18</sup> Feng Yao, "Analysis on Psychological and Social Causes of Juvenile Delinquency—A Study Based on Grounded Theory," *The International Journal of Electrical Engineering Education* 0, no. 0 (February 25, 2021): 1–15, <https://doi.org/10.1177/0020720921996608>.

<sup>19</sup> *Ibid.*, p. 14

<sup>20</sup> Bimo Walgito, *Kenakalan Anak (Juvenile Delinquency)* (Yogyakarta: Yayasan Penerbit Fakultas Psikologi UGM, 1982). p. 2



criminal acts or other acts that violate written or unwritten regulations (customary law).<sup>21</sup>

The term naughty child was then replaced with the term Child in conflict with the law or the so-called child who committed a crime as stated in Article 1 point 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System or abbreviated as JCJS. The term naughty child was replaced because the term is indirectly to avoid stigma and negative labeling of the child.<sup>22</sup>

#### 4.2. The Essence of Juvenile Criminal Justice System

The word 'system' goes back to the ancient Greek *sustēma*, which is a noun derived from the verb *sunistēmi*, 'to govern.' *Sustēma* is a *nomen acti*, i.e., a noun denoting the result of an action, and a system thus refers to what is arranged together. In extant sources, the earliest occurrences relate to humans being put together on ships or in troops.<sup>23</sup>

The understanding of the system explained by Anatol Rapport is a whole which functions as a whole by virtue of the interdependence of its parts. R.L Ackoff defines the system as a conceptual or physical entity, which consists of interdependent parts.<sup>24</sup>

According to the Kamus Besar Bahasa Indonesia, what is meant by the system is as follows:<sup>25</sup>

- a. a set of elements that are regularly interrelated to form a totality;
- b. a set of elements that are regularly interrelated to form a totality.

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<sup>21</sup> "Naughty children are: a. a child who commits a crime; or b. a child who commits an act that is declared prohibited for a child, either according to the laws and regulations or according to other legal regulations that live and apply in the community concerned". See Article 1 Number 2 State Law of the Republic of Indonesia Number 3 of 1997 on Child Courts.

<sup>22</sup> Children in Conflict with the Law, from now on referred to as Children, are children who are 12 (twelve) years old but not yet 18 (eighteen) years old who are suspected of committing a crime. See Article 1 Number 3 State Law of the Republic of Indonesia Number 11 of 2012 on Juvenile Criminal Justice System.

<sup>23</sup> René Brouwer, "On the Meaning of 'system' in the Common and Civil Law Traditions: Two Approaches to Legal Unity," *Utrecht Journal of International and European Law* 34, no. 1 (June 7, 2020): 45–55, <https://doi.org/10.5334/UJIEL.451/METRICS/>.

<sup>24</sup> D. C. Phillips, *Holistic Thought in Social Science* (California: Stanford University Press, 1976), <https://doi.org/10.1007/978-1-349-03281-5>.

<sup>25</sup> "Arti Kata Sistem - Kamus Besar Bahasa Indonesia (KBBI) Online," accessed November 7, 2022, <https://kbbi.web.id/sistem>.

Rocky Marbun, revealed that a system is open and not closed. Because in an open system, a system will receive input and issue feedback (output) which will be interconnected in order to realize a better system mechanism.<sup>26</sup> Thus, a system has a series of processes that take place continuously without stopping and one another has a complete and comprehensive relationship.<sup>27</sup>

While the criminal justice system is generally understood as a system in a society to tackle crime problems. Dealing in the context of controlling crime is within the limits of community tolerance, because as described above, eradicating a crime in human civilization is impossible. All human social life that is formed through human abilities, behavior and interactions are components that make up a large genus called civilization, and crime is a deviant behavior that is influenced by these components.

Muladi explained that the criminal justice system can be analyzed comprehensively, on the one hand we can see it as a normative system, namely as a set of legal rules that reflect criminal values against actions that are considered wrong and despicable. On the other hand, we can also approach it as an administrative system (administrative system) that reflects the criminal law enforcement mechanism carried out by state apparatus or law enforcement (police, prosecutors, judges, prisons). It can also be seen from the social system, which describes that in formulating and responding to criminal behavior it always involves all elements of society.<sup>28</sup>

The criminal justice system is one of the means to prevent, resolve and overcome crime problems. Mardjono Reksodiputro explained the purpose of establishing a

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<sup>26</sup> Rocky Marbun, *Praktik Hukum Pidana Dalam Sistem Peradilan Pidana: Membangun Landasan Kefilsafatan Dan Teoritis (Buku 1)* (Yogyakarta: Arti Bumi Intaran, 2018). p. 39

<sup>27</sup> The first appearances of the notion of a legal system are not found in the law itself but in the study of law (or in 'law science' as continental jurists used to call it) as it developed in Rome in the second and first centuries. BC. To understand these developments, we must take a step back and look at resolving the conflict in Rome. In the late 2nd and early 1st centuries BC, in the non-egalitarian society of Rome, legal conflicts were resolved by respectable citizens, who were considered to embody the values of 'authority' (auctoritas) and 'dignity' (dignity). The citizens of this state were originally priests, but, from the 3rd century BC onwards, could become lay people as well. When faced with a complicated conflict, this layman begins to ask for advice before making a decision. The legal counsel of the judges came to be known as iurisconsulti. Their written answers or responses lead to a whole body of rich, learned legal material. Its importance for the development of law on the European continent cannot be overstated easily: the law has been and is still the business of experts. See Rebecca Huxley-Binns, Jacqueline Martin, and Tom Frost, *Unlocking the English Legal System* (Abingdon: Routledge, 2017). p. 4

<sup>28</sup> Muladi, *Kapita Selektta Sistem Peradilan Pidana* (Semarang: Badan Penerbit UNDIP, 1995). p. 75-76

criminal justice system, namely as an effort to overcome and control crimes that occur in the community.<sup>29</sup> Meanwhile, Tolib Effendi also explained that the criminal justice system has two main goals, namely to protect the community and enforce the law.<sup>30</sup>

Furthermore, the juvenile justice system itself is a form of legal protection provided by the state through its formulation policies in order to provide more legal certainty and serve as guidelines for law enforcement and other elements of society. The birth of the law is based on the reasons as stated in the preamble, namely to maintain their dignity, children have the right to special protection, especially legal protection in the justice system.

The juvenile criminal justice system is all elements of the criminal justice system related to handling cases of juvenile delinquency. First, the police as a formal institution. When juvenile delinquents first come into contact with the justice system, which will also determine whether the child will be released or further processed. Second, the prosecutor and the parole agency will also determine whether the child will be released or processed in juvenile court. Third, juvenile court, the stage when the child will be placed in choices, starting from being released to being included in the final punishment institution, the punishment institution.<sup>31</sup>

The juvenile criminal justice system will prioritize the welfare of the child and ensure that any reaction to violators of child law will always be commensurate with the circumstances, both to the violators of the law and to the violation of the law. So according to the Beijing Rules, an important goal in juvenile justice is to promote the welfare of children (avoidance of sanctions that are merely punishing) and emphasize the principle of proportionality.<sup>32</sup>

Therefore, the juvenile criminal justice system has a goal called Restorative Justice, namely the settlement of criminal cases by involving the perpetrator, victim, family of

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<sup>29</sup> Rocky Marbun, *Sistem Peradilan Pidana Indonesia (Suatu Pengantar)* (Malang: Setara Press, 2015). p. 31

<sup>30</sup> *Ibid.*, p. 33

<sup>31</sup> Harrys pratama Teguh, *Teori Dan Praktik Perlindungan Anak Dalam Hukum Pidana: Dilengkapi Dengan Studi Kasus* (Yogyakarta: Andi Offset, 2018). p. 81

<sup>32</sup> Achmad Ratomi and Rismaya Mutiara Lestari, "Pidana Peringatan Dalam Sistem Peradilan Pidana Anak," *EGALITA* 15, no. 2 (December 24, 2020), <https://doi.org/10.18860/egalita.v15i2.10895>.

the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration back to its original state, and not revenge.<sup>33</sup> The essence of the judicial process against children is as a mechanism that must end with efforts to protect the best interests of the child.

#### **4.3. Warning as a Principal Crime and the Urgency of Reconstruction Against the Position of Warning as a Principle Crime**

Children should be seen as a valuable asset of a nation and state in the future whose rights must be protected and protected. This is because it is in the hands of the children that the progress of a nation is determined. The more modern and advanced a country is, the greater the state's attention should be in creating conditions conducive to the growth and development of children. Children's growth and development must be accompanied by a comprehensive protection provided by the state. The state's responsibility in implementing child protection is realized to ensure that every child has the right to survive, grow and develop and is entitled to protection from violence and discrimination.

Several criminal incidents occurred where the victims and perpetrators were children. The defense of child victims of criminal acts has become a collective movement that involves children's and women's rights organizations/activists and often ignores the actual perpetrators who are also children. In this case, it is realized that a dilemma arises due to a conflict of interest. On the one hand, the movement demands that the perpetrators be punished as severely as possible as a deterrent effect, on the other hand, among the parties there are children as perpetrators of criminal acts who also need legal protection.

One form of legal protection for children in conflict with the law is the varied types of sanctions that can be imposed by judges on children. This can be seen in Article 71 of the JCJS Law which reads:

- (1) The Principle Punishment for children consist of:
  - a. Criminal Warning;
  - b. Criminal Conditions:

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<sup>33</sup> See Article 1 Number 6 State Law of the Republic of Indonesia Number 11 of 2012 on Juvenile Criminal Justice System

- 1) Coaching outside the institution;
  - 2) Community Service; or
  - 3) Supervision.
- c. Job Training;
  - d. Institutional Coaching; and
  - e. Prison.
- (2) Additional penalties consist of:
- a. Deprivation of profits derived from criminal acts; or
  - b. Fulfillment of customary obligations.

Apart from being in the form of a crime, the legislators also give freedom to judges to choose other, lighter sanctions, namely action sanctions. This is as regulated in Article 82 paragraph (1) of the JCJS Law which reads: "Actions that can be imposed on children include:

- a. Return to parents/guardians;
- b. Submission to someone;
- c. Treatment in mental hospitals;
- d. Treatment at social welfare organization;
- e. Obligation to attend formal education and/or training held by the government or private bodies;
- f. Revocation of driving license; and/or
- g. Reparation due to criminal acts.

The various criminal options that can be imposed on children contained in Article 71 of the SPPA Law provide a choice for judges in imposing crimes against children. It is hoped that imprisonment is used as a last resort. One of the crimes mentioned in Article 71 Paragraph (1) of the SPPA Law is the Warning Crime. Article 72 of the JCJS Law states that the warning penalty is a minor crime that does not result in restrictions on children's freedom. The following articles do not state how the warning sentence can be imposed on a child. The simple formulation of the warning penalty as described in Article 72 of the JCJS Law and the absence of government regulations regarding the imposition of a warning penalty have resulted in law enforcement officials interpreting the crime differently so that the primary purpose of the enactment of the SPPA Law, namely child protection, is blurred.

The application of these sanctions must be applied by referring to the provisions

contained in Article 69 paragraph (2) of the JCJS Law which reads "Children who are not yet 14 (fourteen) years old can only be subject to action". This means that a child who is 14 (fourteen) or older can be subject to action or a crime. Meanwhile, those who are less than 14 (fourteen) years old cannot be subject to a crime.

One of the criminal sanctions mentioned in Article 71 Paragraph (1) of the JCJS Law is a warning penalty. The formulation of the warning penalty is simply explained in Article 72 of the JCJS Law and there is no government regulation that regulates the imposition of a warning penalty, as a result, law enforcement officers interpret the crime differently.

This warning penalty before the birth of the JCJS Law was also adopted by Law No. 3 of 1997 concerning the Juvenile Court. However, what makes the difference is that in the Juvenile Court Law, a warning/reprimand is a type of sanction that can be imposed in the form of accompanying action sanctions as stipulated in Article 24 of the Juvenile Court Law which reads:

- (1) Actions that can be imposed on a naughty child:
  - a. Return to parents, guardians, or foster parents;
  - b. Submit to the state to participate in education, coaching, and job training;  
or
  - c. Submit to the Ministry of Social Affairs; or Community Social Organization engaged in education, coaching, and job training.
- (2) The actions as referred to paragraph (1) may be accompanied by a warning and additional conditions determined by the judge.

Furthermore, according to the Elucidation of Article 24 paragraph (2) of the Juvenile Court Law, what is meant by "reprimand" is a warning from the Judge either directly to a child who is sentenced to action or indirectly through his parents, guardians, or foster parents, so that the child does not repeat the act that resulted in him being punished. What is meant by "additional conditions" is for example the obligation to report periodically to the Community Advisor.

Meanwhile, according to Article 72 of the JCJS Law, a warning is a minor crime that does not result in restrictions on children's freedom. The punishment for warning children in the JCJS Law is almost the same as warning in Dutch criminal law. The purpose of a reprimand based on Dutch criminal law, which is in accordance with the

nature of "reprimand", consists of words aimed at correcting what was said by the judge to the convict related to the criminal event that had been committed by the convict.

However, because the warning penalty is included in the main type of crime, not the type of action crime, it can be ascertained that children who are in conflict with the law to be subject to this warning sentence must go through a series of stages of penal justice, even though the classification of criminal acts for warning crimes is light. What type of crime is light, the SPPA Law does not provide a classification of the type of action or at least the threat of sanctions for this warning penalty.

The purpose of this category is to classify crimes into three (three), namely as follows:<sup>34</sup>

a) Minor crimes

Acts that are classified as minor crimes are as follows: minor theft, minor assault without causing injury, or minor damage to property.

b) Moderate crimes

An act that is classified as a moderate level of crime is a type of crime in which there is a combination of all conditions that are considered as appropriate to resolve whether through diversion or not.

c) Serious crimes

For serious crimes such as cases of sexual assault and physical assault that cause serious injuries.

Based on the categories of crimes above, minor crimes are acts that cause small material losses and acts that only cause minor injuries or minor damage to objects (small material losses), so that if you compare them with the diversion conditions, minor crimes are included. criminal acts that meet the requirements to be resolved by diversion. Based on the above crime categories, at least minor crimes and moderate crimes can be resolved by diversion, then the diversion requirement in the JCJS Law is that diversion is carried out in the event that the crime committed is punishable by

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<sup>34</sup> D S Dewi and Fatahillah A. Syukur, *Mediasi Penal: Penerapan Restorative Justice Di Pengadilan Anak Indonesia*, ed. Triani Retno (Indie Publishing, 2011). p. 51

imprisonment for under 7 (seven) years, and is not a repetition of the crime. This is with the consideration that a warning sentence imposed for a minor criminal act should have a position as an action sanction, not a criminal sanction. The action in question is to give a warning in the form of a warning.

Next, the meaning of the term "criminal". the word "criminal" is generally interpreted as punishment. The definition of crime is simply put forward by Sudarto, namely that punishment is suffering that is intentionally imposed on people who commit acts and fulfill certain conditions. It can be interpreted that there is a provision of suffering or discomfort by the competent agency to the person who commits a criminal act.

While the warning penalty is a minor crime that does not result in restrictions on children's freedom. As explained above, the warning form is in the form of a warning received by the child as a criminal so as not to repeat mistakes/violations that can harm others. If the meaning of a warning penalty is in the form of an oral warning so as not to repeat a criminal act, a child should not need to go through a protracted case settlement process just to get an oral warning from the judge if they have been guilty of their actions.

At the practical level the difference between criminal sanctions and action sanctions is often somewhat vague, but at the basic idea level the two have fundamental differences. Both stem from different basic ideas. Criminal sanctions are based on the basic idea of "why is there a punishment?" while action sanctions are based on the basic idea of "what is the punishment for?" In other words, criminal sanctions are reactive to an action, while action sanctions are more anticipatory towards the perpetrator of the act.<sup>35</sup> According to Eva Achjani Zulfa, explaining the philosophical basis of action sanctions is an effort to rehabilitate or improve the condition of the perpetrators of criminal acts that must be carried out as a way out of handling a crime.<sup>36</sup>

Based on these circumstances, according to the author, the position of the warning

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<sup>35</sup> M. Sholehuddin, *Sistem Sanksi Dalam Hukum Pidana (Ide Dasar Double Track System Dan Implementasinya)* (Jakarta: RajaGrafindo Persada, 2003). p. 32

<sup>36</sup> Eva Achjani Zulfa, Anugerah Rizki Akbari, and Zakky Ikhsan Samad, *Perkembangan Sistem Pemidanaan Dan Sistem Pemasyarakatan* (Jakarta: Raja Grafindo Persada, 2017). p. 56



penalty as the main crime shows that it is contradictory to the purpose of the warning punishment itself which is a minor crime and does not result in restrictions on children's freedom and avoids stigmatization of children who are in conflict with the law and it is hoped that children can return to the social environment naturally.

The juvenile criminal justice system will prioritize the welfare of the child and ensure that any reaction to violators of child law will always be commensurate with the circumstances, both to the violators of the law and to the violation of the law. So according to the Beijing Rules, an important goal in juvenile justice is to promote the welfare of children (avoidance of sanctions that are merely punishing) and emphasize the principle of proportionality.<sup>37</sup>

## 5. Conclusion

Article 72 of the JCJS Law states that the warning penalty is a minor crime that does not result in restrictions on children's freedom. This warning sentence is similar to a warning sentence that is imposed for a type of criminal act in the light category, it becomes illogical to place a child who has committed a minor crime in the formal justice process. Thus, the position of the warning penalty as a principal crime in Article 71 paragraph (1) of the JCJS Law is inappropriate, this type of witness should have a position as an action sanction, not a criminal sanction. The difference between a crime and an act is that the punishment is intended as retaliation or compensation for the mistakes of the maker, while the action is intended for the protection of society against people who commit acts that endanger society and for the guidance and care of the maker.

The JCJS Law has the aim of restorative justice, there are several options for handling children's cases, the punishments are also arranged in a variety of ways as a goal to bring proportionality between punishment and protection of children's growth and development. Restoration and rehabilitation functions take precedence over imprisonment. For minor crimes against children as perpetrators can be given warning / reprimand without the child having to undergo a formal criminal process. This policy is to prevent negative influences from the judicial process such as the

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<sup>37</sup> M. Nasir Djamil, *Anak Bukan Untuk Dihukum (Catatan Pembahasan Sistem Peradilan Pidana Anak, UU SPPA)* (Jakarta: Sinar Grafika, 2013). p. 15

inhibition of children's freedom and the stigma of judge decisions in the form of criminal penalties. Therefore, it is necessary to revise Article 71 paragraph (1) of the JCJS Law, namely reconstructing the type of warning punishment into action sanctions contained in Article 82 paragraph (1). In order to avoid ambiguity in the implementation of the warning sanctions, it is necessary to clarify the implementation mechanism related to the terms and considerations of the choice of sanctions as well as the implementation mechanism.

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