

The Value Of Justice In Child Criminal Justice System: A Review Of Indonesian Criminal Law

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Abstract: The value of justice in Act No. 11 of 2012 concerns the Child Criminal Justice System (Act No. SPPA) confirms the Restorative Justice Approach as a method of disputes resolution. The method of research used was normative-legal research with philosophical approach. The results showed that the value of restorative justice through diversion contained in Act SPPA, but the diversion limit for certain types of criminal acts, and threats of punishment under seven (7) years, and not a repetition criminal (recidivists). This indicates that Act SPPA still contained a retributive justice, not promote the interests of protection for child.

Index Terms: Child, Criminal Law, Diversion, Restorative Justice

1 INTRODUCTION

The birth of Act No. 11 of 2012 concerns the Child Criminal Justice System (hereinafter referred to as Act SPPA) provides protection for children who insist a Restorative Justice and diversion in the case of child in conflict with the law. Legal protection not only includes about welfare but for children in conflict with the law that is child as perpetrator, victim and witnesses. The Supreme Court also responded by signing Regulation of the Supreme Court of the Republic of Indonesia No. 4 of 2014 concerns Guidelines for Diversion in the Child Criminal Justice System. The legislators have had firmness about what age a person is defined as under age, thus had a right to leniency in order to apply special treatment for the benefit of child psychology. Act No. 11 of 2012 concerns the Child Criminal Justice System became active force on 30 July 2014 and when the legislation in force, then Act No. 3 of 1997 concerns the Child Court is no longer valid. In article 66 of Act No. 39 of 1999 concerns Human Rights also confirmed that every child has the right not to be subjected to persecution, torture, or the imposition of inhuman punishment and arrest, detention or imprisonment of a child should only be done as a last resort and every child deprived their independence are entitled to be treated humanely and concerned about the personal development needs according to age and should be separated from adults, except for the sake of interests. The phenomenon of child sanctioned prison by a judge, according to Executive Director of Advocacy and Labor Empowerment and Child (LAPA) Apung Herlina that judge's verdict which provide criminal sanctions against children as much 90.9 percent, for children the criminal sanctions is avoided. Given the decision of court must consider the best interests for child, due to negative impact of independence criminal deprivation which can inhibit the development of physical, psychological, and children social. Legal text in child protection and the court of child will give a lot of interpretations about the number of child cases as mentioned above.

Law interpretation through the study of hermeneutics, will discuss the theory of law interpretation in general, that will begin with the text and the reality of law. Shifting from the juridical construction and practical level of dispute resolution involving children today, the authors see a tendency to understand the differences of legal texts to protect and bring to justice the child, because when a child conduct a crime, it is regarded as per-petrators, and also as victims.

2. IDENTIFICATION OF THE ISSUE

As described above, the problem of formulation in this article is related to the value of justice contained in Act No. 11 of 2012 concerns the Child Criminal Justice System in Indonesia?

3 ANALYSIS AND DISCUSSION

The birth of Act No. 11 of 2012 concerns the Child Criminal Justice System (hereinafter referred to as Act SPPA), bring fresh air to the protection of child, since the Act SPPA is undergoing revisions, both concerning the age under 12 (twelve) is not categorized as a child conflicted with the law. Act SPPA confirms the concept of restorative justice contained in Article 5 paragraph (1) "The Child Criminal Justice System shall prioritize the Restorative Justice approach". Then in paragraph (3) stated that "In the Child Criminal Justice System as referred to in paragraph (2) letter a and b shall be pursued diversion". Basically, the development of criminal law at this time indicates a trend shift in the concept of justice and punishment paradigm in the criminal justice system, from the concept of retributive justice (criminal justice) to the concept of restorative justice. Ahmad Ali called restorative justice as a modern concept of criminal law. And also he compared between restorative justices with retributive justice in the proses of criminal resolution. The discussion about restorative justice concept in a variety of studies and definition by many experts tend to translate this concept as a method of problem-solving, which in turn will make the method of mediation as a key application of this concept. Therefore, if the understanding of restorative justice concept is understood as a problem-solving method, the provisions of Article 6 of Act SPPA emphasized the objectives of diversion as follows:

- a. Achieve peace between the victim and the child;
- b. Resolution of child cases outside the court process;
- c. Avoiding child of independence deprivation;
- d. Encouraging the public to participate; and
- e. Instilling a sense of responsibility to the child.

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The arrangement of criminal and actions set out in Chapter V of the Criminal and the actions contained in Article 69 through Article 83. In Article 69 paragraph (1) states that the child can only be punished or subjected to action under the provisions of this Act. In the context of law-political, there are many factors that affect the birth of Act SPPA, i.e legal systems, types of government, community culture, community needs. Likewise with Act SPPA, the birth of Act SPPA as normatively due to the weakness of Act 3 of 1997 which is perceived by the public is the minimum age of criminal responsibility in the child criminal justice system who reach the age of 10 (ten) years. Its fact that the Constitutional Court (MK) cancels the provisions of age limit in 2011, then the Court set age limit of child submitted on Child Session is 12 (twelve) years. The other weakness is the type of criminal and action and guidelines of sanction too prioritizing repressive action in state institutions. The process of dispute resolution of child is not open an opportunity for diversion. According to Sri Sutatiek, the birth of Act SPPA be imposed as follow (1) normative weakness and dysfunction and violations of the provisions of Act No. 3 of 1997 concerns the Child Court, (2) the development of Indo-nesian legislation concerning children, (3) International convention relating to the child and child in conflict with the law; (4) The minimum age of child that can be submitted to the child court in the various countries; and (5) the development of legal science, namely the flow of progressive laws which produce the model of restorative justice and the recognition of criminal individualization concept. The assertion about the child's age in punishment mentioned in Act SPPA, namely Article 62 paragraph (2) which states that the child who not achieve 14 years old can only be subjected to action. Also, act SPPA confirmed that criminal punishment or imposition of action against child is set on the basis of consideration for judges, it formulated in Article 70, which states that: "The lightness of actions, personal condition of child, or the condition at the time of the act or occur subsequently can be used as the basis of consideration for judge not impose punishment or action by considering both justice and humanity". Types of criminal that can be imposed on children who conduct criminal consisting of: (1) main criminal divided into: warning criminal, condition criminal, work criminal, counseling in the prison, and imprisonment. (2) Additional criminal consisting of the deprivation of benefits derived from the crime, and the fulfillment of customs obligations. Then, other sanctions are not the main criminal that is action. The following author presented on Table 1.

Table 1. Type of criminal and action in Act SPPA

No	Type of Sanction	Provisions
I. Criminal		
1.	Warning Criminal	Article 79 and Article 82
2.	Condition Criminal	Article 71 (1) letter b and Article 73 to Article 77
	Counseling outside the prison;	Article 71 (1) letter b number 1. Article 74, Article 75 (1) & (2)
	Public Service	Article 71 (1) letter b number 2, Article 76 (1),(2), and (3)
	Supervising	Article 71 (1) letter b number 3, Article 77 (1), (2)
3.	Job Training	Article 71 (3)
4.	Counseling in the Prison	Article 80
5.	Imprisonment	Article 79 and Article 81
6.	Additional Criminal	Article 71 (2)
7.	Fine Criminal	Article 71 (3)

II. Action		Article 82
a.	Return to Parent/Guardian	
b.	Submission to Someone	
c.	Treatment in the Mental Hospital	
d.	Treatment in the LPKS	
e.	Obligate to attend the formal education and training held by the government or private institute	
f.	Revocation of Driver License, and/or	
g.	Recovery as result of criminal act	

The provisions of article 72 concerning the warning criminal are the mild criminals that do not lead to restriction of child's freedom. The conditional criminal set out on Article 73 (1), which can be imposed by judge as the imprisonment and imposed in a maximum of 2 (two) years. This conditional criminal is divided into general and special conditions, in Article 73 paragraph (3) the general condition is the child do or not do certain things specified in the judge's decision with regard to the freedom of the child. Then, article 73 paragraphs (4) the special condition is the child do or not do certain things specified in the judge's decision with regard to the freedom of the child. The period of punishment with a special condition is more specific in comparison to the general condition. As for the period of punishment with conditional as referred to in Article 73 paragraph (1) no later than 3 (three) years. In the period of special condition, the child supervised by prosecutor and community supervising to do counsel so that the child occupy the requirements that have been established it is affirmed in article 73 paragraph (7). The provisions of article 73 paragraph (8) states that for this condition criminal, the child remains obliged to follow education learning 9 (nine) years. In Act SPPA, the implementation of conditional criminal on article 74 allows child punished outside the prison, as referred to in article 71 paragraph (1) letter b number 1, then the prison as a place of education and counseling is determined in the judge's decision. Furthermore, article 75 paragraph (1) explains that the counseling outside the prison such as: to follow the counseling program held by officials of trustees, for child who are psychologically disturbed psyche then, following treatment in a mental hospital; and those who lodged the case of narcotics and drugs, can follow the therapy due to the abuse of alcohol, narcotics, psychotropic and other addictive substances. The provisions of article 75, if in the implementation of counseling, the child violate the special conditions as referred as article 73 paragraph (4), the official of trustee can propose to the supervisory judge to extend the period of counseling and the period does not exceed a maximum of 2 (two) times the period of counseling that has not been implemented. Act SPPA applying the child re-integration who conduct the crime to the public, in the form of public service as a punishment in the form of education for children to increase their concern for community activities positively, stipulated in article 76 paragraph (1), the criminal is executed a minimum of 7 (seven) hours and a maximum of 120 (one hundred and twenty) hours. Supervisory criminal on article 77 paragraph (1) is implemented a minimum of 3 (three) months and no later than 2 (two) years. In paragraph (2) in the case of child placed under the supervision of public prosecutor and guided by the public advisors. The type of supervisory criminal in the prison is stipulated in article 80 of Act SPPA

which states that:

- (1) Counseling criminal in the prison is conducted in a place of job training or counseling institute organized, either by governmental or private.
- (2) Counseling criminal within the prison was subjected when the condition and actions of child does not endanger the public.
- (3) Counseling in the prison is done a minimum of 3 (three) months and a maximum of 24 (twenty-four) months.
- (4) Child who have undergone 1/2 (one half) of the length of counseling in the prison and not less than 3 (three) months has good behavior eligible for parole.

This criminal is less different with imprisonment, because placed on the counseling that held by the government and private, but its essence is punishment, for the child, this is as a separation from their family, playmates and environment. For them it is quite difficult because the criminal carried a minimum 3 (three) months and a maximum of 2 (two) years. So, this criminal is still a form of punishment other than imprisonment. The type of imprisonment is stipulated in Article 81 of Act SPPA, as follows:

- (1) Child is subjected the imprisonment at LPKA when condition and child action will endanger the public.
- (2) Imprisonment that can be imposed on the child is a maximum of 1/2 (one half) of a maximum of imprisonment for adults.
- (3) Counseling at LPKA is conducted until the child aged 18 (eighteen) years.
- (4) Child who have undergone 1/2 (one half) of the maximum of counseling at LPKA and has good behavior entitled to parole.
- (5) Imprisonment against child is only used as a last resort.
- (6) If criminal by the child as a criminal with dead penalty or life imprisonment, the punishment imposed is imprisonment a maximum of 10 (ten) years.

Likewise with Act SPPA adopts a sanction system of double-track system that is the criminal (straf) and action (maatregels). The provisions of imprisonment stipulated in Act SPPA does not vary far with the UUP Child, the imprisonment of child ½ (one-two) of adults, and for child who criminalized as dead penalty or life imprisonment, then the punishment imposed is a maximum of 10 (ten) years. The difference is act SPPA children aged 12 (twelve) years obligate to diversion, because the child is categorized as child in conflict with the law aged after 12 (twelve) years old and no older than 18 (eighteen) years, while the UUP Child who reach the age of 12 (twelve) years is punished as action sanction. Act SPPA confirms that imprisonment is due to the criminal conducted by child have been endangering the public. Then, the imprisonment to the child is the last resort. As described above, Act SPPA many options for the judge to convict, due to the type of main criminal there are 7 (seven) types of punishment, then to the conditional criminal, there are 3 (three) options, ranging from the mild criminal such as warning, the conditional criminal is divided into: (1) counseling outside the prison; (2) public service; (3) supervision. Other main criminal likes job training, counseling inside the prison, and the last resort is imprisonment. Additional punishment such as deprivation of benefits derived from the crime or the fulfillment of customs obligations. As if the substantive law is punished cumulative such imprisonment and fines, fines

replaced with job training. Later in the determination of criminal sanctions against children in Act SPPA Act is selected based on the age of child in conflict with the law, the following author presented on Table 2:

Table 2. Age of child in conflict with the law in Act SPPA

No	Range of Age	Category of Child			
		ABH	Diversio	Action Sanction	Punishment
1.	Not reached 12 years	-	-	-	-
2.	Reaching 12 years – before 14 years	√	√	√	-
3.	Age 14 years and not aged 15 years	√	√	√	-
4.	15 years until before 18 years	√	√	√	√

Source: Proceed from primary law material of Act SPPA

Act SPPA selecting age of child in conflict with the law and the type of actions and sanctions that can be given by the judge. Child aged before reaching 12 years is not categorized as child in conflict with the law (ABH), but if the child committed the crime, Article 21 of Act SPPA states that:

- (1) In the case of the child has not aged 12 (twelve) years, committing or suspected of committing a crime, investigator, public advisor and professional workers took the decision to:
 - a. Return to the parent/guardian; or
 - b. Include it in educational programs, counseling, and mentoring in government agencies or LPKS in agencies that deal with social welfare, both at central and local level, not later than 6 (six) months.
- (2) Decision as mentioned in paragraph (1) submitted to the court to be set within a period of 3 (three) days.
- (3) Bapas shall conduct an evaluation of the implementation of educational programs, counseling, and mentoring to children as referred to in paragraph (1) letter b.
- (4) In the case of evaluation results as mentioned in paragraph (3) children assessed still require education, counseling, and advance mentoring, the period of education, counseling, and mentoring can be extended a maximum 6 (six) months.
- (5) Government agencies and LPKS as mentioned in paragraph (1) letter b shall submit a progress report to the Bapas regularly every month.
- (6) Further provisions regarding the requirements and procedures for decision-making and education programs, counseling, and mentoring as mentioned in paragraph (1) shall be regulated by Government Regulation.

The form of child placement in educational programs, participating in educational programs and counseling and mentoring, according to author is a severe sanction, it should be enough to return the form of sanctions to parents/guardians, unless the parents are not able to supervise and educate. But age before 12 (twelve) years is the age of a kid once, so what is needed is the parents, and the family as well as environmental and friends, just when applicable brought in a psychologist or given guidance from agencies that focus on education and training child. Child referred in conflict with the law when aged 12 (twelve) years

before reaching the age of 18 (eighteen) years. Then, the provisions of article 69 paragraph (2) of Act SPPA states "child who are no older than 14 (fourteen) years can only be subject to action. Thus, child who reach the age of 14 (fourteen) years subject to criminal sanctions, this means the existence of main criminal law including imprisonment become option for cases of child in conflict with the law who were aged 14 (fourteen) years or more. This assertion is consistent with age children can be detained, article 32 of Act SPPA states against children aged 14 years or more can be done detention, for a criminal offense which carries a punishment of 7 years or more. Thus, act SPPA the child opens opportunities for the application of main criminal and including the type of imprisonment, to be applied to the child. The assertion of act SPPA stating that imprisonment is only a last resort, must understand by law enforcer when dealing with cases of children in conflict with the law or committing a crime, see the case of child is classified as a criminal act punishable mild or severe. Here, needed a carefulness of law enforcer such as police, prosecutors and judges in analyzing cases dealing with them. Based on the type of main criminal as described in Act SPPA, the warning criminal is the mildest criminal, while the other type is still a criminal adopts retributive justice. According to author, act SPPA applied the combined theory, so the philosophical of justice contained in it is discouragement, improvement in the form of action sanctions, and there is also improvement as the embodiment of restorative justice with the diversion.

4 CONCLUSION

The value of restorative justice through diversion is contained in Act SPPA, but diversion limits the type of certain criminal, and punishment under seven (7) years, and not a criminal act of repetition (recidivists). This indicates that Act SPPA still contained in it a retributive justice, not only promotes the interests of protection for children. Thus, the need to immediately enact the legislation on the Criminal Code as law, so that synchronization occur to the existence of act No. 11 of 2012 concerns the Child Criminal Justice System (Act SPPA) that contains restorative justice through diversion.

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