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The Essence of Sanctions of Action in Juvenile Justice System

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Abstract
Sanctions for actions against children are the principle of sanctions that emphasizes the interests of children over other interests. Imposing sanctions against children who commit acts must prioritize the interests of children and oriented to sanctions that provide benefits to the child's growth and development. For this reason, the juvenile justice system provides opportunities for law enforcers to provide sanctions for actions as the main step in imposing sanctions and criminal sanctions as a last resort in imposing penalties on children.
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A. Introduction

The Preamble to the 1945 Constitution of the Republic of Indonesia (1945 Constitution) in its IVth paragraph formulating the national objectives of the Republic of Indonesia is one of them to realize: social justice for all Indonesian people.[1] Humans as important and main actors behind the life of the law are not only required to be able to create and carry out the law (making the law), but also the courage to break the law, when the law is unable to present the spirit and substance of its existence which is to create harmony, peace, order and people's welfare.[2]

In the context of criminal law enforcement, as an effort to achieve justice, one of them can be implemented by means of preventing and overcoming a crime that is part of a criminal policy.[3] The policy was carried out using criminal law facilities (Penal Facilities), especially at the judicial policy stage (In-Abstracto) to the applicative and execution stages (In-Concreto Criminal Law Enforcement). Ideally, at each stage, attention must be paid to and lead to the achievement of the national goals of the Republic of Indonesia as stipulated in the Preamble of the 1945 Constitution of the Republic of Indonesia (NRI), namely to realize equitable justice for all Indonesian people.

The Indonesian Constitution provides guarantees for the rights of children specifically as affirmed Article 28 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states, every child has the right to survival, growth and development and is entitled to protection from violence and discrimination. Article 28 D paragraph (1) Every person has the right to recognition, guarantee, protection and legal certainty that is just and equal before the law. With this provision, the State has an obligation to provide legal protection in the justice system, including the children of criminal offenses.

The development of criminal law in Indonesia is realized through the enforcement of criminal law which operates operationally through a system called the Criminal Justice System.[4] According to Article 28B paragraph (2) of the 1945 Constitution, children have constitutional rights that must be guaranteed and protected and fulfilled. Thus, the existence of children is not just a subject that is a private matter or domestic or family affairs, but also included in state affairs. In addition to these reasons, several subjective reasons in terms of the existence of children so that children need protection, namely:[5]

1) The cost of recovery due to failure to provide child protection is very high. Much higher than the costs incurred if children get protection;
2) Children have a very direct and long-term influence on actions or unaction of the government or other groups;
3) Children always experience separation or gaps in the delivery of public services;
4) Children have no voting rights, and do not have the lobby power to influence the government's policy agenda;
5) Children in many circumstances cannot access the protection and compliance of children's rights;
6) Children are more at risk of exploitation and abuse;

Internationally, the principle of legal protection for children must be in accordance with the Convention on the Rights of the Child as ratified by the Government of the Republic of Indonesia with Presidential Decree No. 36 of 1990 concerning Ratification of the Convention on the Rights of the Child (Convention on the Rights of the

[1] The Preamble to the 1945 Constitution, 4th paragraph.
[2] Sadjipto Rahardjo. 2010. *Penegakan Hukum Progresif*. Jakarta: Kompas.. P.4
[3] Dey Ravena dan Kristian. 2017. *Kebijakan Kriminal (Criminal Policy)*. Jakarta: Penerbit Prenadamedia Group. p 3
[4] R. Wiyono. 2016. *Sistem Peradilan Pidana Anak di Indonesia*. Jakarta: Penerbit Sinal Grafika. p. 132.
[5] Background to the decision of the Constitutional Court Number 1 / PUU-VIII / 2010 concerning the petition for judicial review of Law Number 11 of 2012 concerning the Criminal Justice System for Children

Child).

Article 69 Paragraph (1) of Law No. 11 of 2012 concerning the Juvenile Justice System (hereinafter referred to as SPPA Law) determines: Children can only be sentenced to criminal or be subject to actions based on the provisions in this Law and paragraph (2) Children who have not 14 (fourteen) years old may only be subject to action.

Article 70 and Article 82 of the SPPA Act for children are subject to sanctions based on "The mild conduct of the child, the personal condition of the child, or the condition when the act was committed or what happened then can be used as a basis for judges not to impose a criminal offense or impose an act by considering aspects of justice and humanity. " Article 82 paragraph (1) Actions that may be imposed on a Child include:

1) Returns to parents / guardians;
2) Submission to someone;
3) Treatment in a mental hospital;
4) Treatment at the Institute for Social Welfare Implementation;
5) Obligations to attend formal education and / or training provided by the government or private bodies;
6) Revocation of driving license; and / or
7) Corrections due to criminal acts.

Article 82 paragraph (2) The actions referred to in paragraph (1) letter d, letter e, and letter f are subject to a maximum of 1 (one) year. Paragraph (3) The act referred to in paragraph (1) may be filed by the Public Prosecutor in his claim, paragraph (4) unless the crime is threatened with imprisonment for a minimum of 7 (seven) years. Paragraph (5) Further provisions regarding the actions referred to in paragraph (1) are regulated by Government Regulation.

Accountability for these children is also regulated in the Draft Penal Code in articles 110 to 128 relating to the minimum age for child criminal responsibility to formulate:

1) Children who have not reached the age of 12 (twelve) years who commit a crime cannot be accounted for.
2) Criminal and acts for children only apply to persons aged 12 (twelve) years and 18 (eighteen) years who commit criminal acts.

The determination of the age of 12 years is also based on the Constitutional Court Decision No. 1 / PUU-VIII / 2010 which in its consideration states that it is necessary to set an age limit for children to protect children's constitutional rights, especially the right to protection and the right to grow and develop.

The spirit of formal child protection has existed since the 1920s, starting with the Geneva Declaration (1923) which gave birth to guidelines on Adoption Children's Rights. The configuration of the spirit of child protection was continued with the implementation of the United Nations Resolution (UN) Number: 40/33 of 1985 (popularly known as Convenant the Beijing Rules) which gave birth to guidelines for the establishment of the Juvenile Justice Administration. Then proceed with the United Nations Resolution (UN) Number: 45/112 of 1990 (popularly known as Convenant the Ryadh Guidelines) which subsequently gave birth to guidelines for the Prevention of Criminal Acts by Youth. Then the United Nations Resolution (UN) Number: 45/133 of 1990 (popularly known as Convenant Juveniles Deprived of Their Liberty) which later gave birth to guidelines on the Protection of Children who are being deprived of their liberty and The Tokyo Rules of 1990 which regulates Coaching Efforts in Outside the Institution.

Children need to be protected from the negative effects of rapid development, the flow of globalization in the field of communication and information, advances in science and technology, and changes in the style and way of life of some parents have brought fundamental social changes in family life to the community which is very influential on values and child behavior.

Deviations of behavior or acts that violate the law committed by children, among others, are caused by factors from within (the family) and outside the self (the environment). Therefore the role of parents in looking after and educating children is a major obligation that must be carried towards the process of self-maturity.

Children's independence must be protected and expanded. Children must get the right to life and protection from parents, family, community, nation and state. Child rights are human rights that need special attention, both in providing protection for newborn children, as they grow and develop, into adulthood. Children deserve human rights as a whole.

Children are not to be punished but must be given guidance and coaching, so they can grow and develop as normal children who are healthy and fully intelligent. Children are a gift from God Almighty as a candidate for the next generation of the nation who are still in a period of physical and mental development. Even so, children who break the law do not deserve to be punished, moreover being put in prison.[1]

Judging from the juridical aspect, the understanding of children in the eyes of positive Indonesian law is commonly interpreted as a person who is a minor (Minder-net / Person Under Age), a person who is underage or

[1] M Nasir Djamil, 2013. *Anak Bukan Untuk Di Hukum*, Jakarta: Penerbit Sinar Grafika. P.1

underage (Minderjarigheid / Inferiority) or often referred to as a child under guardian supervision (Minderjarige Ondervoordij).[1]

To measure the extent to which a type of criminal sanction can meet the objectives of punishment determined by the criminal law system in question. This is because the criminal nature is only a "tool" to achieve the goal. Various theories of punishment that emerged in his era have formulated different objectives of punishment.[2]

Regarding sanctions for actions, Roeslan Saleh stated that if the criminal in an effort to achieve the goal is not solely by imposing the crime, but in addition it also uses action. So, in addition to the criminal sanctions there are also actions. This is aimed solely at special prevention. The purpose of this action is to safeguard the security of the community against people who are a bit dangerous and will commit criminal acts.[3]

Sanction of actions aimed at the perpetrators of criminal acts based on protection, so that the perpetrators of criminal acts will be better and not solely for the purpose of retaliation. Actions are also oriented forward, so that the perpetrators try to better understand that what was done is not right and violates the law, so that one day they will not repeat it. According to H.L. Packer on sanctions actions, "The Primary Purpose Of Treatment Is To Benefit The Person Being Treated. The Focus Is Not On His Conduct, Past Or Future, But On Helping Him.[4]

Substantially, the types of sanctions for action in the criminal law of children in Indonesia are still limited, both the type and variety of threats. Even systematics and types of actions are still simple. The dysfunction of supervising judges and observers regarding the supervision of the implementation of sanctions for actions against children is also evidence of an inadequate system of sanctions for actions against children. A series of mistakes by some judges in imposing sanctions on children can also be evidence of the imperfectness of the sanctions system of action in child criminal law in Indonesia.[5]

Research conducted by ICJR, found the fact that the use of imprisonment is still quite high. Child detention is still very high, children who enter the trial process are generally detained and leave only 7% of children related to the law and not detained. The rest of the data that can be identified, children must be subject to detention. Although there is a possibility of the detention of a child being suspended, not many Parents or Guardians use the detention hold for a child. The use of detention or deprivation of physical freedom should be the last remedy for children in connection with the law.

SPPA Law in Article 69 and Article 70 cannot guarantee the legal protection and welfare of children. If the sanction of action (as remidium) is not in accordance with the needs of the child, then the sanction of the action will be in vain, and the criminal law cannot function as a final remedy (Ultimum Remidium). So it needs to be clarified in the rules of the juvenile criminal justice system regarding sanctioning actions against children so that in the case of imposing a judge's sentence it can be objective in deciding the cases of the child.

Philosophical, sociological and juridical basis is consideration or outlook on life and awareness and ideals of law that originate in the Pancasila and the Opening of the 1945 Constitution of the Republic of Indonesia, pay attention to the fulfillment of community and state legal needs related to the development of empirical facts concerning national criminal law, and (3) pay attention to the rules existing regulations so that they will have an impact on the substance or material to be regulated.

In addition to the principles that animate the contents of the juvenile justice system law, there are also philosophical, juridical and sociological aspects.

B. Philosophical Aspects

The basic philosophy is the view of life of the Indonesian people in the nation and state namely Pancasila. The translation of the values of Pancasila in reflecting the justice, order and prosperity that is desired by the people of Indonesia.

Criminal law reform efforts in Indonesia must be based on the ideology of the nation namely Pancasila which contains 5 (five) precepts. The embodiment of the five precepts of the Pancasila is manifested in the goals of the state that the Indonesian people want to achieve as an independent and sovereign state. The Criminal Code, which is still in effect, is a legal product of the Dutch East Indies government, which needs to be adjusted to the ideology stated in the Pancasila. Pancasila and the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia must be used as a benchmark for implementing the renewal. In other words, the renewal of criminal law must be a means to protect the entire Indonesian nation and all of Indonesia's blood spilled, promote public welfare, educate the nation's life, and participate in carrying out world order based on independence, lasting peace

[1] Lilik Mulyadi, 2005. *Pengadilan Anak Di Indonesia* , Bandung: Mandar Maju, p. 3.
[2] The Use of Criminal Theory Can Be Seen In Judges' Considerations, Namely Against Relatively Severe Criminal Acts, Preferably Penalty Containing Element of Retaliation, Whereas In Relatively Minor Crimes, Criminal Purposes Can Be Emphasized Against Personal Actors For Resocialization. M.A. Kholiq Dan Ari Wibowo. 2016."Penerapan Teori Tujuan Pemidanaan Dalam Perkara Kekerasan Terhadap Perempuan: Studi Putusan Hakim". *Jurnal Hukum Ius Quia Iustum*, No. 2 Volume 23 April, p. 202-203.
[3] Roeslan Saleh, 1983. *Stelsel Pidana Indonesia*, Jakarta: Aksara Baru, , p. 9.
[4] Herbert L. Packer,1968. *The Limits Of The Criminal Sanction*, California: Stanford University Press, p 25.
[5] Sri Sutatiek. 2013. *Rekonstruksi Sistem Sanksi Dalam Hukum Pidana Anak Di Indonesia (Urgensi Penerbitan Panduan Pemidanaan. The Sentencing Guidelines Untuk Hakim Anak)*. Yogyakarta: Penerbit Aswaja Pressindo. P. 83

and social justice.

The embodiment of the second principle of Pancasila, namely fair and civilized humanity, one of which is set forth in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, namely: Every child has the right to survival, growth and development and is entitled to protection from violence and discrimination.

Philosophically the application of crime against children often raises fundamental questions. Although juridical punishment of children is possible, but philosophical punishment of children raises problems that are of a dilemma. On the one hand, punishment often has a long lasting negative impact, especially on children. Suffering due to conviction often results in prolonged psychological trauma.

In order to realize adequate child protection, it is necessary to intervene the factors in the formation of quality of life which are equivalent to the development of human civilization in his day. This phenomenon shows that the process towards achieving the level of child protection will be determined during this time period. In this case each age has its own child protection standards that are widely agreed with reference to universal values.

Related to the renewal of criminal law, there are at least two objectives to be achieved by criminal and criminal law, namely inward and outward goals. The purpose of inward, is the renewal of criminal law carried out as a means for the protection of society and the welfare of the Indonesian people. Both of these objectives as a cornerstone (acornerstone) of criminal law and criminal law reform. While the purpose of exiting is to participate in creating world order in connection with the development of international crimes (international crimes). Protection of the community (social defense) with law enforcement in criminal and criminal renewal carried out with the aim of:[1]

a) protection of society from anti-social acts that harm and endanger the community, the aim of punishment is to prevent and overcome crime.
b) protection of the community from the dangerous nature of a person, the criminal / criminal punishment in criminal law aims to improve the perpetrators of crime or try to change and influence their behavior so that they return to the law and become good and useful citizens.
c) protection of the community from abuse of sanctions or reactions from law enforcers as well as from citizens in general, then criminal objectives are formulated to prevent arbitrary mistreatment or action.
d) protection of the community from disturbing the balance or harmony of various interests and values resulting from the crime, the enforcement of criminal law must be able to resolve conflicts caused by criminal acts, be able to restore balance and bring a sense of peace in society. Community protection in this case also includes specifically the protection of victims of crime, which after the Second World War came to light. Victims in this case also include victims of "abuse of power", who must obtain protection in the form of "access to justice and fair treatment, restitution, compensation and assistance".[2]

As quoted by Barda Nawawi Arief, L.H.C. Hulsman[3] argues that the sentencing system (the sentencing system) is a statutory regulation relating to criminal sanctions and crimes (the statutory rules relating to penal sanctions and punishment).[4] If the definition of "punishment" is interpreted as a "giving or imprisonment", then the definition of "criminal system" in this study is seen in a broad sense where the criminal system is viewed from a functional point of view, namely from the point of view of its work / process, which can be interpreted as:

a) The whole system (legislation) for the functioning / operationalization / concretization of criminal);
b) The entire system (legislation) that regulates how criminal law is enforced or operated concretely so that a person is sanctioned (criminal).

Based on the above understanding, the penal system is identical to the criminal law enforcement system consisting of substantive / substantive criminal sub-systems, formal criminal sub-systems and criminal implementation sub-systems. The three sub-systems are a unified criminal system, because it is impossible for criminal law to be operated or enforced concretely with only one of the sub-systems.

The basic philosophy of the formation of the rule of law, in addition to regulating and disciplining the community, also the most important, is to provide a sense of justice for the community.[5] The usefulness of philosophy in justice, especially in the criminal justice system is to examine the extent to which the criminal justice system can provide justice especially for the poor and those who have limited access to justice.

The word "justice" comes from the Latin "iustitia", has three different kinds of meanings, namely:

1) Attributively means a quality that is fair or just (synonym for justness);
2) As an act means an act of carrying out the law or an act that determines rights and rewards or punishment (synonymy of judicature);
3) Persons, i.e. public officials who have the right to determine the requirements before a case is brought to court (synonym judge, jurist, magistrate).

[1]Barda Nawawi Arief. 2011. *Perkembangan Sistem Pemidanaan Di Indonesia*. Semarang: Penerbit Pustaka Magister.. P. 45
[2]Van Dijk, Jan J.M. ,1997. *Introducing Victimology, the 9th International Symposium Of The World Society Of Victimology*, Amsterdam.
[3] Syamsul Fatoni. 2015. *Pembaharuan Sistem Pemidanaan (perspektif teoritis dan pragmatis untuk keadilan)*. Malang: Setara Press.. P. 14
[4] Barda Nawawi Arief. *Op. Cit*. P. 1
[5] Umar Sholehuddin. 2011. *Hukum Dan Keadilan Masyarakat*. Malang: Setara Press. p 64

Equitable punishment is punishment which is in accordance with the philosophy of child punishment. In a justice study to discuss child dissertation dissertation, the writer uses justice according to Gustav Radbruch who stated that there are three basic values that want to be pursued and must get serious attention from law enforcers, namely the value of justice, usefulness and legal certainty, which especially the basic value of this benefit will direct the law on consideration of the needs of the community at any given moment, so that the law really has a real role for the community.

The study and analysis related to the application of sanctions for children is based on the utility theory from Jeremy Bentham, which in essence asserts that the goal of bringing happiness as much as possible to the large number of people. Soebekti stated that the purpose of the law served the purpose of the state, which was to bring prosperity and happiness to its people. That is, the purpose of the law should provide maximum benefits (use value) to the citizens of the community.

In connection with these 2 (two) basic values, according to Sudikno Mertokusumo:[1]

a) Coaching

For children undergoing a judicial process (undergoing their criminal period/Children sentenced to imprisonment) are placed in a Special Child Development Institute (LPKA). This is in accordance with Article 85 of the SPPA Law which reads:

1) Children sentenced to prison are placed in LPKA;
2) Children as referred to in paragraph (1) are entitled to receive guidance, guidance, supervision, assistance, education and training, and other rights in accordance with statutory regulations;
3) SPPA Law which states that LPKA is obliged to organize education, training, skills, guidance and fulfillment of other rights in accordance with statutory provisions;
4) Community advisers conduct social research to determine the implementation of educational and development programs as referred to in paragraph (3);
5) Correctional Institutions (Bapas) must supervise the implementation of the program referred to in paragraph (4);

After a change in nomenclature, the Penitentiary of the Child changed its name to the Institute for Special Development of Children. This nomenclature change is in accordance with the mandate of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) which is then poured through Minister of Law and Human Rights Regulation No. 18 of 2015 concerning the Organization and Work Procedures of the Special Child Development Institution. It is hoped that this change in name will not merely change the nomenclature or the formation of a new organization, but will also bring about a transformation of the handling of children in conflict with the law (ABH), including changing the impression of punishment to a human rights-based approach. The human rights approach prioritizes character, and eliminates any haunted impressions of prisons which are often attached to the present day.

From the changes in the nomenclature,[2] it is hoped that there will also be a positive spirit carried out by the government, through the Ministry of Law and Human Rights, related to changes in the system of treating children in conflict with the law, which are child friendly and character-based.

At present, children who are in conflict with the law no longer occupy the iron bars. The chambers have even been dismantled. Some connecting gates between the main gate and the detention block have also been demolished, so they are more free to move.

In addition, LPKA who have not yet provided a place to play and exercise must immediately facilitate the facility. The world of children is a world of play, so even though they are in LPKA, they must still get that right.

Regarding formal education for prisoners' children, it is also mentioned that in Articles 4, 5, and 6 of Law Number 20 of 2003 concerning the National Education System (National Education System Law) it can be concluded that children placed in LPKA are also entitled to education without discrimination and the government is responsible for administering the education.

Education provided to children can be formal, informal or non-formal education that can complement and enrich each other. Formal education consists of basic education, secondary education and higher education.

b) Protection

The basis of legal protection for the people in Indonesia is Pancasila and the 1945 Constitution of the Republic of Indonesia. Both are the basis of the ideology and philosophy of the Indonesian people who uphold humanitarian values by placing the law as the commander and not the power.

Respect for human rights and position the Indonesian nation as a state of law. This certainly has consequences that must be obeyed and implemented by the government as the state organizer.

Protection in English means protection, which in the Black's Law dictionary provides the following meanings: 1) the act of protecting; 2) protectionism; 3) Coverage; 4) a document given by a public notary to sailors and other

[1] Sudikno Mertokusumo and A Pitlo. 1993. *Bab-Bab Tentang Penemuan Hukum*. Bandung: Pt Citra Aditya Bakti.. p 1-3
[2] Book of the Agency for the Research and Development of Law and Human Rights, Ministry of Law and Human Rights of the Republic of Indonesia. 2016. *Lembaga pembinaan khusus anak dalam perspektif sistem peradilan pidana anak*. Tim pohon cahaya. p 2-6

persons who travel abroad, certifying that the bearer is a U.S citizen.[1]

Legal protection for the public in the Dutch-language literature is called "rechtsbescherming van de burgers tegen de everhead" and in the English-language literature is called "legal protection of the individual in relation to acts of administrative authorities".[2]

Satjipto Rahardjo explained that "legal protection" is an effort to provide protection for human rights harmed by others and that protection is given to the public so that they can enjoy all the rights granted by law.[3]

Meanwhile, according to Peter Mahmud, "legal protection" is an effort made by the law in tackling violations, which consists of two types, namely repressive legal protection and preventive legal protection.[4]

In relation to legal protection carried out by the government or authorities, Philipus M. Hadjon distinguishes legal protection in two kinds, namely:[5]

1) Preventive legal protection is legal protection where the people are given the opportunity to submit an objection (inspraak) or opinion before a government decision gets a definitive form. Thus preventive legal protection aims to prevent disputes. Preventive legal protection is very meaningful for government actions based on freedom of action because with legal protection, the government is encouraged to be careful in making decisions.
2) Repressive legal protection, namely legal protection efforts carried out through the judiciary, both the general court and the state administration. Repressive legal protection aims to resolve disputes.

Legal protection by the state or government is emphasized more on the element of the state or government as the holder of sovereignty. For this reason, legal protection provided by the state or government to citizens can be seen in the legal instruments and policies issued by the government.

In relation to preventive protection, the government has provided a channel through Law No. 12 of 2011 concerning the Formation of Laws and Regulations, namely in Article 53 which states that "the community has the right to provide input verbally and in writing in the context of determining and discussing draft laws and draft regional regulations."

In addition, Article 5 of Law Number 12 Year 2011 also states the principles in the formation of laws and regulations, one of which is the principle of openness. The principle of openness explains that in the process of forming legislation starting from planning, preparation, compilation and discussion are transparent and open so that all levels of society have the broadest opportunity to provide input in the process of making these laws and regulations.

In connection with this dissertation, the theory of legal protection will be used to discuss how the state provides legal protection in a free, balanced, fair and equal position, both preventive and repressive to law enforcement officials in Indonesia, known as chess dynasty, namely advocates, police, prosecutors and judge.

C. Juridical Aspects

Juridically, there is a paradigmatic dilemma related to the approach taken towards children who commit crimes.

The fundamental change in the concept of juvenile justice is based on the concept of children's rights. One of the children's rights set out in the 1945 Constitution of the Republic of Indonesia Article 28B paragraph (2), namely that every child has the right to survival, growth and development and is entitled to protection from violence and discrimination. In addition, as a form of responsibility the Indonesian state has signed the Convention on the Rights of the Child at the United Nations General Assembly (UN) on 20 November 1989, the Indonesian government ratified the Convention on the Rights of the Child through Presidential Decree of the Republic of Indonesia Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child (Convention on the Rights of the Child).

The idea of children as potential human resources in nation building, therefore the development and development of children must begin as early as possible, so that they can participate optimally for the development of the nation and state. One important idea in realizing children as potential human resources is the application of sanctions for children who are in conflict with the law, as part of a form of legal protection for children. Indonesia's positive law has actually recognized the existence of other sanctions other than criminal sanctions against children through the Indonesian Criminal Code Article 45, which in essence asserts that against persons who are not yet mature or under the age of 16, the judge can order the guilty to be returned to their parents, their guardians or preserver or order that the guilty be handed over to the government, if the act is a crime or one of the violations under Articles 489, 490, 492, 496, 497, 503 - 505, 514, 517 - 519, 526, 531, 532,536 and 540 of the Criminal Code and it has not been more than 2 years since it was found guilty of a crime or one of the abuses mentioned above, and the verdict has become permanent.

[1] Byan A Gamer (Ed). 2004, *Black's Law Dictionarry*, Eight Edition. A Thomson Business.. p 1259
[2] Philipus M Hadjon. *Op. Cit*. p 1
[3] Satjipto Rahardjo *Op.Cit*
[4] Philipus M Hadjon. *Op. Cit*. p 2
[5] *Ibid* p 39

The Indonesian government has given serious attention (political will) through the provisions of the laws and regulations which form a juridical basis in realizing the protection of children, especially children in conflict with the law, namely:

a) Law No. 39 of 1999 on Human Rights

This law, as read from the preamble and general explanation section, is guided by various international human rights instruments that are binding for Indonesia, including the universal declaration of human rights, the convention on the elimination of all forms of discrimination against women and the child convention.

In Law No. 39 of 1999 concerning Human Rights in detail governed the responsibility of the state to protect the human rights of its people, basic obligations and the duties and responsibilities of the government in the effort to uphold human rights. With such broad scope, this law seems to be seen as an umbrella arrangement for all laws and regulations concerning human rights.

Regulation of children's rights in Law No. 39 of 1999 concerning Human Rights is regulated in the tenth part starting from Article 52 to Article 66. Limitation of the children's rights must be carried out with caution, considering that children are the human resources expected for national development. One tangible form of protection of the rights of the child, is the implementation of special justice for children in conflict with the law.

The provisions of the article that are the focus of the study and analysis of the authors in this dissertation are the provisions of Article 59 paragraph (1) and paragraph (2), namely:

1) Every child has the right not to be separated from his parents against his will, unless there is a legal reason and rule that shows that the separation is in the best interest of the child.
2) In the condition referred to in paragraph (1), the right of the child to continue to meet directly and have a personal relationship permanently with his parents remains guaranteed by the Law.

Based on the aforementioned provisions, one of the limitations on a child's right to be separated from his parents is if the child is in conflict with the law, which can then be sanctioned by actions in the form of:

a) returns to Parents / Guardians;
b) surrender to someone;
c) treatment in a mental hospital;
d) treatment at LPKS;
e) the obligation to attend formal education and / or training provided by the government or private body;
f) revocation of driving license; and / or
g) repairs due to criminal acts.

The imposition of sanctions for actions against such children is also in line with the realization of children's rights as regulated in Article 60 paragraph (1) of Law No. 39 of 1999 concerning Human Rights, namely:

Every child has the right to receive education and teaching in the context of personal development in accordance with their interests, talents, and intelligence levels.

Provisions of Law No. 39 of 1999 concerning Human Rights, specifically Article 66 paragraph (2) which states that: Capital punishment or life imprisonment cannot be imposed on child perpetrators. The provision turns out to be in line with the provisions of Article 47 paragraph (2) of the Criminal Code which confirms that: if the act is a crime that is threatened with capital punishment or life imprisonment, then the maximum sentence of imprisonment is fifteen years.

Arrangements related to a person will not be sentenced to death sentence or life imprisonment which is a human right, in line with the teachings of determinism and humanism that are known in philosophical schools. Recognition and protection of children's rights not to be sentenced to death or life imprisonment, must also continue to be considered by the government in order to protect and protect children's rights, especially children in conflict with the law.

In addition, the provisions of Article 66 paragraph (4) of Law No. 39 of 1999 concerning Human Rights which emphasizes, namely:

Arrests, detention, or a child prison sentence may only be carried out in accordance with applicable law and can only be carried out as a last resort.

These provisions are in line with the principles / principles in Law No. 11 of 2012 concerning the Criminal Justice System for Children as regulated in Article 2 letter I, namely: deprivation of liberty and punishment as a last resort. The application of these principles / principles in the juvenile criminal justice system is in line with children's rights that must be realized in the juvenile criminal justice system as regulated in Article 3, namely: not being arrested, detained, or imprisoned, except as a last resort and in the shortest possible time. .

The elaboration of the principles / principles and rights of children mentioned above, are regulated in Article 32 paragraph (2), namely:

Detention of a child can only be carried out under the following conditions:

a) Children aged 14 (fourteen) years or more; and
b) Allegedly committing a crime with the threat of imprisonment of 7 (seven) years or more.

The aforementioned provisions are the main conditions that are cumulative and must be met by law enforcers to be able to detain a child, that is, the child is 14 years of age or older and the act allegedly against the child is a criminal offense that carries a sentence of 7 years or more.

b) Law No. 23 of 2002 on Child Protection

In Law No. 39 of 1999 concerning Human Rights previously discussed above, governed the responsibility of the state, government, parents, family and society to provide protection to children in general. Law No. 23 of 2002 further elaborates the guarantee of recognition and respect for children's rights and the obligations of the state relating to it. The provisions of Article 2 of this law reaffirm the principle of violation of child protection that we have previously observed contained in the Convention on the Rights of the Child. The four principles are: the principle of non-discrimination; the best interests of the child; the right to life, survival and development; and appreciation of children's opinions.

May the best interest principle for children be the foundation of further regulation of protection of children in conflict with the law. If this law is traced, it can be found that the rules regarding state responsibility in ensuring the protection of children in conflict with the law are scattered in a number of articles in this law the most important provisions are articles 16, 17, and article 64.

The provisions of article 16 emphasize the right of children to be protected from all forms of torture and inhuman punishment, as well as guarantees that arrest, detention and imprisonment will only be carried out as a last resort. Furthermore, article 17 guarantees the right of every child deprived of his liberty to: get humane treatment and be placed separately from adults; obtain legal assistance and other assistance in each stage of the legal effort; defend themselves and obtain justice before the juvenile court in a closed session; and kept confidential (his identity).

The provisions of article 64 more specifically regulate the rights of children in conflict with the law as a group that must obtain special protection from the government and society. In this provision it is emphasized that special protection is carried out through humane treatment, provision of assistants, provision of special facilities and infrastructure, imposing sanctions in the best interests of the child, monitoring and recording of children's development, guarantees to maintain relationships with parents / family and protection from reporting on identity in the mass media to avoid labeling.

The provisions above are similar to those found in Law No. 39 of 1999, also not necessarily operational. These provisions seem to be seen as a general reference that must still be concrete in more technical regulations. Legislation which then concretizes the government's obligation to respect, protect and guarantee the fulfillment of children's rights in conflict with the law can be found in the laws that establish juvenile courts which are equipped with special procedural laws for children.

c) Law No. 11 of 2012 on the Juvenile Justice System

Indonesia has known the juvenile court since 1997. This court was established through Law No. 3 of 1997 concerning Juvenile Courts. In 2012, Law No. 11 of 2012 concerning the Juvenile Criminal Justice System which replaces Law No. 3 of 1997, but this law has only come into force 2 (two) years since it was promulgated (July 2014).

Through Law No. 11 of 2012 the entire system and administration including the procedural law of the juvenile court version of 1997 were overhauled and harmonized with the principles developed specifically in the convention on children's rights in the child protection law mentioned above. In other words, this child criminal justice system law then concretely realizes the state's obligation to establish the administration and / or the juvenile justice system as the fulfillment of the rights of children in conflict with the law, including in particular children in conflict with the law.

The specificity of juvenile justice does not mean that procedural rights guaranteed by ICCPR, CAT or KUHAP cannot be applied and can be crossed. It must be observed that all guarantees of general protection (procedural rights) contained in the general criminal procedure law (KUHAP) as well as international instruments that have been ratified by the Government of Indonesia, such as the ICCPR or CAT, mutatis mutandis, must also be given to children in conflict with the law .

This means that the specificity provided for in Law No. 11 of 2012 may not necessarily be considered an exception. This was said by taking into account a number of provisions in Law No. 11 of 2012 which can be expressly interpreted as a lex specialis rule, specifically relating to court administration and the legal provisions of juvenile court proceedings. Instead it must be addressed as an additional legal right (special protection) that must be given to children in conflict with the law, precisely because the state must pay attention not only to the position of children as vulnerable groups, but more than that as concrete efforts to advance the best interests of children.

The spirit of advancing the best interests of children in this law stated that the juvenile justice system is implemented based on the principles of: protection, justice, non-discrimination, the best interests of children, respect for children's opinions, survival and growth and development of children, coaching and mentoring children, proportionality, deprivation of liberty and punishment as a last resort, as well as avoidance of retaliation (article

2). Therefore, as a realization of the above objectives, a number of rights must be given to children who are in conflict with the law at each stage of the criminal justice process.

Of all the principles, it seems that the most important principle that most influences the overall administration and process of juvenile justice is the principle of the best interests of the child. This is clearly different from the juvenile justice system as the principle of the best interests of children. This is clearly different from the general criminal justice system which further promotes the public interest, legal certainty and justice. The will to prioritize the interests of children also appears in the provision that the entire examination process at each stage (investigation to examination in court) must be carried out in a family atmosphere.

In order to guarantee the protection of the "best interests of the child" efforts to uncover the truth (criminal) must be carried out by people who have special abilities. In this law it is determined that investigators, public prosecutors, and judges who examine the cases of children must meet certain requirements, namely: experienced, have interest, attention, dedication and understand the problems of children, and have attended technical training on juvenile justice. Furthermore, the obligation to pay attention to the best interests of the child and to maintain a family atmosphere is maintained (article 18). This obligation is borne by social counselors, professional social workers and social welfare workers, investigators, public prosecutors, judges, and advocates or other legal aid providers.

After outlining the most important norms relating to child protection rules, it is important to protect children who are in conflict with the law from the adverse effects of the criminal justice system (general). On the contrary, it can be referred to many cases that occur in Indonesia which show ignorance (or lack of understanding) of law enforcers who work in the criminal justice system towards the vulnerable position process of children in conflict with the law.

a. International Instrument

The obligations (legal and non-legal in the form of soft laws)[1] of the above state are further adopted into national legislation.

a) Convention the Right of the Child

United Nations Declarations have stated that childhood has the right to receive special care and assistance, and bearing in mind that the need to expand special services for children has been declared instruments related to special bodies of international organizations concerned with the welfare of children . The Convention on the Rights of the Child is one of the international instruments concerning children. The articles governing the requirements of children in conflict with the law are set forth in articles 37 c and article 40 (1).[2]

Article 37. states parties shall ensure that:

States Parties shall ensure that:

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

Article 40

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

Article 37 participating countries will guarantee that:

(c) every child deprived of liberty will be treated humanely and respected with human dignity and with due regard to the needs of people his age. In particular every child deprived of liberty will be separated from adults, unless it is deemed that not doing this is in the best interest of the child concerned and he has the right to make contact with his family through correspondence or visits, safe in special circumstances .

The principles of children's rights in accordance with the Convention of the Right of the Child are as follows:

1) Every child must enjoy all the rights listed in this declaration without exception, without distinction and discrimination.
2) Every child must enjoy special protection, must be given opportunities and facilities by law or by other equipment, so that they are able to develop physically, mentally, morally,

[1] USAID, The Asia Foundation, kemitraan partnership. *Hukum Perlindungan Perepuan Dan Anak*, hasil riset 2019-2013. p 461
[2] Abintoro prakoso. 2012. *Pembaharuan sistem peradilan pidana anak*. Yogyakarta: aswaja pressindo.. Hlm 50

spiritually, and socially in a healthy and normal way.
3) Every child from birth must have a name and national identity.
4) Every child must enjoy the benefits of social security.
5) Every child physically, mentally, and socially experiencing disability must be given special treatment, education and maintenance in accordance with their conditions.
6) Every child for his full and balanced personal development needs love.
7) Every child must receive education free of charge and on the basis of compulsory education.
8) Every child in any situation must receive protection and assistance first.
9) Every child must be protected from any forms of neglect, acts of violence and exploitation
10) Every child must be protected from any discrimination based on racial, religious and exploitation practices.

Based on the 10 principles of children's rights as described above, in general it can be categorized in 4 fields, namely:

1) Right to survival, concerning the right to an adequate standard of living and health services.
2) The right to develop, including the right to education, information, leisure, arts and cultural activities, freedom of thought, belief, and religion, as well as the right of children with disabilities to special services, treatment and protection.
3) Right to protection, including protection for all forms of exploitation, cruel treatment, and abuse in the criminal justice process.
4) The right of participation, including freedom to express opinions, gather and associate, as well as the right to participate in making decisions concerning himself.

b) The Beijing Rules

International instruments relating to the application of criminal sanctions for children

The gesture to prevent children from applying criminal acts is also an appeal of the international community contained in various international instruments, especially international instruments relating to the application of crime for children.

As far as the rights of children in conflict with the law are concerned, we can look at the regulation of the state's responsibility to guarantee those rights which are in line with the principles contained in the Beijing Rules. The provision in question is Article 66 which reads in full:

1) Every child has the right not to be subjected to torture, torture, or inhuman punishment.
2) A death sentence or life sentence cannot be imposed on a child criminal.
3) Every child has the right not to be deprived of liberty illegally.
4) Arrest, detention or imprisonment of children is carried out in accordance with applicable law and only carried out as a last resort.
5) Every child deprived of liberty is entitled to humane treatment and by taking into account the fulfillment of personal development needs according to his age and must be separated from adults, except for his interests.
6) Every child deprived of liberty has the right to obtain legal assistance or other assistance effectively at each stage of applicable legal remedies.
7) Every child deprived of liberty has the right to defend oneself and obtain justice before an objective and impartial juvenile court in a hearing that is closed to the public.

The above provisions seem to be compiled as a list and detail of children's rights in conflict with the law. However, the formulation of these rights in Law No. 39 of 1999, even though its fulfillment must clearly be guaranteed by the state, it cannot necessarily be implemented and demanded for its concrete implementation. For this reason, it is necessary to examine how the obligations of the state cq. the government embodies in other legislation which is more technical and in concrete policy.

c) The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)

One of the international instruments relating to the implementation of criminal offenses for children is the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) contained in UN Resolution 45/112 dated December 14, 1990. Some important things are contained in UN Resolution 45 / 112 related to criminal application for children include:

1) the development of non-criminogenic attitudes (coercive from the author) among children and in the community needs to be done, by utilizing the law, useful social activities;
2) The United Nations for the Administration of Juvenile Justice (the Beijing Rules);
3) The international rules for the protection of juvenile deprived of liberty International instruments relating to child protection rights.

D. Sociological Aspects

Sociologically, legal reform is carried out because of a desire to meet the legal needs of the community that has been attempted since 46 years ago. This need is based on the cultural values of a nation (latency) that is independent and sovereign. Moreover, for countries that have experienced colonialism and are currently still inheriting the legal system from the state that colonized them, both through the principle of concordance, jurisprudence and doctrines implanted by the colonizers which in subsequent developments were not widely understood by the new generation of the country. Legal reforms for these countries are absolutely necessary so that national criminal law is realized.[1]

Sociologically, the application of sanctions against children also raises questions, given the social traditions that are permissive to children's delinquency. The delinquency of children in the community tradition is often responded unreservedly by the community or family, so the delinquency of a child usually ends in an apology. With such a permissive tradition of child mischief, the application of the criminal offense in the form of a crime of deprivation of liberty will be responded negatively by the community. Sociologically, the community is not willing to see children treated as criminals.

The internal conditions of Indonesian society that are developing rapidly along with developments in the international world and the demands for legal certainty and justice are so strong, causing several criminal law formulations contained in the Criminal Code can no longer be used as a legal basis for overcoming the problem of crime. Comprehensive reform of criminal law, in which regulates the balance between public interests and the interests of the state with individual interests, between protection of perpetrators and victims of criminal acts, between elements of behavior and inner attitude, between legal certainty and justice, between written law and legal life in society, between national values and universal values, and between human rights and human rights obligations, must be realized as soon as possible.

The best punishment for a child in criminal justice is not a prison sentence but an act of compensation according to the degree of seriousness of the crime. "The compensation (restitutio) in question is a sanction imposed by the criminal justice system that requires the offender to pay a sum of money or work (service), either directly or substitute (the family of a crime victim)". The most appropriate compensation for children is community project work compared to monetary compensation because in general children do not have the ability to compensate money, especially for children from poor or homeless families. A child who is determined to be compensated by the court can be included in a work program in groups with other friends. Compensation with project work will train the child to be honest and responsible for the punishment given to him. The form of punishment in the form of sanctions for damages is very necessary in the implementation of criminal law for children in the context of protecting children in conflict with the law.

In making changes to the law, there are three systems used to adjust to developments in society, namely:[2]

1) The global system, where changes are placed in a special criminal law Act, this kind of law is outside the Criminal Code and contains rules, both material criminal law and criminal procedure law.
2) The evolution system, in which changes are made by adding or changing the articles in the existing Penal Code.
3) Compromise system, where changes are made by adding certain chapters to the Criminal Code.

All three systems approaches are implemented in Indonesia. Even the Criminal Code Act still applies different events as in article 153 of the Criminal Procedure Code, which states that children and women have criminal differences.

Broadly speaking, the new draft Penal Code regulates the types of child crimes, the minimum age limit for children to be criminally responsible for children who commit crimes, and the determination of psychological considerations such as emotional, intellectual, and mental child.

The most relevant clause is the crime of deprivation of liberty or institutionalization which according to the Beijing Rules should consider two important things, namely:[3]

1) Criminal is a last resort and is inevitable (in connection with the seriousness of the action taken by a child).
2) Criminal imprisonment in the shortest possible time.

The issue of children's rights in the legal process is closely related to the philosophy of juvenile justice. In Indonesia, it has never been explicitly stated the philosophy adopted in dealing with children who commit crimes. However, it needs to be linked to the goals of the juvenile justice system as recommended in rule No. 5 Beijing Rules[4], namely good treatment and guarantee that decisions taken against child offenders will always consider children as part of their environment such as social status, family atmosphere, damage due to violations or other

[1] Kusno Adi. 2009. *Diversi sebagai upaya alternative penanggulangan tindak pidana narkotika oleh anak*. Malang: Umm press. P. 95
[2] Loebby Loqman 1992. *Hukum Tentang Pidana Denda*. Jakarta. Departemen Kehakiman. P 34

[3] United Nations Standar Minimum Rules For The Administration Of Juvenile Justice (The Beijing Rules)
[4] *Ibid*. Item 5.1

factors related to the special atmosphere of the environment and the desire of the offender to compensate and his desire to be a good part of society including protection for victims. The court also guarantees the welfare of children and gives their individual rights during the course of the trial.

Article 7 of the Beijing Rules[1], states that basic procedural guarantees must be guaranteed in every juvenile justice process, namely:

1) The right to notify the accusation;
2) Rights remain silent;
3) The right to obtain legal counsel;
4) The right to the presence of parents / guardians;
5) The right to confront witnesses and hearings of witnesses;
6) Right of appeal to a higher level.

According to 5.1 rules the Beijing Rules show two very important goals or objectives namely advancing child welfare and the principle of proportionality.

The need for special treatment and approaches to child cases has been explained in the declaration of the right of the child and the SMR-JJ (Beijing Rules). Regarding the policy not to impose capital punishment as stated in no. 17.2 it is explained in the commentary that it is in accordance with article 6 (5) of the international covenant on civil and political rights (ICCPR) and concerning the prohibition of the use of corporal punishment.

Childhood is a time when someone really needs love especially from parents to develop and learn. This situation will not be found in correctional institutions that are limited by high walls and in an atmosphere that is not harmonious with one another. In the family only if the child does not get the affection / attention from his family, especially his parents, the child will look for attention inside or outside the home and the child may become naughty. Whereas in the Correctional Institutions the love that should be obtained from the family environment is impossible, Institution officials cannot fully pay attention to the residents because of the large number of children they must supervise.

Law Number 11 of 2012 concerning the Juvenile Justice System regulates that two types of sanctions can be imposed on children who commit criminal acts, namely criminal sanctions and sanctions actions, so that it can be seen that this law has used a double track system or double track system . Double track system is a two-track system regarding sanctions in criminal law, namely criminal sanctions and sanctions actions. Sanctions imposed in this law are not solely intended to frighten or threaten the perpetrators of the crime, but also function to educate and correct the perpetrators of the crime.

Although at the level of practice, the difference between criminal sanctions and sanctions actions is often somewhat vague, but at the level of basic ideas both have fundamental differences. Criminal sanctions are based on the basic idea "why is criminal conviction?", While sanctions are based on the basic idea of "what is criminal prosecution for?". In other words, criminal sanctions are reactive to an act, while sanctions are more anticipatory action against the perpetrators of these acts.[2]

The focus of criminal sanctions is aimed at the wrongdoing that someone has done through the imposition of suffering so that the person concerned becomes deterrent. The focus of action sanctions is more focused on efforts to help perpetrators to change. So it is clear that criminal sanctions emphasize the element of retaliation, whereas sanctions for actions stem from the basic idea of community protection and guidance or treatment of the perpetrators of crime.

The use of this two-track system is a consequence of the adoption of neo-classical flow that seeks to exploit the advantages and leave the deficiencies of the two other criminal law streams namely the Classical and Modern streams.[3]

Sanction of action originates from the philosophy of determinism which assumes that living conditions and human behavior, both as individuals and as a group of people are determined by physical, geographical, biological, psychological, sociological, economic, and religious factors. Thus, the evil behavior of a person or society is determined by various factors, and therefore every conviction can only be justified with the intention of rehabilitating the offender.[4]

The philosophy of determinism is the basis of the birth of the theory of punishment in the form of relative theory or goal theory. This relative theory then forms the sanction for action. Relative theory views that punishment is not retaliation for the wrongdoer, but rather as a means to achieve a goal that is useful to protect the community. According to Leonard Orland, relative theory in criminal law aims to prevent and reduce crime. Sanctions must be intended to change the behavior of criminals and others who have the potential or tend to commit crime.

[1] *Ibid*. Item 7.1
[2] Sholehuddin, 2004. *Sistem Sanksi Dalam Hukum Pidana : Ide Dasar Double Track System & Implementasinya*, Jakarta: PT. Rajagrafindo Persada, p.17
[3] *Ibid*. p. 3.
[4] *Ibid*. p. 33-34

Therefore, the theory is relatively more forward looking.[1]

According to Karl O. Christiansen, there are several main features of this relative theory, including:[2]

1) The purpose of sanctions is prevention; 2) Prevention is not the final goal but only as a means to achieve higher goals, namely the welfare of the community; 3) Only violations of the law can be blamed on the perpetrator, for example willfulness or negligence that qualifies for a crime; 4) Sanctions must be set based on their purpose as a crime prevention tool; 5) Sanctions are forward looking or prospective. It contains an element of reproach but both an element of reproach and an element of retaliation cannot be accepted if it does not help prevent crime for the benefit of the people's welfare. Thus according to relative theory, sanctions are not just to retaliate against people who have committed crimes, but more than that, sanctions must have other useful purposes. Sanctions are set not because people commit crimes, but that people don't commit crimes again.

There are three basic objectives of this relative theory, including:

Detention as a criminal effect, means to keep the convicted person from the possibility of repeating the same crime. The purpose as an antidote means that punishment serves as a reminder and frightening example for potential criminals in society.

This theory considers that punishment is a way to achieve rehabilitation in the convicted person. Error or act of crime is considered as a social disease that is integrated in the community. The crime is also considered as a cause of mental disharmony or personal imbalance that requires psychiatric therapy, counseling, spiritual practices, and so on. Therefore, criminalization 1) Deterrence and deterrence. 2) Rehabilitation is seen as a process of social and moral treatment for a convicted person to reintegrate properly into his community or community.[3]

This form of purpose is part of the doctrine that punishment is a process of reform. Every conviction basically states that the actions of the convicted person is wrong, cannot be accepted by the community and that the convicted person has acted against their obligations in society. Therefore, in the process of punishment, the convicted person is helped to realize and admit the wrongs that have been accused of him.[4]

The objectives of this relative theory are realized by the application of sanctions actions against someone who commits a crime, especially children regulated in Law Number 11 of 2012 concerning the Criminal Justice System for Children (SPPA Law). In a contrario, what is meant by an action is what is imposed on a person who commits an offense that is not suffering or what is not a reaction to a criminal act that is not in the form of a misery that is inflicted by the state on the offender.

Sanction of the purpose of action is more educational. If viewed from the point of view of criminal theories, sanctions for actions are sanctions that do not retaliate. It is solely aimed at special prevention, which is protecting the community from threats that can harm the interests of the community. So the main purpose of applying sanctions for children who commit criminal acts is to conduct guidance and rehabilitation of children so that they are aware of their mistakes and can turn into better human beings.

Alf Ross argues that although action sanctions are still attached to the element of suffering, action sanctions are not intended to denounce the actions of children as contained in criminal sanctions. This opinion is justified by Sholehuddin because in essence any type and form of sanctions in criminal law still contain elements of suffering. This was confirmed by Gerber and Mc Anany who stated that sanctions in criminal law always concern suffering as long as it is coercive experienced by the convicted person for committing acts prohibited by the court and the public.[5]

Alf Ross's opinion about the nature of the sanction of action above is in line with the relative theory because the conviction is not solely intended to prove that the perpetrator has been guilty, but the conviction must contain positive consequences for the perpetrators, including the victim and other people in Public. The basic characteristics of this theory according to Igor Primoratz are future-oriented crimes and the basic principle reads puniturut ne peccetur which means to be convicted so that they are no longer guilty.[6]

E. Conclusion

The nature that underlies the imposition of sanctions for children based on philosophical, juridical and sociological grounds is more on the principle of the best interest of the child which is based on where the child is assumed not to have legal capacity to commit a crime considering the conditions and nature that still depend on adults, the age level of physical, mental, moral, and spiritual development is not yet mature. Children are considered not to truly understand the mistakes they have made so that it is appropriate to be given a reduced sentence and differentiation of the punishment for children with adults. In the context of children's lives in the structure of the layers of society

[1] *Ibid*. p. 41-42
[2] *Ibid*. p. 44
[3] *Ibid*. p. 44-45
[4] *Ibid*. p. 45
[5] *Ibid*. p. 44-45
[6] *Ibid*. p. 45

and culture that is still based on the pattern of relationships between children and adults

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