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Reformulation of the Criminal Justice System for Children in Conflict Based on Pancasila Justice

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Abstract *The writing of this paper aims to examine the policy of the criminal justice system for children in conflict with the law and reformulation of the criminal justice system for children in conflict with the Pancasila justice. The main problem in writing this paper is that why it is considered important to reform the criminal justice system for children in conflict with the law based on Pancasila justice? This study uses secondary data by analyzing the laws of the juvenile justice system in Indonesia and comparing them to the laws and regulations regarding the juvenile justice system in Greece and Yoslavia. The results of the study found that the age requirement for criminal responsibility for children is too low, namely 12 (twelve) years and the terms of diversion, that the threat of criminal acts that can be carried out by diversion and not repetition of criminal acts is not in line with the aim of diversion, namely to prosper*

and achieve the best interests of children such as recommended by the Convention on the Right of the Child and The Beijing Rules. Therefore, it is important to reformulate/reformulate immediately regarding these diversion requirements. The conclusion of this paper emphasizes the importance of reformulating the criminal justice system for children in conflict with the law (the criminal child) based on Pancasila justice.

Keywords: Reformulation, Criminal Justice System, Children in Conflict with the Law, Pancasila Justice

1. Introduction

Children are the gift and mandate from God, as the next generation of the nation's ideals. They have a strategic role and position in order to maintain the survival of the nation and state¹. As determinants of the destiny and history of the nation, they reflect the standpoint of the nation's future conduct². Based on very strategic position of the child, guidance and protection are required to ensure comprehensive, congenial, harmonious, and balanced physical, mental and social growth and development³.

¹ Ahmad Syakirin, "Formulasi/model sistem pemidanaan anak di Indonesia." *Mimbar Yustitia* 2, No. 2 (2018): 121-141.

² Rise Karmilia, and Dani Kurniawansyah. "Kebijakan Sistem Pemidanaan Dalam Upaya Perlindungan Hukum Terhadap Anak Sebagai Pelaku Tindak Pidana." *Journal of Juridische Analyse* 1, No. 1 (2022): 1-13.

³ Muntuwenkosi Sibisi and Ajwang' Warria, "Challenges Experienced by Probation Officers Working with Children in Conflict with the Law in the Johannesburg Metro Region (South Africa)," *Children and Youth Services Review* 113, No. March (2020): 104949, <https://doi.org/10.1016/j.chilyouth.2020.104949>.

The attention of the international community towards the protection of children in conflict with the law began with the recognition in the Universal Declaration of Human Rights in 1948⁴, the United Nations General Assembly Declaration on the Rights of the Child in 1959 and the International Covenant on Civil and Rights of the Child in 1966⁵. United Nations General Assembly by Resolution No.40/33 in 1980 by generating Resolution No. 4 on the Development of Minimum Standards of Juvenile Justice and recommending that the Committee on Crime Prevention and Control develop Standards Minimum Rules for the Administration of Juvenile Justice (hereinafter abbreviated as SMR-JJ) and confirmed by the United Nations General Assembly by Resolution No.40/33, dated November 29, 1985⁶.

Juridically, the guarantee of child protection in Indonesia is regulated in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) as amended IV, Article 28B Paragraph (2) states "(2) Every child shall have the right to live, to grow and to develop, and shall have the right to protection from violence and discrimination". The juvenile criminal justice system is specifically regulated in Law No. 11 of 2012 on the Juvenile Criminal Justice System (hereinafter as the SPPA Law), specifically regulating the protection of children's rights as perpetrators of criminal acts (delinquency).

The SPPA Law still contains visible juridical disadvantages, including the formulation of Article 7 Paragraph (2) of the SPPA Law. The condition that diversion can be carried out for criminal acts committed by children is punishable

⁴ Abintoro Prakoso, *Hukum Perlindungan Anak*. (Yogyakarta: Laks Bang Pressindo, 2016).

⁵ Patricia Gray, "'Child Friendly' International Human Rights Standards and Youth Offending Team Partnerships," *International Journal of Law, Crime and Justice* 45 (2016): 59–74, <https://doi.org/10.1016/j.ijlcj.2015.11.001>.

⁶ Rasdi, *Kebijakan Pidana Pengawasan Dalam Hukum Pidana Anak Di Indonesia* (Semarang: Unnes Press, 2013).

by imprisonment for under 7 (seven) years. Such provisions indicate that the formulation system is more oriented to the action aspect, paying less attention to the perpetrator (child) aspect. The next diversion requirement is regarding the child's recidive (repetition of a crime). Formulation of norms in the article does not reflect the balance between the act and the perpetrator, as adopted in modern law, which adheres to the principle of "*da-daader strafrech*" (the criminal system is oriented towards perpetrators and victims).

Formulation of the norms of Article 7 Paragraph (2) of the SPPA Law, is also not in line with the principles in the Standard Minimum Rule Juvenile Justice (SMR-JJ)/the Beijing Rule. In Rule 17.1, among other things, it is emphasized that in making decisions in cases of children, they must be guided by the principles, except considering the seriousness/severity of the crime, but also the circumstances and needs of the child and the child's welfare factor becomes the main consideration⁷.

Formulation of the norms of Article 1 Number 3 of the SPPA Law, contains the problem of restrictions/definitions of children in conflict with the law, which

⁷ Nandang Sambas, *Pembaharuan Sistem Pemidanaan Anak di Indonesia* (Yogyakarta: Graha Ilmu, 2010). See also Muhammad Ikbal, "Implementation of Discretion Perspective of Penal Policy (Study of Yogyakarta Police Department)". *JILS (Journal of Indonesian Legal Studies)* 3, No. 1 (2018): 75-92. <https://doi.org/10.15294/jils.v3i01.23208>; Irma Yuliawati, "Comparison of Rechterlijk Pardon Concept on 2019 Criminal Code Draft and Article 70 Law Number 11 of 2012 Concerning Juvenile Criminal Justice System". *Journal of Law and Legal Reform* 2, No. 4 (2021): 603-622. <https://doi.org/10.15294/jllr.v2i4.48368>. For further discussion and comparison concerning the child protection on juvenile criminal justice system, please also see Ratri Novita Erdianti, and Sholahuddin Al-Fatih. "Fostering as an Alternative Sanction for Juveniles in the Perspective of Child Protection in Indonesia". *JILS (Journal of Indonesian Legal Studies)* 4, No. 1 (2019): 119-128. <https://doi.org/10.15294/jils.v4i01.29315>; Abdiel Abraar Arya Aradhana, and Charles Sahalatua Pangaribuan. "Cyberbullying in Media Social: A Mainstreaming the Victim Protection Principles in Indonesian Criminal Justice System". *Indonesia Media Law Review* 1, No. 2 (2022): 99-122. <https://doi.org/10.15294/imrev.v1i2.60587>.

is one who has reached the age of 12 (twelve years), but has not yet reached the age of 18 (eighteen years) who is suspected of committing a crime. Regulations regarding the minimum age limit requirements for children to be filed to a juvenile case trial in the norm of the article is too low. Formulation of the norms of Article 9 Paragraph (2) of the SPPA Law, relates to a criminal justice system that is not oriented to the perpetrators and victims in a balanced way. Conditions for reaching a diversion agreement must be approved by the victim/family.

Based on these juridical disadvantages, it is natural that in its implementation it will hinder the achievement of the welfare and best interests of children as the main goal of the juvenile criminal justice system in Indonesia. According to the report from the Directorate General of Corrections at the Ministry of Law and Human Rights, child delinquency throughout Indonesia as of June 2022, a total of 1174 children in Indonesia consist of child convicts with a total of 923 children in the LPKA (Child Special Placement Institution), and 251 children detained in the Child Placement Institution While (LPKAS)⁸.

Pancasila is the basis of the state (Grundnorm) and at the same time the way of life of the Indonesian nation (Way of Life). Pancasila as the most basic legal norm is the highest rule, and fundamental, and becomes the core of every legal and state order in providing Pancasila justice in Indonesian law, togetherness, and the value of social justice of the Indonesian people as a whole and as a whole as the identity of the Indonesian Nation. Every applicable legal regulation must be sourced and inspired by the values of Pancasila as the basic norm⁹.

Pancasila in its position as the grundnorm (basic norm) that the values of Pancasila as the fundamental values of the state are the source of all sources of law

⁸ DITJENPAS, "Ditjen PAS - SDP Publik," n.d., <http://sdppublik.ditjenpas.go.id/>.

⁹ Yudi Latif, "Pancasila Sebagai Norma Fundamental Negara". *Paper*, Seminar Nasional Dies 73 FH UGM) 18 February 2019.

and the source of the highest legal order in Indonesia. Objectively Pancasila as the basic norm also contains a view of life, awareness, legal ideals (*recht ide*), as well as moral ideals and the character of the Indonesian nation¹⁰. Therefore, based on these conditions, this paper will conduct a study on “why is it necessary to reform the criminal justice system for children in conflict with law and how to reform the criminal justice system for children in conflict with law based on Pancasila justice?”

2. Method

The type of research used in this research is normative/doctrinal legal research, which is legal research conducted by examining library materials or secondary data¹¹, including primary legal materials, secondary legal materials and tertiary legal materials relating to the criminal justice system for children in conflict with law. This normative legal research approach requires that all doctrines, principles, values and norms in laws and regulations have strong consistency. This research approach uses the statutory approach, conceptual approach and comparative approach¹². In the realm of normative legal research, it actually does not recognize the term of data type, but the term used is legal material. This legal material consists of primary legal materials, secondary legal materials and tertiary legal materials¹³.

¹⁰ H Amran Suadi, *Filsafat Hukum: Refleksi Filsafat Pancasila ,Hak Asasi Manusia dan Etika* (Jakarta: Prenada Media Group, 2019).

¹¹ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Depok: Raja Grafindo Persada, 2018).

¹² Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2021).

¹³ Zaenudin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2018).

Legal materials in this research include Primary Legal Materials: Law No. 39 of 1999 on Human Rights, Law No. 11 of 2012 on the Juvenile Criminal Justice System, Law No. 23 of 2002 in conjunction with Law No. 35 of 2014 on Child Protection and other implementing regulations related to juvenile justice policies. Secondary legal materials, including books related to the study of this dissertation, legal scientific journals, and research reports related to juvenile justice. Tertiary legal materials, including law dictionaries, encyclopedias and articles.

The main data collection in the form of secondary legal materials is carried out by means of library research, and the study of important documents related to legal regulations, from the basic law level, laws and other lower regulations related to the juvenile criminal justice system, protection for children in conflict with the law and human rights (children).

3. Result & Discussion

A. The Importance of Reforming the Juvenile Criminal Justice System

1) Formulation Policy

Policy derives from the English term “policy”, it is defined as “the general principles by which a government is guided in its management of public affairs”¹⁴. The term “policy” in the Great Indonesian Dictionary means “a series of concepts and principles that outline and base a work implementation plan, leadership and way of acting, a statement of ideals, goals, principles or purposes as a guideline for management in achieving goals”¹⁵.

¹⁴ Dey Ravena and Kristian, *Kebijakan Kriminal* (Jakarta: Kencana, 2017).

¹⁵ Ravena and Kristian.

The politics (policy) of criminal law or the so-called criminal system includes the formulation stage/legislative stage in the House of Representatives (DPR), the law application stage (application stage in the executive/government agency) and the execution/implementation stage of the Criminal Law Act as a functional/operational unit in order to achieve the purpose of punishment¹⁶.

M. Cherif Bassiouni declared the 3 (three) stages of the policy, as cited by Barda Nawawi Arief, as legislative policies, applicative/judicial policies, and executive policies. Legislative policy as the stage of law enforcement "in abstracto", while applicable policies, judicial policies, and executive policies as policies "in concreto"¹⁷. The policy formulation starts from the stage of formulating norms/sanctions by the legislative body, which is called the legislative policy stage as the most strategic stage, because at this stage the lines of punishment and criminal justice system policies are formulated which are also the legal basis for the stage of implementing the criminal/application stage by the judiciary and the stage of criminal/administrative implementation by the criminal implementing officers¹⁸.

2) Criminal Justice System

The system comes from the Greek "systema" which means a series of objects that are joined by a framework of regular interactions or interdependence¹⁹. The

¹⁶ Barda Nawawi Arief, *Tujuan Dan Pedoman Pemidanaan: Perspektif Pembaharuan Dan Perbandingan Hukum Pidana*. (Semarang: Badan Penerbit Undip, 2017).

¹⁷ Barda Nawawi Arief, *Kebijakan Formulasi Ketentuan Pidana Dalam Peraturan Perundang-Undangan*. (Semarang: Badan Penerbit Undip, 2016).

¹⁸ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana :Perkembangan Penyusunan Konsep KUHP Baru* (Jakarta: Prenada Media Group, 2017).

¹⁹ Pujiyono, *Rekonstruksi Sistem Peradilan Pidana Indonesia*. (Semarang: Pustaka Magister, 2012).

system can also mean as wholes consisting of a number of parts/elements (whole compound of several parts)²⁰.

The system can also be interpreted as a whole, which is composed of parts, in which parts are interconnected on a regular basis and are wholes²¹. It contains at least 3 (three) characteristics, which is comprehensive (whole), has several elements, all elements are interrelated (relation) and then form (structure)²².

Based on the opinions of other legal experts, Lili Rasjidi concludes that the system has the following characteristics²³:

- a. A complexity of elements formed in a single interaction (process)
- b. Each element is related in a unified relationship with each other (independence of its part)
- c. The complex unitary elements form a larger whole, which includes the entire unitary element that composes it (the whole is more than the sum of its part)
- d. The whole determines the characteristics of each of its constituent parts (the whole determines the nature of its part)
- e. Part of the whole cannot be understood if it is considered in isolation from the whole (the part cannot understood if considered in isolation from the whole)
- f. The parts move dynamically, independently or as a whole in the whole (system).

²⁰ Febby Mutiara Nelson, *Sistem Peradilan Pidana Dan Penanggulangan Korupsi Di Indonesia* (Depok: Raja Grafindo Persada, 2020).

²¹ Rocky Marbun, "Grand Design Politik Hukum Pidana Dan Sistem Hukum Pidana Indonesia Berdasarkan Pancasila Dan Undang-Undang Dasar Negara Republik Indonesia 1945," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 1, no. 3 (2014): 558–77, <https://doi.org/10.22304/pjih.v1n3.a8>.

²² Pujiyono, *Rekonstruksi Sistem Peradilan Pidana Indonesia*.

²³ Lili Rasjidi and Liza Sonia Rasjidi, *Dasar-Dasar Filsafat Dan Teori Hukum* (Bandung: Citra Aditya Bhakti, 2019).

A legal system can also be measured through eight basics or principles called the Principles of Legality as stated by Fuller as follows:²⁴

- a. A legal system must contain regulations, it must not contain ad hoc decisions.
- b. The regulations must be announced.
- c. There should be no retroactive regulations, if the regulations are not prohibited, then these regulations cannot be used as a guideline of conduct. Allowing retroactive regulations means destroying the integrity of the regulations that are intended to apply in the future.
- d. Regulations must be arranged in an understandable formula.
- e. A system must not contain rules that conflict with each other.
- f. Regulations must not contain demands exceeding what can be done.
- g. There should be no habit of changing the rules frequently that it causes one to lose orientation.
- h. There must be a compatibility between the promulgated regulations and their daily implementation.

The broad definition of the criminal justice system includes all laws and regulations concerning Substantive Criminal Law, Formal Criminal Law and the Implementation of Criminal Law as a functional punishment unit. A criminal justice system that only includes rules/stipulations of material (substantive) criminal law, in this case is intended as a criminal justice system in a narrow sense²⁵.

The criminal justice system in the narrow sense or substantive in nature, which refers to the provisions of the Criminal Code as well as substantive legal provisions outside the Criminal Code. In line with the latest developments, the

²⁴ Hanafi Arief, and Ningrum Ambarsari. "Penerapan Prinsip Restorative Justice dalam Sistem Peradilan Pidana di Indonesia." *Al-Adl: Jurnal Hukum* 10, No. 2 (2018): 173-190.

²⁵ Barda Nawawi Arief, *Kebijakan Formulasi Ketentuan Pidana dalam Peraturan Perundang-Undangan*.

juvenile criminal justice system is also regulated in the Criminal Code Draft Bill (2019), which is different from the provisions of the Criminal Code. Broadly speaking, the Criminal Code Draft Bill consists of Book I on General Provisions covering 6 Chapters (consisting of 187 Articles) and Book II on Criminal Act covers 36 Chapters (consisting of 441 Articles).

Book I regarding General Provisions of the Criminal Code Draft Bill is more modest, when compared to the Criminal Code as it is more oriented towards 3 main issues/pillars of penal law/criminal justice system, which is the problem of "Criminal Act", the problem of "Criminal Liability" and the problem of "Criminal and Punishment". In Book II the Criminal Code Draft Bill regulates "Criminal Act", so that there is no longer found regarding the classification of offenses, which is crimes and violations as regulated in Book II and Book III of the Criminal Code.

Explicitly regarding children, it is regulated in Chapter III concerning "Criminalization, Punishment, and Sanction, Paragraph 2, Part Three on Diversion, Sanction, and Punishment for Children starting from Articles 112-117 of the Criminal Code Draft Bill (2019).

In the further context, the term of criminal justice system, hereinafter abbreviated as SPP (criminal justice system), is a term that describes the working mechanism for tackling crime using a systems approach.

Muladi emphasized that the criminal justice system is a judicial network that uses penal law as a means, both material penal law, formal penal law and penal law enforcement²⁶. The purpose of the criminal justice system is to organize a judicial system that can tackle crime and is intended as a tool for the community

²⁶ Muladi, *Hak Asasi Manusia, Politik dan Sistem Peradilan Pidana*. (Semarang: Badan Penerbit Undip, 2002).

in their efforts to overcome the emergence of crime within the limits and conditions of tolerance of the community concerned.

Criminal Justice System is essentially synonymous with judicial power in the field of penal law. In its realization/implementation, it is carried out through 4 (four) penal law enforcement sub-systems including: (1) investigative power sub-system (by investigating agency/institution), (2) prosecution power sub-system (by public prosecutor's agency/institution), (3) power sub-system to adjudicate and impose decisions/criminals (by the judiciary) and (4) the power to implement decisions/criminals (by the agency/executive/executional apparatus). The four sub-systems constitute an integral penal law enforcement system or often known as the "Integrated Criminal Justice System" (SPP)²⁷.

The meaning of Integrated in the Integrated Justice System is synchronization or simultaneity and harmony, including:

- a. Structural synchronization, which is the simultaneity and harmony that includes the relationship between law enforcement agencies
- b. Substantial synchronization, which is the vertical and horizontal simultaneity and harmony in relation to positive law.
- c. Cultural synchronization, which is the simultaneity and harmony in appreciating the views, outlooks and philosophy comprehensively that underlies the operation of criminal justice²⁸.

The Juvenile Criminal Justice System is an activity of examining and making decisions on children's cases with the aim of protecting the interests of children carried out by the police, prosecutors, courts and other officials based on the

²⁷ Barda Nawawi Arief, *Kapita Selekta Hukum Pidana*. (Semarang: Badan Penerbit Undip, 2019).

²⁸ Pujiyono, *Rekonstruksi Sistem Peradilan Pidana Indonesia*.

principles of child welfare and the best interests of the child²⁹. Setyo Wahyudi emphasized that the juvenile criminal justice system is a law enforcement system of juvenile criminal justice which includes the child investigation subsystem, juvenile prosecution subsystem, juvenile judicial examination subsystem and juvenile criminal law enforcement subsystem based on child material criminal law, child criminal formal law and juvenile criminal law enforcement³⁰.

The Juvenile Criminal Justice System is a working procedure/ work system mechanism for tackling crime by using the systems approach in the administration of justice and the judiciary as a system of inseparable relations between laws and regulations, administrative practices and outlooks and behavior (law enforcement officers). The purpose of Juvenile criminal justice is to materialize the welfare of the child and the best interests of the child.

The definition and limitation of children in conflict with the law stipulated in the Law No.11 of 2012 on the Juvenile Criminal Justice System states that children in conflict with the law are children who are 12 (twelve) years old but have not yet reached 18 (eighteen) years old who are suspected of committing a crime. The problem of the age of criminal responsibility, it is different between countries in the world, depending on the historical and cultural background of

²⁹ Gray, "'Child Friendly' International Human Rights Standards and Youth Offending Team Partnerships."

³⁰ Setyo Wahyudi, *Implementasi Ide Diversi dalam Pembaharuan System Peradilan Pidana Anak di Indonesia* (Yogyakarta: Genta Publishing, 2014).

each country³¹. In Yugoslavia³², for example, the age limit for children's responsibility is relatively higher than in Indonesia, which is as follows:

- a. Children under the age of 14 years {Article 65 Paragraph (1)} cannot be punished or subject to sanction
- b. Children aged 14 years but have not yet reached 16 years old (junior), cannot be punished, but may be subject to educational sanction {Article 66 Paragraph (1)}.
- c. Children aged 16 years but have not yet reached 18 years old (senior) can be punished and subject to sanction {Article 66 Paragraph (2)}.

The provisions regarding the Age of Criminal Responsibility when compared with the provisions in the Law on the Juvenile Criminal Justice System, there are some differences. The Law on the Juvenile Criminal Justice System only recognizes one term of the child in conflict with the law in relation to the issue of criminal liability. There is no difference in terms based on their age group as in Yugoslavia. The age of children who can be accounted for according to the SPPA Law is lower, which is 12 years to less 14 years old can only be subject to any sanction and cannot be subject to punishment. Children aged 14 to less than 18 years can be subject to sanctions in the form of sanctions and or punishment.

B. The Current Juvenile Criminal Justice System in Indonesia

The current criminal justice system for children refers to the provisions of Law No. 11 of 2012 on the Juvenile Criminal Justice System which specifically

³¹ Olayinka Atilola, Gbonjubola Abiri, and Bolanle Ola, "Psychiatric Morbidity among Adolescents and Youth Involved with the Juvenile Justice System in Sub-Saharan Africa: Systematic Scoping Review of Current Studies and Research Gaps," *International Journal of Law and Psychiatry* 73, No. November (2020): 101633, <https://doi.org/10.1016/j.ijlp.2020.101633>.

³² Rasdi, *Perlindungan Berkonflik dengan Hukum* (Semarang: BPFH UNNES, 2021).

regulates criminal justice for children who commit crimes. Article 1 Point 3 states that: *“Children in conflict with the law are those who are 12 (twelve) years old but have not yet reached 18 (eighteen) years old who are suspected of committing a crime”*.

Article 1 number 7 explains that: *“Children in conflict with the law have the right to have their case resolved through diversion, which is the transfer of the settlement of children’s cases from the criminal justice process to processes outside of criminal justice”*.

The general explanation of “restorative justice” in Law No. 11 of 2012 on the Juvenile Justice System is as follows: *“Restorative justice is a diversion process, in which all parties involved in a criminal act, mutually overcome problems and create an obligation to make things better by involving victims, children and the community in finding solutions to repair, reconciliation and reassurance and not based on retaliation”*³³.

Muladi stated “the restorative justice process seeks a facility for dialogue between all parties affected by the crime ... including victims, perpetrators, their supporters and society as a whole”³⁴. Another opinion was conveyed by Howard Zehr, a “visionary and architect of the restorative justice movement, stated that: *“Restorative justice is a process to involve, to the extent possible, those who have a stake in specific offence and to collectively identify and address harms, needs, and obligation, in order to heal and put things as right as possible”*³⁵.

Diversion as a new paradigm in the juvenile criminal justice legal system, in which the settlement of cases of delinquent children (perpetrator of crime), is carried out without going through criminal procedural law procedures/through out-of-court channels, brings new hope for the process of protecting the special

³³ Ani Purwati, *Keadilan Restoratif & Diversi dalam Penyelesaian Perkara Tindak Pidana Anak* (Surabaya: Jakad Media Publishing, 2020).

³⁴ Muladi and Diah Sulistyani RS, *Kompleksitas Perkembangan Tindak Pidana dan Kebijakan Kriminal*, (Bandung: Alumni, 2016), pp. 113-114.

³⁵ Muladi and Diah Sulistyani.

rights of children in conflict with law. Another definition of diversion listed in the United Nations Standard Minimum Rules for the administration of the Juveniles Justice (the Beijing Rules), stated that:

“Granting authority to law enforcement officials to take policy actions in dealing with or resolving the problem of child offenders by not taking formal steps, includes stopping or discontinuing/releasing from the criminal justice process or returning/handing over to the community and other forms of social service activities. The application of diversion can be carried out at all levels of examination, intended to reduce the negative impact of children's involvement in the judicial process”³⁶.

The purpose of diversion, as stated in Article 6 of Law No. 11 of 2012, states, among other things is to achieve peace between victims and perpetrators; settle cases out of court; avoid deprivation of children's freedom; encourage community participation and instill a sense of responsibility in children. Diversion also has a positive goal/side “Diversion in juvenile justice is done to prevent children from the formal criminal justice system which has negative impacts to children”³⁷. It is also stated that “The basic reason that the court will give the stigmatization of children for their actions as the child is considered evil, so it is better to avoid it outside the criminal justice system”³⁸.

³⁶ Setyo Wahyudi, *Implementasi Ide Diversi dalam Pembaaharuan System Peradilan Pidana Anak di Indonesia* (Yogyakarta: Genta Publishing, 2011).

³⁷ Rasdi and Saru Arifin, “Model of Diversion and Its Implementation In The Criminal Justice System,” *International Journal of Business, Economics and Law* 11, No. 4 (2016): 88.

³⁸ Rasdi, “Criminal Justice System Model to Protect Rights of Children in Conflict with Law,” *South East Asia Journal of Contemporary Business, Economics and Law* 9, No. 4 (2016): 24–29.

Article 7 Paragraph (1) of Law No. 11 of 2012 states that “diversion must be carried out at the level of investigation, prosecution and examination of children's cases in the District Court”. Child cases that can be diverted as emphasized in Article 7 Paragraph (2) of Law No. 11 of 2012 are cases of children who are threatened with imprisonment of less than 7 (seven) years and are not recidive. Furthermore, Article 8 stipulates:

- a) Diversion is carried out amicably by involving children and their parents or guardians, victims and/or parents and guardians, community counselors, and professional social workers based on a restorative justice approach.
- b) In the event that the deliberation as referred to in paragraph (1) is required, it may involve Social Welfare personnel and/or the community.
- c) The Diversion Process must pay attention to:
 - (1) The interests of the victim;
 - (2) Child welfare and responsibilities;
 - (3) Avoidance of negative stigma;
 - (4) Avoidance of retaliation;
 - (5) Harmony in community; and
 - (6) Propriety, decency and public order.

Article 11 paragraph (1) states: *“The results of the diversion agreement can be in the form of reconciliation with or without compensation, handover to parents or guardians; participation in education or training in educational institutions or LPKS for a maximum of 3 months or community service”*.

Article 13 of Law No. 11 of 2012, states that the juvenile criminal justice process is continued in terms of:

- (1) Diversion process does not result in an agreement.
- (2) Diversion agreement is not implemented.

The definition, “continued”, means that the child's case will be continued to the level of investigation, prosecution or examination at a court hearing. Children, as those children of victims and/or children of witnesses have the right to be protected from reporting in print or electronic media (see Article 19). Article 21 Paragraph (1) stipulates that:

In the event that a child under 12 (twelve) years old commits or is suspected of committing a crime, the Investigator, Community Counselor, and Professional Social Worker shall make a decision to:

- (1) Hand over to parents/guardians; or
- (2) Participate in education, coaching and mentoring programs in government agencies or LPKS in institutions dealing with social welfare, both at the central and regional levels, for a maximum of 6 (six) months.

Based on the description of the diversion provisions as a method of resolving child cases through out-of-court (non-litigation) channels as formulated in the SPPA Law No. 11 of 2012, it turns out that there are still many juridical disadvantages. This can be observed in the formulation of the norm of Article 1 Point 3, regarding the issue of the age limit of a child in conflict with the law, which is one who has even reached the age of 12 (twelve years) but has not yet reached the age of 18 (eighteen years) who is suspected of committing a crime.

The regulation regarding the minimum age requirement for a child to be submitted to a child case trial in the norm of the article is too low.

Formulation of Article 7 Paragraph (2) of Law No. 11 of 2012 is a case of a child who is threatened with imprisonment of less than 7 (seven) years and is not a repetition of crime (recidive). Such a formulation is not in accordance with the purpose of diversion and the results of the diversion as well as the restorative

justice approach which is the fundamental basis for resolving child cases in the provisions of the SPPA Law itself.

Formulation of the norms of Article 9 Paragraph (2) of the SPPA Law, relates to a criminal system that is not oriented to the perpetrators and victims in a balanced way. Conditions for reaching a diversion agreement must have the consent of the victim/family. Such formulation of the norms in the article tends to harm the position of children who are perpetrators of criminal acts vulnerable to criminal proceedings. The provisions of these norms deviate from the basic/principle of proportionality in the juvenile justice system.

C. Reformulation of the Criminal System for Children in Conflicts with Law Based on Pancasila Justice

The term of renewal is intertwined with the use of the phrase of development. According to Barda Nawawi Arief, the term of development is closely related to the problem of “development, renewal, reform, founding, structuring, re-establishing, reviewing, evaluating. The term of development includes the notion of “development, reform, renovation, rebuild, reconstruction, evaluation/ re-evaluation”³⁹.

Theoretically/conceptually, the term of legal system can be emphasized as an integral part of the legal sub-system, which includes the legal substance sub-system, the legal structure sub-system and the legal culture sub-system.

The term of renewal in relation to the legal system basically refers to the notion of renewal that is carried out continuously or sustainably (sustainable reform/sustainable development). The renewal of legal system for a country or

³⁹ Barda Nawawi Arief, *Pembangunan Sistem Hukum Nasional Indonesia*. (Semarang: Pustaka Magister, 2012).

society will always be in line with the dynamics of the legal needs of the community along with the development of science and technology, which also demands to keep carrying out scientific activities and change in philosophical thoughts/ basic ideas/intellectual conceptions.

According to Friedman, the structural subsystem as a basic idea is one of the foundations and real elements of the legal system. The structural subsystem for a system is the framework of body, which is permanent, institutional body of the system as well as strong hard bones to keep the process flowing at its boundaries⁴⁰.

The substance subsystem is composed of rules and regulations regarding how these institutions can work or behave in upholding law and justice. The legal culture subsystem is a component or subsystem of social attitudes and values. The basic idea is that social values and attitudes that are interpreted and applied by a decision will be able to operationalize the machine of the legal system to move forward, or vice versa.

The legal culture subsystem as emphasized by Lawrence M Friedman “a legal system in actual operation is a complex organism in which structure, substance and culture interact. To explain the background and effect of any part call into play many elements of the system. Let us take, for an example, the incidence and reality of divorce. To begin with, it depends on rules of law. Structure and substance here are durable features slowly carved out of the landscape by long-run social forces. They modify current demands and are themselves the long-term residue of other

⁴⁰ IGM Nurdjana, *Sistem Hukum Pidana Dan Bahaya Laten Korupsi, Perspektif Tegaknya Keadilan Melawan Mafia Hukum* (Yogyakarta: Pustaka Pelajar, 2010). See also Arsyad Aldyan, and Abhishek Negi. “The Model of Law Enforcement Based on Pancasila Justice.” *Journal of Human Rights, Culture and Legal System* 2, No. 3 (2022): 178-190. <https://doi.org/10.53955/jhcls.v2i3.51>; Mokhammad Najih, “Indonesian Penal Policy: Toward Indonesian Criminal Law Reform Based on Pancasila”. *JILS (Journal of Indonesian Legal Studies)* 3, No. 2 (2018): 149-174. <https://doi.org/10.15294/jils.v3i02.27510>.

social demands. Legal culture may also effect the rate of use, that is, attitudes toward whether it is rights or wrong, useful, or useless, to go to court will also enter into a decision to seek formal or using them. Values in the general culture will also powerfully affect the rate of use⁴¹.

Based on the description above, it can be stated that the objectives of the legal system itself will be achieved/realized effectively and efficiently if close cooperation can also be realized between the components or legal subsystems, both substantial subsystems, structural subsystems and cultural subsystems as well as mutually fill in if there are deficiencies in the perfection of each of these legal subsystems.

In the further context, the Justice can be interpreted from various perspectives, as emphasized by some of legal scholars. Justice according to Aristotle is divided into 3 (three) types of justice, which are distributive justice, recovery justice and commutative justice. Distributive justice states the distribution of goods and services to everyone according to their position in society and equal treatment of equality before the law. Commutative justice regulates regarding transactions between parties in trade, so that in such transactions there must be equality and mutuality between the parties.

Aristotle's expression of justice states "justice consists in treating equals equally and unequally unequally, in proportion to their in equality". It means that under the same conditions are treated equally, and those who are not the same are also treated unequally, proportionally⁴².

⁴¹ Isabella Merzagora et al., "The Expert and the Foreigner: Reflections of Forensic Transcultural Psychopathology on a Total of 86 Reports by Experts on Criminal Liability," *International Journal of Law and Psychiatry* 57 (2018): 24–30, <https://doi.org/10.1016/j.ijlp.2017.12.005>.

⁴² Suteki and Galang Taufani, *Metodologi Penelitian Hukum (Filsafat, Teori Dan Praktek)* (Depok: Raja Grafindo Persada, 2018).

In the similar context, according to John Rawls, the theory of justice has 2 (two) goals, which is considering morals in making moral decisions that underlie all human social actions and developing a theory of social justice which is superior to the theory of utilitarianism. John Rawls's principles of justice include 2 (two) principles. The first principle, the principle of greatest equal liberty, includes the freedom to participate in political life, speak out, having belief, being oneself, and freedom to defend property rights. The second principle (the difference principle) includes the difference principle and the principle of fair equality of opportunity⁴³.

Meanwhile, the concept and understanding of Justice based on Pancasila (or *Pancasila Justice*) does not have one meaning and understandings. The existence of Pancasila as a philosophy of punishment in the Indonesian legal system has a very important position to influence, underlie, animate, and create harmony between the values that live in society and provide a deterrent effect to perpetrators of crime. The theory of punishment has not been able to demonstrate legal authority before the perpetrators/prospective criminals⁴⁴.

Bernard L Tanya stated that the development of legal politics in Indonesia based on Pancasila needs to be framed in the form of eight Pancasila frames, including the spirit of caring for Indonesia, the spirit of gentlemen agreement, leben-philosophie (living together in the frame of diversity), the implementation of whatever is right, fair and good, caring for human values, the values of Indonesian unity, populist/state life and caring for social life⁴⁵.

⁴³ Uzair Fauzan and Heru Prasetyo, *Teori Keadilan, Dasar-Dasar Filsafat Politik Untuk Mewujudkan Kesejahteraan Sosial Nagara* (Yogyakarta: Pustaka Pelajar, 2019).

⁴⁴ Rocky Marbun, *Politik Hukum Pidana Dan Sistem Hukum Pidana Di Indonesia* (Malang: Setara Press, 2019).

⁴⁵ Bernard L.Tanya and Theodoro Yosep Parera, *Pancasila Bingkai Hukum Indonesia* (Yogyakarta: Genta Publishing, 2015).

The concept of citizen protection in the Pancasila Legal System, according to the view of Philipus M. Hadjon⁴⁶, should contain the following elements: harmonious relations; proportional functional; deliberation and trial as a last resort; as well as elements of a balance of rights and obligations.

Based on this view, it should be in the application of the criminal system in the Indonesian legal system based on Pancasila to adopt and contain these elements to materialize the goals of the criminal justice system in Indonesia. According to Barda Nawai Arief, based on what is written in the signs of the National Legal System (hereinafter as SISKUMNAS), law enforcement should not only enforce written laws, but also unwritten laws/legal values that live in society. Thus, the purpose of law enforcement is not only to enforce the “rule of law” but also to enforce the “rule of social cohabitation” (rule of community)⁴⁷.

Barda Nawawi Arief also emphasized that by referring to the results of the VI/1994 National Law Seminar, it is necessary to develop an idea about the quality of the dispensation of justice that is more compatible with the Pancasila legal system, which is characterized by Indonesia, which is Pancasila justice. Pancasila justice which contains the meaning of “divine justice”, “humanistic justice”, and “democratic, nationalistic, and social justice (society)⁴⁸”. Thus, the upheld justice is not just formal justice but also substantial justice.

Based on several studies on the theory of justice mentioned above, it is natural and imperative for the Indonesian people to make the theory of “Pancasila justice” as the basis of justice based on philosophical values, socio-cultural/societal values and socio-political values of the Indonesian nation itself, as has been stated above, as the basis for law enforcement in Indonesia. Law enforcement in Indonesia will

⁴⁶ Marbun, *Politik Hukum Pidana Dan Sistem Hukum Pidana Di Indonesia*.

⁴⁷ Nawawi Arief, *Pembangunan Sistem Hukum Nasional Indonesia*.

⁴⁸ Nawawi Arief.

find its identity by referring to and based on Pancasila justice and can materialize the welfare of the Indonesian people, no exception in the juvenile criminal justice system.

D. Juvenile Criminal Justice System Practices in Various Countries: Yugoslavia and Greece

Provisions regarding punishment and sanctions in Yugoslavia are regulated in the General Section of the Criminal Code Chapter VI entitled “Provision Relating to Educative and Penal Measures for Minors”⁴⁹

1) Ground Rules:

In Chapter VI, children in Yugoslavia are classified into 3 (three) levels:

- a) A child, which is less than 14 years old (Article 65 paragraph 1), if committing an offense cannot be punished and subject to educational and security measures. Child Support Institutions are authorized to provide services/guidance.
- b) Children approaching adulthood, which are those aged between 14 to 16 years {Article 66 Paragraph (1)}, if committing an offense cannot be punished, only subject to educative sanction.
- c) Adult children are those between the ages of 16 to 18 years {Article 66 Paragraph (2)}, if they commit an offense, they may be subject to educative sanction and child-specific penalties, which is child imprisonment. Security measures can be imposed on junior and senior children.

Meanwhile, provisions regarding child delinquency are contained in Chapter VII, General Rules of the Greek Criminal Code⁵⁰, as follows:

⁴⁹ Rasdi, *Perlindungan Berkonflik Dengan Hukum*.

⁵⁰ Barda Nawawi Arief, *Beberapa Masalah Perbandingan Hukum Pidana* (Jakarta: Raja Grafindo Persada, 2003).

- 1) Young perpetrators aged between 7 to 18 (eighteen) years are given the following sanctions: corrective action (Article 122 of the Criminal Code); imposition of treatment (Article 123 of the Criminal Code) and for children aged 13 (thirteen) years and over can be subject to detention in a foster home (Article 127 of the Criminal Code). Children who can be brought to criminal proceedings are those who are at least 13 (thirteen) years old.
- 2) Types of reformatory actions for adolescents include:
 - 3) Giving a warning / harsh criticism of teenagers
 - 4) Placed under the control of his/her parents/guardians.
 - 5) Placed in the supervision/protection of children, juvenile supervision agencies.
 - 6) Adolescents are placed in certain municipalities/states specifically for this purpose.
 - 7) Special treatment measures for adolescents on the advice of medical specialists, due to mental disorders, eye disorders, deafness and muteness, epilepsy and others.
- 8) Adolescents aged 7 (seven) to 12 (twelve) years can be given corrective/treatment actions.
- 9) Children aged between 13 – 17 years can be subject to reformatory/treatment measures, if necessary, subject to detention in an orphanage.
- 10) Young adults aged 18 (eighteen) to 21 (twenty-one) years, are subject to custodial sanctions like adults, by obtaining relief.

E. Policy Arrangements for the Juvenile Criminal Justice System in the Concept of the Criminal Code

The national policy towards reforming the juvenile criminal justice system needs to be pursued through a national policy based on the basic philosophy of treating children in conflict with the law, which is “the best interest of child”⁵¹.

National policy/National Development Planning Agency/ Criminal Law Politics, renewal of the juvenile criminal justice system can also be viewed in the 2019 Criminal Code Draft Bill (RKUHP) compiled by the Study Team of the National Legal Development Agency (BPHN). In particular, the juvenile criminal justice system regulated in the Criminal Code Draft Bill (2019) can be described below.

Article 112, regarding Diversion:

- (1) A child who commits a crime punishable by imprisonment of less than 7 (seven) years and is not a repetition of criminal offense must be pursued through diversion.
- (2) The diversion procedure as referred to in paragraph (1) is regulated by law.

Article 113, regarding Sanction:

- (1) Every Child may be subject to sanction in the form of:
 - (a) returned to Parent/guardian;
 - (b) handover to a person;
 - (c) treatment in a mental hospital;
 - (d) maintenance in institutions that carry out affairs in the field of
 - (e) social welfare;

⁵¹ Mashuril Anwar and M Ridho Wijaya, “Fungsionalisasi Dan Implikasi Asas Kepentingan Terbaik Bagi Anak Yang Berkonflik Dengan Hukum: Studi Putusan Pengadilan Tinggi Tanjung Karang,” *Undang: Jurnal Hukum* 2, No. 2 (2020): 265–92, <https://doi.org/10.22437/ujh.2.2.265-292>.

- (f) under an obligation to attend formal education and/or training that
 - (g) held by a government or private entity;
 - (h) revocation of driving license; and/or
 - (i) remedy due to criminal acts.
- (2) The sanctions as referred to in paragraph (1) letter d, letter and letter f are imposed for a maximum of 1 (one) year.
- (3) Children under the age of 14 (fourteen) years cannot be punished and can only be subject to sanction.

Article 114, regarding Punishment:

The punishment that can be imposed on a child is in the form of:

- a. principal punishment; and
- b. additional punishment.

Article 115, regarding the types of Principal Punishment:

The principal punishment as referred to in Article 114 letter a consist of:

- a. punishment by admonition;
- b. punishment subject to the following conditions:
 - 1) coaching outside the institution;
 - 2) community service; or
 - 3) supervision.
- c. work training;
- d. coaching within the institution; and
- e. imprisonment.

Article 116, regarding Additional Punishment:

Additional Punishment as stated in Article 114 letter b consists of:

- a. Deprivation of profits derived from criminal acts; or
- b. Fulfillment of customary obligations.

The provisions of Article 117, confirms that: *“Provisions regarding diversion, sanction, and punishment as regulated in Articles 112 to 116 are carried out based on the provisions of laws and regulations”*.

The regulation of the juvenile criminal justice system as regulated in the Criminal Code Draft Bill (2019), from 112 to Article 117, if observed, is actually the result of the adoption of the provisions of Law No. 11 of 2012 on the Juvenile Criminal Justice System, so that it has not fulfilled the objectives of implementing the juvenile justice system, which is for the best interests and welfare of the child.

F. The Criminal Justice System for Children in Conflict with the Law Based on Pancasila Justice

SPPA Law No. 11 of 2012 has brought a new paradigm in juvenile justice by including provisions regarding restorative justice⁵² and diversion, which have not been explicitly regulated in the previous juvenile justice law. Restorative justice is “the process of resolving criminal cases by involving perpetrators, victims, families of perpetrators/victims, and other related parties to seek a just settlement with an emphasis on restoring the original situation rather than retaliation”.

The general explanation of Law No. 11 of 2012 on the Juvenile Criminal Justice System confirms:

Restorative justice is a diversion process, in which all parties involved in a criminal act collectively overcome problems and create an obligation to make things better by involving victims, children

⁵² Thulane Gxubane, “Facilitation of Residential Diversion Programmes for Youth Sex Offenders in South Africa,” *Southern African Journal of Social Work and Social Development* 31, No. 2 (2019), <https://doi.org/10.25159/2415-5829/4448>.

and the community in finding solutions for remedy, reconciliation and reassurance, which is not based on retaliation”.

Settlement of cases through restorative justice is expected to be able to materialize and achieve balanced justice between the parties: the perpetrator/family, the victim/family and the community of which peace/safety has been disrupted as a negative effect of a crime. Nur Rochaeti stated that restorative justice is one of the best alternatives to cover the shortcomings and dissatisfaction of retributive and rehabilitative approaches in the juvenile criminal justice system.

The 2019 Criminal Code Draft Bill, formulating restorative justice through the diversion method, is in line with the purpose of punishment. Article 51 of the Draft Criminal Code confirms that:

- 1) prevent the commission of criminal acts by enforcing legal norms for the protection and custody of the community.
- 2) socialize the convicts by conducting guidance and mentoring so that they become good and useful people.
- 3) resolve conflicts caused by criminal acts, restore balance, and bring a sense of security and peace in society; and
- 4) grow a sense of remorse and free the guilt of the convict.

The concept of punishing a child will always follow the legal needs of the community in accordance with the nature and character of the child. In addition, restorative justice through the diversion method will encourage the realization of the welfare and best interests of children.

Diversion aims to achieve peace between victims and perpetrators; settle cases out of court; avoid deprivation of children's freedom; encourage community participation and instill a sense of responsibility in children. This is actually in

accordance with the humanitarian values of precepts II and the democratic value of deliberation in principle IV of Pancasila.

Rules 5.1 from The Beijing Rules explained that the juvenile justice system should prioritize the welfare of the child and allow that the reaction to child offenders who violate the law is commensurate with the situation and condition of the perpetrator of the crime and the type of violation. The ultimate goal of juvenile criminal justice is "that eliminating a child's freedom is a last resort and is imposed in the shortest possible time and is limited to extraordinary cases. (The Beijing Rules on general principles point 5). This is in accordance with the values of social justice contained in Pancasila, precept V.

The Convention on the Rights of the Child, in the second general principle, Article 3 (Paragraph 1), states the need to prioritize the best interests of the child as follows:

"All actions against children, whether carried out by government or private social welfare institutions, judicial institutions, government agencies or legislative bodies, the best interests of children are the main consideration".

The juridical advantages viewed in the protection of children in conflict with the law in the SPPA Law and the 2019 RKUHP, mainly lie in the formulation problem regarding the minimum age limit for criminal liability for children and the conditions for diversion.

Formulation regarding the minimum age limit for criminal liability for children in the SPPA Law Article 1 point 3 as well as in the 2019 RKUHP Article 113 Paragraph (3), both determine the minimum limit/at least has reached the age of 12 years and has not yet reached the age of 18 (eighteen) years.

Paragraph 4.1, The Beijing Rules, emphasizes, the determination of the age of criminal responsibility of children cannot be specified at an overly lower age, considering the emotional, mental and intellectual reality of children.

Observations of the UN Committee on the Rights of the Child on Indonesia's Third and Fourth Periodic Reports stated that the Committee welcomes the efforts to increase the minimum age for criminal liability and prioritize the use of restorative justice in the SPPA Law. However, the Committee still highlights that the minimum age limit for children is still low, which is 12 years old.

The Committee recommends increasing the minimum age for child responsibility to 14 years. The results of the Latin American Seminar in Rio de Janeiro in 1953 recommended a minimum age limit of 14 (fourteen) years to make it easier for children in state law⁵³.

This explanation is very important to reformulate the provisions of Article 1 Paragraph (3) of the SPPA Law into "Children in conflict with the law, are 14 (fourteen) years and less than 18 (eighteen) years who are suspected of committing a crime". Whereas in Article 113 Paragraph (3) of the 2019 RKUHP, it reads "Children under the age of 14 (fourteen) years cannot be sentenced to punishment and can only be subject to sanction", it reads "Children aged 14 (fourteen) years cannot be punished and only subject to sanction."

Article 69 Paragraph (2) of the SPPA Law, originally read "children less than 14 (fourteen) years can only be subject to sanction", then modified into "children aged 14 (fourteen) years can be subject to sanction or punishment". Provisions for adjusting the age limit of children with the culture and conditions of Indonesian society today are inseparable and in accordance with the teachings of Godliness

⁵³ Gxubane.

and human values as well as the value of unity contained in the I, II and III principles of Pancasila.

Increasing the age limit for children to be submitted to the judicial process is aimed at protecting children's rights so that the welfare of the child and the best interests of the child can be manifested. The low age of children who are criminally processed will have the potential to have a negative impact on children and also adversely affect the mental development of the children.

The diversion requirement is related to the threat of no crime committed by the child, who is less than 7 (seven) years of age not in favor of the welfare and best interests of the child. This constricts the possibility of diversion rights for children. According to the writer, the diversion provisions should apply to all types of criminal acts and should not be associated with criminal acts with a criminal penalty of less than 7 years.

This provision is not in line with the purpose of diversion, including avoiding children from criminal justice. The diversion requirement associated with the problem of repeating crimes committed by children is also inappropriate because it contradicts the purpose of diversion to avoid the judicial process and achieve restorative justice and the results of diversion which are considered to be able to educate children.

The diversion agreement requires the approval of the victim/family, placing the perpetrator in a lower position and there is no guarantee for the perpetrator to avoid criminal justice. The diversion process is more determined by the consent of the victim/family, placing the perpetrator vulnerable to criminal proceedings and not in the best interests of the child (perpetrator).

Formulation of diversion in the SPPA Law and the Criminal Code Draft Bill has not shown the principle of proportionality between the victim and the perpetrator. Diversion agreement should be reached on the basis of deliberation

and consensus, between perpetrators, victims and related parties in a balanced way, so that there is proportionality between perpetrators and victims, in accordance with the values of Pancasila, especially the III and V principles of Pancasila.

Sanctions for children in the SPPA Law and the 2019 Criminal Code Draft Bill have adopted recommendations from the provisions of international legal instruments/laws and several other countries. The formulation of sanctions for children in conflict with the law is arranged from the lightest to the heaviest sanctions (imprisonment), according to the “the last resort” principle.

4. Conclusion

Based on the discussion of the results and discussion above, the following conclusions can be drawn: It is necessary to immediately reform the criminal justice system for children in conflict with the law as regulated in Law No. 11 of 2012, considering that the law still contains juridical disadvantages which result in the failure to achieve the objectives of the juvenile criminal justice system. Such juridical disadvantages in the law, which is formulated in the formulation of norms in 1 Number 3, regarding the minimum age for juvenile criminal liability, Article 7 Paragraph (2) on diversion requirements and Article 9 Paragraph (2) on diversion agreements, which are not in accordance with the values, principles, and objectives of child protection. Reformulation of the criminal justice system for children in conflict with the law with Pancasila justice-based Law is an urgent need by reformulating the provisions in Article 1 Point 3, regarding the minimum age limit for criminal liability for children is raised to 14 (fourteen) years, in accordance with international recommendations/agreements and provisions of other countries. The provisions of Article 7 Paragraph (2), the diversion requirement is

proximately planned as it is not in accordance with the purpose of the diversion. Article 9 Paragraph (2) regarding the diversion agreement, is not in accordance with the principle of proportionality and is detrimental to children who are perpetrators of criminal acts. Such reformulation of the provisions of these norms is deemed urgent to achieve justice based on the socio-philosophical, socio-political and socio-cultural of the Indonesian nation, which is crystallized in the values of Pancasila.

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The authors declare there is no conflict of interest in the publication of this article.

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