

Philosophy Of Criminal Immination In The Child Criminal Justice System In Indonesia

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Abstract : This study aims to analyze and find the philosophy of criminal punishment in the juvenile criminal justice system in Indonesia, identify judges' considerations in imposing criminal penalties for children who are perpetrators of criminal acts in Indonesia and analyze and find the legal implications of sentencing crimes by judges to the existence of community research reports. is a normative legal research with Legislation Approach, Case Approach, Historical Approach, Comparative Approach, Conceptual Approach. The sources of legal materials used are primary, secondary and tertiary legal materials. The collection of legal materials using library research and interviews. Then described and analyzed qualitatively. The results of this study indicate that (1) the philosophical imposition of criminal penalties in the juvenile criminal justice system in Indonesia is a criminal process that is imposed not solely based on the actions that have been carried out by the perpetrator, but the handling of children, the application of punishment is more fostering and protecting children.

Keywords: Criminal Imposition, Children,

1. INTRODUCTION

Law has an important function in social life, namely as a tool to create justice, order, peace and order but also to ensure legal certainty. At the next level, law is directed as a means of progress and welfare of society which is formed based on the desire and awareness of each individual in society, with the intention that the law can run as aspired by the community itself, namely wanting harmony and peace in the association of living together. The person who commits a crime will be held responsible for the act with a criminal if he has a mistake.

A person makes a mistake when at the time of committing an act from the perspective of society he shows a normative view of a crime. Law basically has a very important role in social life because law is not only a parameter for justice, order, peace and order but also to ensure legal certainty. At the next level, the law is increasingly directed as a means of progress and public welfare. (Andi Hamzah, 2001)

Marcus Tullius Cicero put forward the law in an expression, namely "Ubi Societas Ibi Ius" which means "where there is society there is law." This classic expression illustrates when the law was first created. This implies that the law is created when humans are created too, because when there are humans and their associations, that's when the law already exists. (Peter Mahmud Marzuki, 2013)

Humans are required to be able to control their behavior as a consequence of living in society with control and awareness to limit behavior that has the potential to harm the interests of others and the public interest. The role of law is very important to regulate public relations and as citizens, both relationships between human beings, human relations with objects, humans with nature and humans with the state. In reality, there are humans who violate the law or commit criminal acts. A criminal act is an unlawful act committed by a person and deserves to be punished according to his mistake as formulated by law. A person who commits a criminal act will be held responsible for his actions with a criminal if he has a mistake. (Ahmad Rifai, 2010)

The judge's decision can have an impact on the emergence of a negative public view of judges and courts. The low negative public view of judges can be avoided by deciding cases fairly and thoroughly so as not to create gaps in a decision. The judge should be born, grow and develop an attitude or character of moral satisfaction if the decisions he makes can become a benchmark for the same case as reference material for theoreticians and legal practitioners as well as the satisfaction of conscience if it is confirmed and not canceled by the High Court. or the Supreme Court, if the case reaches the level of appeal or cassation. Judges in making decisions must pay attention to all aspects in it, starting from the need for prudence and avoiding as little inaccuracy as possible, both formal and material, to the existence of technical skills in making it.

Therefore, the judge's decision is an important and necessary aspect to resolve criminal cases so that it can be stated that the judge's decision on the one hand is useful for the defendant in order to obtain legal certainty about his status and at the same time can prepare the next step towards the decision in the sense that it can be in the form of accepting the decision or committing appeal, cassation, and so on. (Lilik Mulyadi, 2017)

Article 14 of Law Number 48 of 2009 concerning Judicial Power (hereinafter referred to as the Judicial Law) states:

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a. Decisions are made based on a confidential judge's deliberation session.

b. Whereas in a deliberation session, every judge is obliged to convey written considerations or opinions on the case being examined and become an inseparable part of the decision.

According to Lilik Mulyadi, a good, qualified, and perfect judge's decision should be tested with four basic criteria for the question (the 4 way test), namely:

- 1) Is my decision correct?
- 2) Am I honest in making decisions?
- 3) Is the decision fair to the parties?
- 4) Is my decision useful?

Even though the practice is based on the nature/attitude of a good judge, the basic framework for thinking/acting and through the four points of question mentioned above, the judge turns out to be an ordinary human being who does not escape from negligence, mistakes/mistakes (*rechterlijk dwaling*), a sense of routine, carelessness, and mistakes. Judicial practice shows that there are certain aspects that are overlooked and often ignored by judges in making decisions.

According to Sudarto, the judge's decision is the culmination of a criminal case, so the judge must consider other aspects so that the judge's decision completely reflects the sociological, philosophical, and juridical values, as follows:

1) Juridical considerations

Juridical considerations mean that the judge bases his decision on the formal provisions of the legislation. Juridically, the judge may not impose the sentence unless it is with at least two valid pieces of evidence, so that the judge gains the belief that a criminal act has actually occurred and the defendant is guilty of committing it. In addition, it is also considered that the defendant's actions are against the formal law and fulfill the elements of the crime committed.

2) Philosophical considerations

Philosophical considerations mean that the judge considers that the sentence imposed on the defendant is an attempt to improve the behavior of the accused through the sentencing process. This means that the philosophy of punishment is coaching the perpetrators of crimes, so that after the convict is released from the correctional institution, he will be able to improve himself and not commit another crime.

3) Sociological considerations

Sociological considerations mean that the judge in imposing a sentence is based on the social background of the defendant and takes into account that the sentence imposed has benefits for the community. (Sudarto, 1986)

The imposition of criminal sanctions for children who often commit criminal acts must be avoided because imprisonment is the last means that must be done after other efforts that are coaching and prevention have not been successful. Children as part of the younger generation are the successors to the ideals of the nation's struggle and human resources for national development. (Wagiati Sutedjo, 2006). (The development and protection efforts have emerged new problems that can threaten the future of the nation, namely concerning deviations in children's behavior caused by various factors, including: cultural progress and Science and Technology (IPTEK) as well as changes in the lifestyle and way of life of parents who have brought social changes in people's lives and greatly affect the values and behavior of children (Lilik Mulyadi, 2005)

Deviations in children's behavior when viewed from a legal perspective, of course there are behaviors that are not in accordance with the norms and can cause problems in the legal field. Deviant behavior by society is labeled as a violation even as a crime. (Bambang Waluyo, 2004). In essence, children cannot protect themselves from various kinds of actions that cause mental, physical and social harm in various aspects of life. (Barda Nawawi Arief, 1996) Children who are in conflict with the law have the potential that their rights are violated by the state more than adults who commit criminal acts. This is because children are human figures whose lives still depend on the intervention of other parties. Therefore, the state needs to pay special attention to children.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law) replaces Law Number 3 of 1997 concerning Juvenile Court which is considered inappropriate.

The formulation of the article provides a clear picture for judges in making decisions, they must pay attention to the existence of a Community Research Report. Thus, the decision making by the judge must consider the report given by the community advisor so that the child in undergoing the legal process actually obtains justice, benefits and legal certainty. Basically, the judge always considers the imposition of a decision made, unless the judge has another argument. But in reality, it is necessary to pay attention to matters concerning the interests of children in the future. If viewed from a philosophical point of view, children must be prioritized and in the SPPA Law it is emphasized that children must have the right to receive guidance and protection.

The imposition of a crime is basically a must for perpetrators of criminal acts. Not all perpetrators of criminal acts can be sentenced to criminal penalties, as in the case of children who commit criminal acts, which is a matter of looking at the factual conditions of the child's life itself in the family, school and social environment in society itself. Therefore, the imposition of children is contrary to the theory of justice, the theory of benefit, the theory of social engineering and the theory of punishment itself. The legal reality in society is not in accordance with what must be lived. For example, the child is involved in a legal process in the form of abuse which can be categorized as a child's delinquency in community life and has an impact on the survival and future of the child.

Starting from this, looking at the community, it is clear that this child is heavily influenced by the environment in which the child grows and develops and is very influential, so that the child in his daily life with the environment can damage the character and mentality of the child to get involved with things that should not be done.

The public's view of course can see the reality of the child in his association. Thus, the child who is involved in legal problems because of the environmental law and positions the child as a criminal act requires the judge's consideration in punishing the child by looking at the considerations of the Litmas itself which prioritizes the best interests of the child.

Criminal convictions carried out by judges must consider Litmas more to provide an assumption for judges in making decisions on cases involving children so that the juvenile criminal justice process carried out can fulfill the sense of legal certainty itself. This needs to be seen considering the existence of judges as role models in providing justice in the eyes of the community.

The reality found that the judges did not consider the existence of Litmas. The judge as a decision maker in the trial does not see any provisions contained in the law so that the judge's decision sometimes does not make a good contribution because it does not pay attention to the existence of community advisors through the Litmas. Thus, the Community Counselor makes recommendations to be considered by the judge, which is a very good thing to realize a juvenile criminal justice system that is really expected by the community as mandated by the SPPA Law.

Basically the judge's decision has not fulfilled the sense of justice and the purpose of sentencing has not been carried out properly for the child and will have an impact on the growth and development of the child himself. Therefore, it is necessary for the judge to have more confidence and knowledge of the judge and must rely on the provisions of the law so as not to override the existing rules. Thus, the legal impact received will be even greater if there is no justice in the eyes of the judge at all on the child. The problem that is seen is that justice and the benefit of law have not been realized properly in imposing criminal penalties for children, so that sentencing has not provided the expected goal. Based on the description above, the author considers that it is necessary to do further research in this study with the Title Philosophy Of Criminal Immination In The Child Criminal Justice System In Indonesia.

II. RESEARCH METHODS

This research is normative juridical. Where library materials are the basis in (science) research which is classified as a secondary source of material. The sources of secondary material intended for the research used are personal letters, books, official documents, literature, scientific works and laws and regulations to complete this research. (Gusti Ayu Putu Suwardani, 2012)

III. RESULTS AND DISCUSSION

Philosophy of Criminal Imposition in the Juvenile Criminal Justice System in Indonesia

1. Philosophy of Imposing Child Criminal

Juvenile justice which is based on the principle for the welfare of the child and the interests of the child leads to discussions on the principle underlying state intervention through juvenile justice institutions in the lives of children and their families, namely the principle of *parens patriae*. (Paul Hadisuprpto, , 2003). The philosophy of *parens patriae* comes from the Latin "in loco parentis". which was originally intended as an expression of the intervention of state power in supervising children in detention rather than an expression of placing the interests of the state above and above the interests of parents. According to Sudarto, it is a principle that emphasizes that the authorities must act when children need help, while children who commit crimes are not punished but must be protected and given assistance. (Sudarto,1986)

Historical studies show that the intervention of the judiciary in the lives of children and families is always aimed at overcoming bad conditions that befall children, such as child crime, child neglect and exploitation of children. (Sudarto,1986) The development of the modern flow in criminal law that focuses on the perpetrators of criminal acts, it is known that there is individualization and differentiation of punishment, punishments that are in accordance with the circumstances of the perpetrators of criminal acts, so that the handling of juvenile offenders through juvenile justice is sought so that children are not included in the criminal justice system. in a prison house that only makes themselves more evil than before.

All activities carried out in the context of juvenile justice, whether carried out by the police, prosecutors, judges or other officials, must be based on a principle for the welfare of the child and the interests of the child. (Sudarto,1986)

The National Legal Development Agency revealed that in England since ancient times, the king has the prerogative to act as *parens patriae*, which is to protect the people who need help, including children who need his help. This means that the authorities must act when it is children who need help, while children who commit crimes are not punished but must be protected and given assistance. (National Legal Development Agency, 1979)

Based on the principle of "*parens patriae*", the Ruler/State shall administer juvenile justice in the context of dealing with juvenile crimes. The administration of juvenile justice was first held in 1899 in Illinois, United States, and then developed and spread as the basis for administering juvenile justice in other states in the United States. The principle of "*parens patriae*" as the basis for the implementation of juvenile justice then developed in almost all parts of the world. (Paul Hadisuprpto, 2003)

In England, it is known as what is called the King's prerogative as *parens patriae* (protecting the people and children who need his help). Thus, historically, court intervention in children's lives has always been shown in order to deal with situations that are less favorable and even tend to be dangerous for children and young people who commit crimes should not be given a criminal but must be protected and given assistance.

The development of juvenile justice models that are in accordance with the conditions of the socio-cultural values of the country concerned. The development of juvenile justice models, namely the retributive justice model and the individual coaching model. The retributive/retaliatory justice model departs from the theory that the criminal is imposed solely because a person has

committed a crime or criminal act. Criminal is an absolute consequence that must exist as a retaliation to the person who committed the crime. So the basis of justification of the crime lies in the existence or occurrence of the crime itself. (Muladi and Barda Nawawi, 2008) The implication of the existing judicial model aims to protect the best interests of children and for the welfare of children, as well as to impose criminal sanctions on delinquent children must be carried out through a comprehensive and holistic process.

According to Wagiaty Sutedjo, historically the court's interference in children's lives has always been aimed at overcoming unfavorable conditions that even tend to be dangerous for children, exploitation of children and child crime and many other things. (Wagiaty Sutedjo, 2006)

According to Zimring, there are two justifications for establishing a juvenile court, namely; The diversionary justification is the argument that juvenile court is in favor of the child, because it causes less harm than ordinary litigation. Meanwhile, interventionist justification emphasizes the good things that can be achieved by programs implemented by child welfare experts. Thus child-focused courts are an opportunity to design positive programs that will simultaneously protect society and heal the child (Rosenheim.M.K., Zimring, F.E., Tanenhaus, D.S., and John, B, 2002).

The development of children as perpetrators of criminal acts in Indonesia by looking at the situation in the Netherlands regarding the punishment of children as the country behind the formation of the law that is now applicable in Indonesia. In the Netherlands, there are two stages of development, starting with the establishment of the Dutch Wetboek van Strafrecht in 1881, where in the law there are articles that reflect as if a child who is not yet 10 years old cannot be prosecuted under criminal law if he is proven to have committed a crime. a crime, then the perpetrator is ordered to enter the rijksopvoedingsgesticht (Royal Educational Institution) by the judge.

If the perpetrator is 10 to 16 years old, the criminal judge must investigate whether the perpetrator can contain *ordeel des onderscheids* (can make an assessment of his actions and be aware of the prohibited nature of his actions) or not. If the answer is yes, then the perpetrator can be sentenced to an adult with a 1/3 reduction. If threatened with life imprisonment, it can be replaced with a maximum imprisonment of 15 years in prison. If the answer is no, then the perpetrator cannot be punished. but if the crime committed is a serious crime, then the criminal judge may order the perpetrator to enter the Royal Educational Institution.

This has brought changes, among others, in examining children's cases, which are no longer based on the *ordeel des onderscheids*, but are more concerned with issues of education that need to be given to criminals, accompanied by the establishment of a number of crimes and more appropriate actions for children who commit crimes. underage crime. In criminal cases where children are the perpetrators, the judge must be aware that what is important to him is not whether the children can be punished or not, but what actions should be taken to educate the child.

Thus the thoughts that exist in the Netherlands in tackling and protecting the interests of children are associated with handling criminal cases where the perpetrators are children and youth. Furthermore, the Dutch courts were also equipped with *Kinder Strafrecht* and the establishment of a child judge (*kinder rechter*) with the Law of July 5, 1921 which took effect on November 1, 1922. Thus, the Netherlands has had experience in juvenile justice for more than half a century.

However, it turns out that not all or all of the Dutch laws were enforced in Indonesia as a colony. The Criminal Code in force in Indonesia only contains part of it, including Article 45,46,47 of the Criminal Code and other articles, namely Article 39 paragraph (3), Article 40 and Article 72 paragraph (2) of the Criminal Code, which are intended to protect the interests of children. . Reviewing the history of the formation of juvenile crime and its development in Indonesia. More or less since 1954 in Indonesia, especially in Jakarta, as the State Capital, special judges have been formed to try children with the assistance of prauwana officials, but detentions are generally still combined with adults. In 1957 the government's attention to juvenile delinquency was getting better, as evidenced by the sending of several experts from various departments abroad to study matters concerning juvenile delinquency, especially from the investigation to the way it was resolved in court.

The departments in question are the Prosecutor's Office, the Police, and the Judiciary. Upon returning from abroad, verbal arguments were formed between the three agencies above to provide special treatment for children who commit crimes. Protection of children certainly involves more adequate institutions and legal instruments. For this reason, Law Number 3 of 1997 concerning Juvenile Court was born to answer the problems and handling of children in Indonesia.

In addition, Law Number 23 of 2002 concerning Child Protection was born to answer children's problems in terms of regulating protection for the child himself. But the law was changed again to Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. The handling of this child in Law Number 3 of 1997 concerning Juvenile Court is felt to have not been able to prosper the child and does not pay attention to the best interests of the child himself.

Therefore, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System was born to replace the Juvenile Court Law as a more adequate legal instrument in carrying out guidance and providing protection for children. According to the author's view here, the Juvenile Court law is felt to be not good because juvenile justice does not yet have justice and there is no reduction in child crime and the court's decision is more on prison sentences which seem to rob the child of his independence.

Crime is a sorrow for someone who befalls him. Basically, the punishment imposed on a person in a judge's verdict is an absolute decision. Therefore, the imposition of a crime must at least have a sense of justice for everyone without exception. The meaning of justice is something that is said to be fair in the eyes of humans and in the eyes of God.

Legal justice is justice based on laws and regulations. In the sense that judges decide cases only based on positive law and statutory regulations. Justice like this according to adherents of the legalistic positivism school. In adhering to this justice, judges only act as implementers of the law, judges do not need to look for legal sources outside of written law and judges are only seen as applying the law to rational concrete cases. In other words, as a mouthpiece or mouth of the law.

In addition to legal justice (legal justice) can only be obtained from the law, precisely in a condition it will cause injustice to the community because the written law that was created has a certain behavior and one day will die, because when the law is

created the element of justice is only defend society. However, after being promulgated, along with changes in the values of justice in the community, as a result, the elements of justice will be lost in the law.

Good law is law that is appropriate and lives in society (the living law) which is of course also appropriate or is a reflection of the values that apply in society (social justice). The justice referred to here is not procedural justice (formal) but substantive justice (material) in accordance with the conscience of the judge.

The conception of justice is based on the desired environmental conditions of society. The concept of justice which is essentially still an abstract idea that is more difficult to understand. It will be easier to understand the injustice in society. Procedural justice (formal), means justice that is obtained from the decisions of official institutions established by law, including court decisions. (Mulyana W. Kusuma, 1981)

So far, many parties have demanded that judges in Indonesia favor the realization of substantive (material) justice rather than merely procedural (formal) justice. However, this claim can indeed be accepted theoretically rather than practically, because it brings complicated legal problems. Procedural justice (formal) is justice which refers to the an-sich law. As long as the sound of the law is realized, formal justice is achieved. Whether materially, justice is really handed over to be morally fair and virtuous (vistue) for many parties, the enforcers of procedural (formal) justice do not care about it. They are the enforcers of procedural justice (formal), usually classified as positivists. (Prija Djatmika, 2008)

For positivism, legal decisions can be logically deduced from pre-existing regulations without the need to point to social goals, virtues and morality.

The law exists for humans, so that people expect the benefits of implementing or enforcing this law to create unrest in society. In the practice of justice, it is very difficult for a judge to accommodate these three principles in a decision. In dealing with this justice, the judge must choose one of the three principles to decide a case and it is impossible for these three principles to be included at once in a decision (the principle of casuistic priority). If it is likened to a line, the judge in examining and deciding a case is (moved) between 2 (two) limiting points in the line, namely whether it stands at the point of justice, while the point of benefit itself is between the two.

When the judge makes a decision that is closer to the principle of legal certainty, the judge will automatically move away from the point of justice. If the judge makes a decision closer to justice, the judge will automatically move away from the point of legal certainty. This is where the limit of the judge's freedom lies, where the judge can only move between the two 2 (two) limiting points. With a reasonable consideration, a judge will determine when he stands near the point of legal certainty and when he has to be near the point of justice. So it is not entirely true that the judge in examining and deciding a case is free and without limits.

The judge must be able to describe it all, when the judge chooses the principle of justice, for example as the basis for making a decision. Enforcement of the theory of benefit is more nuanced in the economic aspect, with the premise that the law exists for humans, so that the purpose of the law must be useful for the community at large. The emphasis on the principle of legal certainty is more aimed at creating order and involvement in society.

According to M. Sholehuddin, the philosophy of punishment essentially has 2 (two) functions, namely: First, the fundamental function is as a normative basis and principles or rules that provide guidelines, criteria or paradigms for criminal and sentencing issues. This function is formally and intrinsically primary and is contained in every teaching of a philosophical system. That is, every principle that is determined as a principle or rule is recognized as a truth or norm that must be enforced, developed and applied. Second, the function of theory, in this case as a meta-theory. That is, the philosophy of punishment serves as a theory that underlies and underlies every theory of punishment.

The criminal system also gave birth to the existence of the idea of criminal individualization. In essence, the idea of individualization has several characteristics regarding the following aspects: a. Accountability (criminal) is personal/individual (personal principle); b. Criminals are only given to people who are guilty (culpability principle; 'no crime without guilt'); c. The punishment must be adapted to the characteristics and conditions of the perpetrator. This means that there must be flexibility for judges in choosing criminal sanctions (type and severity of sanctions) and there must be the possibility of criminal modifications (changes/adjustments) in their implementation. (Barda Nawawi Arief,1996)

The philosophy of punishment is criminally oriented, where the punishment system and the theory of punishment are. In principle, the philosophy of punishment is also oriented to the model of justice to be achieved in a juvenile criminal justice system. Concretely, how the judge as a controller in terms of making decisions is also oriented to the theoretical dimension and must also refer to the values of justice to be achieved by all parties.

According to Sue Titus Reid, the justice model is a modern justification for punishment. This model is called the justice approach which is based on two theories (objectives) of punishment, namely prevention and retribution. (Sue Titus Reid, 1987). The basis for retribution assumes that violators will be judged with appropriate sanctions for the crimes they have committed. It is also presumed that appropriate sanctions will prevent the pre-criminal from committing crimes again and also prevent others from committing crimes."

If a "common thread" is drawn to the "model of justice" there is an implicit "criminal philosophy" in it. Basically, the "model of justice" is correlated with the theory of punishment where this dimension also has an integrative scope orientation of "punishment philosophy" in the sense of a combination of the scope of "retributive, deterrent and rehabilitation philosophy".

The imposition of a crime is aimed at the benefit of as many people as possible. The imposition of a criminal matter can have an effect in the event that a person does not repeat the act. This can be directed towards realizing the sentencing process, such as the imposition of definite criminal sanctions and shown to the public that will be able to bring about a preventive effect as the goal of imposing a crime.

On the other hand, the imposition of criminal sanctions is able to prevent the repetition of a crime by someone. The implementation of the crime in accordance with what is determined will be felt as a seriousness, so that the thought of feeling the same thing in the future brings as an unfavorable thing.

Crime is a contribution to give birth to a deterrent effect for someone committing a criminal act. The connection with the process of imposing a criminal through a court decision is something that was born for the sake of realizing justice. Apart from that, the judges also base their beliefs on where in addition to alibis, which are strengthened through information and evidence, they are also based on conscience.

Sentencing is a synonym for punishment or criminal imposition, and has an understanding, namely the imposition of a crime for someone who has violated the rules of criminal law. The philosophy of punishment as regulated in the concept of the Criminal Code, it appears that the Draft Criminal Code has experienced a very sharp shift compared to the philosophy of punishment adopted by the Criminal Code.

Philosophy in the Criminal Code as the influence of classical school of thought that developed in French criminal law. The philosophy of punishment in the Criminal Code is based on the premise of retaliation for the actions that have been committed by the perpetrator. Thus, the principle of punishment is to give excessive fear, revenge and defame.

The law is considered reasonable and rational to be imposed on everyone as a result of a crime. A criminal sentence is proposed to suffer the offender. Regardless of the suffering is related to the suffering of the victim or not. The sense of justice is only measured by the suffering felt by the offender. Thus, the feasibility of imposing a sentence is a measure of the imposition of a criminal.

The punishment imposed is not solely based on the actions that have been carried out by the perpetrator. However, it is based on consideration of various aspects that exist in the perpetrator himself. For this reason, the philosophy of punishment developed in the draft Criminal Code is not solely aimed at how to treat offenders. However, it is also oriented towards far-sighted thinking so that punishment can provide protection, both for perpetrators and victims. In the end, the sentence imposed can create protection and welfare for the community. The concept of punishment is based on the philosophy of punishment which is based on philosophy.

Criminal justice provides social punishments such as deprivation of liberty and parole or parole for retributive purposes. (Katherine S. Williams, 1997). Punishment seen from a retributive perspective presupposes that punishment is a negative teaching against any deviant behavior committed by the community. The retributive view assumes that everyone is responsible for their own moral choices. Thus, the retributive view focuses its argument on crimes that have been committed. Crime becomes a fair retribution for the losses that have been caused. For this reason, punishment is morally justified. The rationale for being punished lies in the basic assumption that the punishment is a negative reward for the responsibility for wrongdoing.

Meanwhile, the utilitarian school sees the crime in terms of its benefits or uses. In a utilitarian perspective, what is seen is the situation or condition that is to be produced by the imposition of the criminal itself. According to this view, punishment must have a preventive nature, both general prevention and special prevention. In the utilitarian view, the punishment imposed is intended to improve the attitudes and behavior of the perpetrators of criminal acts so as not to repeat their actions (special prevention), besides that it also intends to prevent other people from the possibility of committing the crime (general prevention). Therefore, this utilitarian view is considered forward looking.

P. A. F. Lamintang views about the purpose of sentencing, basically there are three main ideas about the objectives to be achieved by a sentencing, namely: (P.A.F. Lamintang, 1984)

- a. To improve the personality of the criminal himself;
- b. To make people a deterrent to committing crimes; and
- c. To render certain criminals incapable of committing other crimes, that is, criminals which by other means are beyond repair."

In line with that, Wesley Cragg considered that the deterrent function of the criminal effect should be considered more as a form of social control. (Wesley Cragg, 1992) The basic assumption is that everyone has an inherent interest in distancing themselves from pain and suffering.

The concept of the 2019 National Criminal Code Bill regarding the purpose of punishment is explicitly stated in Article 51 which states that:

Sentencing aims to:

- a. Preventing the commission of criminal acts by enforcing legal norms for the protection and protection of the community;
- b. Socializing the convicts by conducting coaching and mentoring so that they become good and useful people;
- c. Resolving conflicts caused by criminal acts, restoring balance, and bringing a sense of security and peace in society; and
- d. Cultivating a sense of remorse and freeing the guilt of the convict

According to Sudarto "criminal sanctions are suffering that is intentionally imposed on people who commit acts that meet certain conditions". The imposition of sanctions can be interpreted as giving punishment to someone who has violated a rule that has been set by the government and the rule applies when someone commits a deviant act.

The imposition of sanctions is contained in Article 10 of the Criminal Code including:

- a. death penalty
- b. imprisonment
- c. Criminal Cage: V
- d. Criminal fine
- e. Criminal cover

Additional penalties:

- a. Revocation of certain rights;
- b. confiscation of certain goods;
- c. Announcement of judge's decision.

Meanwhile, in the 2019 Criminal Code Bill

Article 64

Crime consists of:

- a. Principal crime
- b. Additional penalties; and
- c. Special crimes for certain criminal acts specified in the law.

Article 65

(1) The principal penalties as referred to in Article 64 letter a consist of:

- a. imprisonment;
- b. Criminal cover;
- c. Criminal supervision;
- d. Criminal fines; and
- e. Social work crime.

(2) The order of punishment as referred to in paragraph (1) determines the severity or severity of the punishment.

Article 66

(1) Additional penalties as referred to in Article 64 letter b consist of: a. revocation of certain rights; b. confiscation of certain Goods and/or invoices; c. announcement of judge's decision; d. payment of compensation; e. revocation of certain permits; and f. fulfillment of local customary obligations.

(2) The additional punishment as referred to in paragraph (1) may be imposed in the event that the imposition of the principal punishment alone is not sufficient to achieve the purpose of the sentencing.

(3) The additional penalty as referred to in paragraph (1) may be imposed for 1 (one) type or more.

(4) Additional punishment for probation and assistance is the same as additional punishment for the crime.

(5) Additional penalties for members of the Indonesian National Armed Forces who commit crimes in connection cases shall be imposed in accordance with the provisions of laws and regulations for the Indonesian National Armed Forces.

Article 67

The special punishment as referred to in Article 64 letter c is a death penalty which is always threatened with alternatives.

Regarding the purpose of punishment, it is closely related to the criminal justice system itself. According to Muladi, the criminal justice system is a judicial network that uses criminal law as its main means, both material criminal law, formal criminal law and criminal law enforcement. (Muladi,2008). The Criminal Justice System, especially against children, is a criminal process for children who are involved with the problem of criminal law itself. In the SPPA Law, it is known that there are criminal sanctions for children other than the Criminal Code.

The imposition of sanctions on children is contained in Article 71 paragraph (1) of the SPPA Law, including:

Principal crime:

- a. Criminal warning
- b. Criminal conditions:
 - 1) coaching outside the institution;
 - 2) Community service; or
 - 3) Supervision.
- c. Work training
- d. Institutional coaching
- e. Jail.

The purpose of the warning penalty according to Angger Sigit Pramukti and Fuady Primaharsya states that: (Angger Sigit Pramukti and Fuady Primaharsya, 2015)

"A warning penalty is a minor crime that does not result in restrictions on freedom of rights" (Article 72 of the SPPA Law)

Criminal warnings against children such as to warn them not to commit a crime that will or has been committed by the child and does not reach the trial. A criminal offense on the condition that there are conditions that must be obeyed by the child in carrying out the period of punishment. Angger Sigit Pramukti and Fuady Primaharsya stated in a criminal case with the condition that the general conditions and special conditions referred to both were: (Angger Sigit Pramukti and Fuady Primaharsya, 2015)

"The general condition is that the child will not commit a crime again while serving a criminal period with conditions. While the special conditions are to do or not to do certain things that are stipulated in the judge's decision while still taking into account the freedom of the child.

This is also stated in Article 73 which states that:

(1) The punishment can be imposed by a judge in the case of a maximum imprisonment of 2 (two) years.

(2) In the court's decision regarding the criminal condition as referred to in paragraph (1), general conditions and special conditions are determined.

(3) The general condition as referred to in paragraph (2) is that the child will not commit a crime again while serving a criminal period with conditions.

(4) The special conditions as referred to in paragraph (2) are to do or not to do certain things that are stipulated in the judge's decision while still taking into account the freedom of the child.

(5) The criminal period with special conditions is longer than the criminal period with general conditions.

(6) The term of the criminal period with the conditions as referred to in paragraph (1) is a maximum of 3 (three) years.

(7) During the criminal period with conditions, the Public Prosecutor shall supervise and the Community Counselor will provide guidance so that the child occupies the stipulated requirements.

(8) As long as the child is serving a sentence with the conditions as referred to in paragraph (7), the child must attend 9 (nine) years of compulsory education.

Coaching outside the institution is contained in Article 75 paragraph (1) of the SPPA Law. There are several types of coaching that can be carried out by child fostering officials, namely:

"Coaching outside the institution can be in the form of:

a) Participate in the mentoring and counseling program conducted by the supervisory officer;

b) Following therapy in a mental hospital; or

c) Following therapy due to abuse of alcohol, drugs, psychotropic substances, and other addictive substances."

Coaching outside the institution can be carried out by anyone who can improve a child by following a program created by a community institution. In addition to coaching outside the institution, there are also community service crimes as referred to in Article 76 which states that:

(1) Community service crime is a crime intended to educate children by increasing their awareness of positive social activities.

(2) If the child does not fulfill all or part of the obligations in carrying out the community service crime without a valid reason, the supervisory official may propose to the supervisory judge to order the child to repeat all or part of the community service crime imposed on him.

(3) The punishment for community service for children is imposed for a minimum of 7 (seven) hours and a maximum of 120 (one hundred and twenty) hours.

Supervision in criminal matters with conditions in the juvenile criminal justice system the meaning of supervision can be seen in the explanation of Article 77 paragraph (1) of the SPPA Law which states that:

"Supervision punishment is a crime that is specifically imposed on children, namely supervision carried out by the public prosecutor on the behavior of children in daily life in the child's home and the provision of guidance carried out by community counselors."

According to Angger Sigit Pramukti and Fuady Primaharsya, Angger Sigit Pramukti and Fuady Primaharsya said that the job training crime referred to in the sentence imposed on this child was: (Angger Sigit Pramukti and Fuady Primaharsya,2015)

"Criminal job training is carried out in institutions that carry out job training according to the age of the child. Institutions that carry out job training include job training centers, vocational education institutions that are carried out, for example by the ministry that carries out government affairs in the fields of manpower, education or social affairs."

This job training penalty can only be imposed on children for a minimum period of 3 (three) months and a maximum of 1 (one) year. The guidance in the institution carried out for children as referred to in the book Angger Sigit Pramukti and Fuady Primaharsya states that: (Angger Sigit Pramukti and Fuady Primaharsya,2015)

"Criminal coaching within institutions is carried out in job training places or coaching institutions organized, both by the government and the private sector."

Imprisonment that can be imposed in the judge's decision against children is the maximum limitation of imprisonment for children, namely (one half) of the threat of punishment for adults by looking at Article 79 paragraph (2) of the SPPA Law. According to Angger Sigit Pramukti and Fuady Primaharsya regarding imprisonment in the juvenile criminal justice system, they state that: (Angger Sigit Pramukti and Fuady Primaharsya,2015)

"Prison punishment in the Law on the Juvenile Criminal Justice System also adheres to the ultimum remedium principle which means that imprisonment against children is only used as a last resort."

Preferably, the judge in giving or imposing sanctions on children is not always imprisonment, because in the SPPA Law, precisely in Article 75 paragraph (1) letter c of the law that the imposition of criminal sanctions that can be given to children who abuse narcotics can be imposed by with the condition that they follow therapy due to abuse of alcohol, narcotics, psychotropic substances and other addictive substances.

Article 71 Paragraph (2) of the SPPA Law, additional penalties for children consist of:

a. Deprivation of profits derived from criminal acts; or

b. Fulfillment of customary obligations.

Article 82 Paragraph (1) of the SPPA Law, Actions that can be imposed on children include:

a. Returns to parents/guardians;

b. Submission to someone;

c. Treatment in a mental hospital;

d. Treatment at LPKS;

e. Obligation to attend formal education and/or training held by the government or private bodies;

f. Revocation of driving license; and/or

g. Repairs due to criminal acts.

The application of punishment to children often causes debate because in this case it has very broad consequences both regarding behavior and stigma in society and also within the child, but with the issuance of the SPPA Law, the application of

punishment is more fostering and protecting against children, compared to the Act. The Juvenile Court Law is no longer relevant because it is not in accordance with the times.

The SPPA Law adheres to a two-track system where in addition to regulating criminal sanctions, it also regulates actions (double track system). Through the implementation of this two-track system, the sanctions imposed will better reflect justice, both for perpetrators, victims and the community so that judges can determine the imposition of sanctions against children that are appropriate and deserve to be accounted for by children in conflict with the law. In general, the imposition of criminal sanctions on violators of the law is often considered as the goal of criminal law. Therefore, if the violator has been brought before the court and then sentenced to criminal sanctions, the legal case is considered to have ended.

Such a view has positioned the situation in criminal law and criminal law enforcement is a criminal sanction as stated in the articles that are violated. The punishment that is commonly applied under the Criminal Code, does not educate children to be better, but rather exacerbates conditions and can increase the crime rate of children. The application of punishment to children based on the SPPA Law is a basis for imposing sanctions on children who commit criminal acts, as stated in Article 71 Paragraph (4) of the SPPA Law which states that:

"Criminals imposed on children are prohibited from violating the dignity of the child."

With the issuance of the SPPA Law, it is hoped that the welfare and fulfillment of children's rights will be better. Children who commit criminal acts apply special provisions based on the SPPA Law, as well as the punishment imposed on children for a maximum of (half) of the maximum imprisonment for adults so that the specificity of handling juvenile justice can reduce the provisions in the Criminal Code and Criminal Procedure Code based on the Lex Specialist Derogate principle. Generalist.

The principles of imposing criminal penalties against children are contained in The Beijing Rules and the Convention On The Right Of the Child which have been ratified by the Government of Indonesia with Presidential Decree No. 36/1990. imprisonment as far as possible is not imposed on children as stated in the Draft Criminal Code and the SPPA Law. Article 3 of the SPPA Law, every child in the criminal justice process has the right to:

- a. Treated humanely by paying attention to the needs according to their age;
- b. Separated from adults;
- c. Obtain legal and other assistance effectively;
- d. Carry out recreational activities;
- e. Free from torture, punishment or other cruel, inhuman, and degrading treatment;
- f. Not sentenced to death or life imprisonment;
- g. Not arrested, detained, or imprisoned, except as a last resort and for the shortest time;
- h. Obtaining justice before a juvenile court that is objective, impartial, and in a trial that is closed to the public;
- i. His identity is not published;
- j. Obtain assistance from parents/guardians and people who are trusted by the child;
- k. Obtain social advocacy;
- l. Acquire a personal life;
- m. Gaining accessibility, especially for children with disabilities;
- n. Obtaining education;
- o. Obtaining health services; and
- p. Obtain other rights in accordance with the provisions of the legislation.

Article 81 of the SPPA Law stipulates different things from the rules for adult criminals:

- a. Children are sentenced to imprisonment in LPKA if the child's circumstances and actions will endanger the community
- b. Imprisonment that can be imposed on children is a maximum of (one half) of the maximum penalty of imprisonment for adults;
- c. Guidance at LPKA is carried out until the child is 18 (eighteen) years old;
- d. Children who have lived (one half) of the time
- e. Guidance at LPKA and good behavior are entitled to parole;
- f. Imprisonment of children is only used as a last resort;
- g. If the crime committed by a child is a criminal offense punishable by death or life imprisonment, the sentence imposed is a maximum imprisonment of 10 (ten) years.

Article 21 of the SPPA Law also stipulates that in the event that a child under 12 (twelve) years of age commits or is suspected of committing a crime, investigators, community advisors, and professional social workers shall make decisions to:

- a. Submit it back to the parent/guardian; or
- b. Participate in education programs, coaching in government agencies or LPKS in agencies dealing with social welfare, both at the central and regional levels, for a maximum of 6 (six) months

According to the author here, the SPPA Law is very appropriate considering the philosophy of the juvenile criminal justice system is to prioritize the protection and rehabilitation of child offenders as people who still have a number of limitations compared to adults. Children still need protection from the state and society for a long time to come.

The philosophy of punishment in the SPPA Law is:

- a) Juvenile justice is an integral part of the national development process
- b) Children need special legal protection and treatment compared to adults
- c) Based on the principle of non-discrimination and the best interests of the child
- d) It is the duty of the state, society and family to protect children.

The philosophy of punishment in the SPPA Law as seen that the punishment imposed on children is an effort to be able to restore children through coaching in order to realize national development. In addition, children are also given special protection and should not be equated with adults in handling problems faced by children as perpetrators of criminal acts or victims of crime.

The function of imposing criminal sanctions as a consequence of social control in society. (Norman Johnston et al, 1962) Although Durkheim stated that the purpose of punishment is one of them as a means of preventing the occurrence of a crime, the main thing is the public's feeling about which behavior is intended as a crime. This change in the value of an act may occur when the public's view of the act changes. Therefore, it is necessary to view one of the functions of criminal threats as a promotional tool to build the same perception in society towards an act. (Norman Johnston et al, 1962) Regarding children as perpetrators of criminal acts, in the SPPA Law, they fight for the best interests of children. This reminds us that the views in society are very different in the perception of behavior that arises, so that social behavior in society in children will be formed.

Children who have problems with the law must comply with the principle of non-discrimination and children's rights must be prioritized for the best interests of the child, because children are the nation's generation that is prepared to continue the nation's influence in the future. The law provides a guarantee of protection for children, where children are entitled to protection from the state, society and family for the welfare of the child and the best interest of the child. Therefore, children have the right to be protected so that their future can be achieved well, so that children who are involved in legal problems, the state must protect them.

However, this substantial institution must be seen in a social framework or context. Its overly formal nature, if it is based only on the interests of legal certainty, will lead to injustice. (Norman Johnston et al, 1962)

Thus it can be said that punishment cannot be separated from the types of crimes regulated in the positive law of a country. The punishment carried out by a regular community against criminals can take the form of getting rid of or paralyzing the perpetrators of criminal acts, so that the perpetrators will no longer interfere in the future.

According to Hazewingkel Suringa, a crime is a reaction to the commission of an offense that has been proven proven, in the form of an intentional act to inflict some kind of suffering on the perpetrator because he has committed a crime. (P.A.F. Lamintang and Theo Lamintan, 2010). One of the big problems in punishing children is the bad effect of punishment on child development. Punishment often brings a bad mark on someone, which in the context of children, will be very destructive to their long expected life.

2. Handling of Child Perpetrators of Crime

The initial handling of crimes in the juvenile criminal justice system has similarities with criminal justice in general, namely starting from the investigation process due to reports from victims to the police. The investigation process carried out by the Police is an important matter for the continuation of the criminal justice process against children, because in the investigation it can be known whether an act that is suspected of being a crime has occurred or an act that is not a criminal act has occurred. The police are given discretionary authority in carrying out their duties, so they have the right to continue or not to continue a case.

The order of the process of handling criminal acts with child perpetrators at the police level is as follows:

a. Inquiries and investigations

An investigation is a series of investigators' actions to seek and find an event that is suspected of being a criminal act in order to determine whether or not an investigation can be carried out according to the method regulated in this law. The police in conducting investigations against child perpetrators of crime must pay attention to various provisions regarding efforts to handle children from arrest to the placement process. Starting an investigation is based on the results of an assessment of the information or data obtained, while the information or data needed to conduct an investigation is obtained through: (Moch. Faisal Salam, 2005)

- 1) Certain reliable sources
- 2) There is a direct report to the investigator from a person who knows that a crime has occurred.
- 3) The results of the official report made by the investigator.

The goal to be achieved from an investigation is to obtain or collect information, evidence or data used to: (R. Soesilo, 1979)

- 1) Determine whether an event that occurs is a criminal act or not.
- 2) Who can be held accountable (criminally) for the crime.
- 3) It is a preparation for taking action.

An investigation is a series of actions carried out by an investigating officer in accordance with the method in the law to seek and collect evidence, then with that evidence make or become clear on the criminal act that occurred and at the same time find the suspect or the perpetrator of the crime. (Yahya Harahap, 2006). Investigations are carried out by police officers who at least have the positions of assistant lieutenant II and civil servants who coordinate with the police to collect evidence to find out whether an event that occurred is a criminal event, with the investigation also aimed at finding the culprit. (Luhut Pangaribuan, 2013)

In accordance with Article 26 of the SPPA Law, it states that:

- 1) Investigation of children's cases is carried out by Investigators who are determined based on the Decree of the Head of the State Police of the Republic of Indonesia or other officials appointed by the Head of the State Police of the Republic of Indonesia.

2) Examination of the child of the victim or child of the witness is carried out by the investigator

- 3) Where are the requirements to become an investigator in a child case, namely:
 - a) Has experience as an investigator;

- b) Have interest, attention, dedication, and understanding of the Child's problems; and
- c) Have attended technical training on juvenile justice

The investigation process in children's cases is carried out according to the provisions of the law. Therefore, the parties involved in the process of handling children include: (Ilham Djaya, 2020)

1) Child investigator

As emphasized in Article 26 of the SPPA Law, it specifically regulates the qualifications of special investigators to handle child cases. The SPPA Law also confirms that the police are given the authority to investigate children in the event that there are no investigators who meet the requirements. The stages in the investigation are:

- a) The investigation begins with the arrest of the child. Investigators are given 1 x 24 hours to determine the child's status whether as a witness or perpetrator, within this time span, children must be placed specifically and separately from adults, such as in a special service room for children or in LPKS.
- b) After determining the status of the child, the investigation stage begins. At this stage the child has the right to be accompanied by a Community Counselor and Advocate. In addition, investigators have the right to detain children on the condition that the child is over 14 years old and the type of crime committed is threatened with over 7 years
- c) The final stage of the investigation is the transfer of the child's case file to the prosecutor's office. The investigator in this case sends the child's case file including evidence to be examined by the public prosecutor. If it is declared complete or can be heard with the phrase, it is P21. Furthermore, the child will be handed over to the public prosecutor.

2) Community Advisor

Article 1 number 13 of the SPPA Law explains that Community Counselors are law enforcement functional officials who carry out community research, guidance, supervision and assistance to children both inside and outside the criminal justice process.

At the investigation stage, PK carries out the task of community research in assisting children. PK's first role is to be a child companion who provides reinforcement, protection and motivation during the child examination process. After that, PK conducts community research to gather information about the social condition of children, their families and their environment. This information excavation begins with conducting interviews with children, then visiting their homes to explore data and conditions for their families and their environment.

3) Advocate

Advocates have a role to assist and guarantee the rights of children during the examination stage. In the detention of children, legal advocates can be active, but not by interfering with the investigator's authority.

4) Professional social worker

Professional Social Worker is a person who works in both government and private institutions who have the competence and the social work profession as well as concern in social work obtained through education, training, and/or experience in social work practice in carrying out service tasks and handling children's social problems. Article 1 number 14 of the SPPA Law confirms that;

Social workers (Peksos) have duties including guiding, assisting, protecting and assisting children by conducting social consultations and restoring children's confidence, as well as providing social assistance and advocacy for children. The full explanation of Social Social workers' duties is regulated in Article 68 of the SPPA Law.

In practice, in the case of children, social workers are more likely to accompany children as perpetrators, so they often coordinate with community advisors.

5) Other supporting agencies or institutions

To support the optimal implementation of SPPA, cooperation between law enforcement agencies and other agencies or related institutions is crucial. Some of the agencies include:

- a) Ministry of Women's Empowerment and Child Protection
 - b) Indonesian Child Protection Agency (LPAI)
 - c) Indonesian Child Protection Commission (KPAI)
- b. Arrest and Detention

The Criminal Procedure Code regulates the authority of the police to carry out investigations and investigations which are further regulated in the guidelines and implementation (Juklak) and technical instructions (Juknis) of the police. The act of arrest is not regulated in detail in the SPPA Law, so the provisions of the Criminal Procedure Code apply. The SPPA Law stipulates that:

- 1) The arrest of a child is carried out for the purpose of investigation for a maximum of 24 (twenty four) hours;
- 2) The arrested child must be placed in a special children's service room;
- 3) In the event that a special service room for children does not yet exist in the area concerned, the child is deposited in the LPAS;
- 4) Arrest must be carried out humanely by taking into account the needs according to their age;
- 5) The cost for each child placed in LPAS is charged to the budget of the ministry that carries out government affairs in the social sector.

Attempts to arrest a child by an investigator must apply the principle of presumption of innocence in order to respect and uphold the dignity of the child and must also be understood as a person who has not been able to understand the legal problems that have occurred to him. An investigator who makes an arrest effort in addition to applying the principle of presumption of innocence must also pay attention to the rights of the child as a suspect, such as the right to obtain legal assistance at every level of examination according to the procedure determined by law (Article 54 of the Criminal Procedure Code). (Ilham Djaya,2020)

The procedure that will be carried out after the arrest attempt is carried out continues with the detention effort. Detention is the placement of a suspect or defendant to a certain place by a child investigator or child public prosecutor or child judge with a determination in terms of and according to the method regulated in the Criminal Procedure Code and the SPPA Law.

A child who is undergoing a detention process must still be met with physical, spiritual and social needs, besides that child safety must also be fulfilled which is provided in the form of placing the child in a Social Welfare Organization as regulated in Article 32 of the SPPA Law or can be detained through a Temporary Child Placement Institution. (LPAS). The detention carried out by the public prosecutor is carried out in order to facilitate prosecution efforts, but the period of detention is carried out for a maximum of 5 (five) days. The detention period at the request of the public prosecutor can be extended by a District Court judge for a maximum of 5 (five) days, then when the 5 (five) day period has ended, the child must be released by law (Article 34 of the SPPA Law).

c. Inspection

The examination process before the court also requires the defendant to be detained in order to expedite the examination process, the judge can make a detention for a maximum period of 10 (ten) days, the period at the request of the judge can be extended by making an application to the Head of the District Court for a maximum of 15 (five) days. fifteen) days, if the 15 (fifteen) days period has ended and the judge has not given a decision, then the child must be released by law (Article 35 of the SPPA Law), then during the examination process there is a submission of evidence, then the confiscation of evidence In the case of a child, it must be determined no later than 2 (two) days by the Chairperson of the Court (Article 36 of the SPPA Law).

Article 37 of the SPPA Law stipulates that in the case of detention for the purposes of examination at the appellate level, the appellate judge may make a detention for a maximum of 10 (ten) days, then at the request of the appeal judge it can be extended by the head of the high court for a maximum of 15 (fifteen) days. . The period of 15 (fifteen) days and paragraph (2) has ended and the appellate judge has not rendered a decision, the child must be expelled by law.

d. Detention

Detention is forced to be carried out for the purpose of examination at the cassation level, the cassation judge may detain a maximum of 15 (fifteen) days and may be extended 20 (days) at the request of the cassation judge by the chairman of the Supreme Court. In this case, the time period has expired and the cassation judge has not rendered a decision, the child must be expelled by law (Article 38 of the SPPA Law).

e. Prosecution

The delegation of files to the court requires the public prosecutor to give notice to the defendant about the provisions on the day and time the case will be heard accompanied by a summons, both to the defendant and to witnesses to come at the hearing that has been determined. The next task after the start of the trial is prosecution, prosecuting cases for the sake of law as a public prosecutor according to the provisions of this law such as a judge's determination. The public prosecutor in carrying out his duties has the authority to carry out further detention or detention, the detention is carried out for a maximum of 10 (days)) day. Within 25 (twenty five) days, the public prosecutor must transfer the case file which has not been transferred to the District Court, then the suspect must be released from detention for the sake of law.

The Public Prosecutor is obliged to seek diversion no later than 7 (seven) days after receiving the case file from the investigator, which is carried out no later than 30 (thirty) days, and if the diversion process succeeds in reaching an agreement, the Public Prosecutor submits the diversion report along with the diversion agreement to the Chairperson of the Court. For the State to make a determination, if the diversion process fails, the Public Prosecutor is obliged to submit an official report on the diversion and delegate the case to the court by attaching a report on the results of community research.

In the process of prosecuting the parties involved:

1) Child prosecutor

The prosecution stage is one of the powers of a prosecutor, in addition to investigation and execution. When a prosecutor carries out the prosecution function in a trial, he is referred to as a "public prosecutor". This is regulated in the Criminal Procedure Code and adopted by the SPPA Law. However, in practice, in handling cases of children, the term Child Prosecutor is more used, although during the trial the term Public Prosecutor is used.

In general, prosecution begins with the pre-prosecution stage where there is a process of examining case files by the public prosecutor. In the SPPA Law, the time limit for prosecution is implicitly limited to 10 days, before being handed over to the court. The pre-prosecution stage begins when the SPDP (Warrant for the Commencement of Investigation) from the police is received by the prosecutor's office. Then a Child Prosecutor is appointed who handles the child's case to become a Public Prosecutor.

2) Child Investigator

Child investigators have a significant role in the pre-prosecution stage, with the task of completing the child's case file before it is transferred to the prosecutor's office. After the file is declared complete, the investigator is responsible for presenting the child and his/her parents or guardians, community advisors, social workers, and legal counsel to the child prosecutor for delegating the child's case or what is better known as the prosecution stage.

3) Advocate

The role of advocates at the prosecution stage is not as much as when they were in the investigation stage. In prosecution, advocates are still passive because the process of filing child cases is the absolute authority of the prosecutor's office.

4) Community Advisor

In the prosecution stage, the Community Counselor (PK) has a role in assisting the child. PK provides assistance to children when delegating children's cases and during examinations by child prosecutors. In general, PK ensures that the child's physical and psychological condition is in good condition during the examination. In addition, PK also ensures that children's rights are not violated during the examination process.

5) Professional social worker

In the prosecution stage, social workers (Pedsos) have a role that is not much different from the Community Counselor, namely assisting children.

6) Other supporting agencies or institutions

In practice, there is not much assistance or advocacy for children in conflict with the law from other supporting agencies or institutions. However, if deemed necessary, the Public Prosecutor may present other supporting agencies or institutions deemed relevant. This is based on Article 32 of the SPPA Law which states that in the examination of the examination level, children must be given legal assistance and accompanied by a Community Counselor or other assistant in accordance with the provisions of the legislation.

f. Court

Handling at the court stage is the next stage after completion of the prosecution stage. This stage is included in the categorization of the adjudication stage. Sessions generally take place with a fast and scheduled agenda. In the process of prosecuting the parties involved:

1) Child Judge

The court is given 25 days to settle the child's case. This is implicitly regulated in the SPPA Law. According to the SPPA Law, the examination in court of a child case is carried out by a judge who is determined based on the decision of the Chief Justice of the Supreme Court or other officials appointed by the Chief Justice of the Supreme Court on the recommendation of the Head of the District Court concerned through the Head of the High Court, and the conditions for being appointed as judges are as stated in the SPPA Law. referred to, namely:

- a) Has experience as a judge in the general court environment;
- b) Have interest, attention, dedication, and understanding of the Child's problems; and
- c) Has attended technical training on juvenile justice.

Judges examine and decide cases of children in the first instance with a single judge. The Head of the District Court may determine the examination of the Child's case with the panel of judges in the case of a criminal offense which is punishable by imprisonment of 7 (seven) years or more or it is difficult to prove, then the chairman of the court may appoint a panel of judges to carry out the examination of the child. This is regulated in Article 44 of the SPPA Law.

The SPPA Law regulates a special court room for children and must be separated from adults and friendly to children. That is, the children's courtroom is specially designed to make the child comfortable with the trial. For example, the absence of a higher judge's table, the position of the child's seat that is not the center, and in some circumstances video conferencing facilities are prepared for children who avoid direct meetings with these parties because of the traumatic impact. In addition, the parties present at the trial are also required not to wear a toga, uniform or official attributes as stipulated in Article 22 of the SPPA Law.

Examination of juvenile delinquent cases at the Cassation level, carried out by a cassation judge, is determined based on the decision of the Chief Justice of the Supreme Court. The terms for the appointment of a child cassation judge are adjusted to the provisions of Article 43 paragraph (2) of the SPPA Law. The cassation judge examines and decides on children's cases at the cassation level with a single judge. The reasons for the court to make a criminal decision are:

- a) Because it has been proven to fulfill the elements of a criminal act that has been charged to him
- b) The child has been detained during the court process, starting from the time of investigation, prosecution until the time of trial, so that by being sentenced to a crime, the sentence of imprisonment can be reduced or almost the same as the period of detention he has done.

2) Prosecutor

Stages of examination at the trial, the role of the public prosecutor begins with the agenda of reading the indictment. After that, the public prosecutor will prove the elements of the crime by presenting witnesses and evidence at trial. In addition, the public prosecutor will usually consider recommendations from the Community Counselor and social workers in formulating demands that will be read out at the end of the child's examination in court.

3) Advocate

Examination in court becomes the central role of advocates to defend children. Starting from evidence of defense to witnesses a de charge or witnesses who relieve children.

4) Community Advisor

In court, a significant role for a community advisor is to read out community research recommendations. In general, the results of the litmas recommendations are based on criminogenic factors (driving criminal acts), sociological, psychological and

juridical analysis as well as factors such as the condition of the child's parents, the child's educational status, to the role of the child in the family economy.

5) Social Worker

The role of social workers in the trial is to read out the Social Security Service which includes the extent of functioning and social interaction of criminal acts committed by children.

6) Other Supporting Agencies or Institutions

In practice, there are not many presences from other supporting agencies or institutions during the trial process. However, if deemed necessary, the judge can present other supporting agencies or institutions deemed relevant. This is based on Article 32 of the SPPA Law which states that at every level of examination, children must be provided with legal assistance and accompanied by a community counselor or other assistant in accordance with the provisions of the legislation.

Then the child who has been prosecuted can be placed separately as regulated in the laws and regulations in Indonesia, namely Article 4 of the Correctional Law which states that:

Correctional Institutions including Child Correctional Institutions are established in each Regency or Municipal Capital.

This Correctional Institution after the enactment of the SPPA Law changed its term to the Child Special Guidance Institution (hereinafter referred to as LPKA). The existence of children in places of detention and imprisonment with people who are older, places children in a vulnerable situation to become victims of various acts of violence. (Nashriana, 2013)

3. Criminalization Arrangements for Children

a. Child Criminalization in Indonesia

1) Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

Sanctions are a logical consequence of an action taken. The legal subject that can be sentenced to criminal acts and actions is every criminal actor, according to the situation and conditions. Children who are criminals can also be sentenced to criminal acts or actions. In the SPPA Law, Article 1 number 3, 4, 5 stipulates that a child is a child who has not reached the age of 18 years. However, specifically for children who can be submitted or processed through the criminal justice system are people who have reached the age of 12 but are not yet 18 years old.

The sanctions regulated in the SPPA Law consist of criminal sanctions and action sanctions as stipulated in chapter V of the Law. Article 69 paragraph (2) of the SPPA Law states that children who are not yet 14 (fourteen) years old can only be subject to action. The lightness of the act, the child's personal condition, or the circumstances at the time the act was committed or what happened later can be used as the basis for judges' consideration not to impose a sentence or impose an action taking into account the aspects of justice and humanity.

The penalties for children as regulated in Article 71 of the SPPA Law are:

1) The main punishment for children consists of:

- a) Criminal warning;
- b) Criminal conditions with the following conditions:
 - Coaching outside the institution;
 - Society service; or
 - Supervision.
- c) Job training;
- d) Development within the institution; and
- e) Prison

2) Additional penalties consist of:

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

3) If the material law is threatened with cumulative punishment in the form of imprisonment and fines, the fines are replaced with job training.

4) Criminals imposed on children are prohibited from violating the dignity of the child.

5) Further provisions regarding the form and procedure for the implementation of the crime as referred to in paragraph (1), paragraph (2), and paragraph (3) shall be regulated by a Government Regulation.

The punishment can be imposed by a judge in the case of a maximum imprisonment of 2 (two) years. The judge decides that the child is fostered outside the institution as referred to in Article 71 paragraph (1) letter b number 1, the institution where education and guidance is determined in his decision. Regarding the criminal restrictions on children's freedom, it has been regulated in Article 79 of the SPPA Law which states:

- 1) The punishment for restricting freedom is imposed in the event that a child commits a serious crime or a crime accompanied by violence.
- 2) The punishment for restricting freedom imposed on a child is a maximum of 1/2 (one half) of the maximum imprisonment imposed on an adult.

3) The special minimum imprisonment does not apply to children.

4) Provisions regarding imprisonment in the Criminal Code also apply to children as long as they do not conflict with this law.

Children are sentenced to imprisonment in LPKA if the child's circumstances and actions will endanger the community. Imprisonment that can be imposed on children is a maximum of 1/2 (one half) of the maximum imprisonment for adults. Guidance at LPKA is carried out until the child is 18 (eighteen) years old. Children who have undergone 1/2 (one-half) of the length of coaching at LPKA and have good behavior are entitled to parole. Imprisonment of children is only used as a last resort. If the crime committed by a child is a crime punishable by death or life imprisonment, the sentence imposed is a maximum imprisonment of 10 (ten) years.

As for sanctions in the form of actions, the SPPA Law has regulated it in Article 82 and Article 83 which states:

Article 82

1) Actions that may be imposed on children include:

- a) Return to parent/guardian;
- b) Submission to someone;
- c) Treatment in a mental hospital;
- d) Treatment in LPKS;
- e) Obligation to attend formal education and/or training held by the government or private bodies;
- f) Revocation of driving license; and/or
- g) Correction of the consequences of a criminal act.

2) The actions as referred to in paragraph (1) letter d, letter e, and letter f are imposed for a maximum of 1 (one) year.

3) The action as referred to in paragraph (1) may be submitted by the Public Prosecutor in his charge, unless the criminal offense is punishable by a minimum imprisonment of 7 (seven) years.

4) Further provisions regarding the action as referred to in paragraph (1) shall be regulated by a Government Regulation.

Article 83

1) The act of surrendering a child to someone is carried out for the benefit of the child concerned.

2) Child care measures are intended to assist parents/guardians in educating and providing guidance to the child concerned.

Given that children are the next generation of the nation that need to be protected and nurtured, the SPPA Law does not only regulate sanctions for children in conflict with the law, but also regulates sanctions for law enforcement officers who handle cases of children who do not implement the provisions of the law, namely:

Article 96

Investigators, Public Prosecutors and Judges who intentionally do not carry out their obligations as referred to in Article 7 paragraph (1) shall be sentenced to a maximum imprisonment of 2 (two) years or a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah).

Article 97

Everyone who violates the obligations as referred to in Article 19 paragraph (1) shall be sentenced to a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah).

Article 98

Investigators who intentionally do not carry out their obligations as referred to in Article 33 paragraph (3) shall be punished with imprisonment for a maximum of 2 (two) years.

Article 99

The Public Prosecutor who intentionally does not carry out the obligations as referred to in Article 34 paragraph (3) shall be sentenced to a maximum imprisonment of 2 (two) years.

Article 100

A judge who intentionally does not carry out the obligations as referred to in Article 35 paragraph (3), Article 37 paragraph (3), and Article 38 paragraph (3) shall be sentenced to a maximum imprisonment of 2 (two) years.

Article 101

Court officials who intentionally do not carry out the obligations as referred to in Article 62 shall be punished with imprisonment for a maximum of 2 (two) years.

In addition to criminal sanctions and action sanctions, the SPPA Law also regulates administrative sanctions. As stipulated in Article 95 that officials or officers who violate the provisions as referred to in Article 7 paragraph (1), Article 14 paragraph (2), Article 17, Article 18, Article 21 paragraph (3), Article 27 paragraph (1) and paragraph (3), Article 29 paragraph (1), Article 39, Article 42 paragraph (1) and paragraph (4), Article 55 paragraph (1), and Article 62 are subject to administrative sanctions in accordance with the provisions of the legislation.

2) Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection in conjunction with Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law

The Child Protection Law has not been able to run effectively because there is still overlap between sectoral laws and regulations related to the definition of a child. On the other hand, the rise of crimes against children in the community, one of which is sexual crimes, requires increased commitment from the Government,

Regional Government, and the community as well as all stakeholders related to the implementation of child protection.

Law Number 35 of 2014 concerning Child Protection (hereinafter referred to as the Child Protection Law emphasizes the need for heavier criminal sanctions and fines for perpetrators of crimes against children, to provide a deterrent effect, and to encourage concrete steps to restore the physical, psychological and social status of child victims). and/or child perpetrators of crime. This needs to be done to anticipate child victims and/or child perpetrators of crimes in the future do not become perpetrators of the same crime Law Number 35 Year 2014 concerning Amendments to Law Number 23 Year 2002 concerning Protection One of the amendments to children focuses on increasing criminal sanctions against perpetrators of sexual violence against children, however, the amendments to the law have not significantly reduced the level of sexual violence against children.

Therefore, the State takes optimal and comprehensive steps by not only giving weighting criminal sanctions, but also implementing preventive forms by providing actions in the form of chemical castration, installation of electronic detection devices, and rehabilitation for perpetrators of sexual violence against children. To address the phenomenon of sexual violence against children, provide a deterrent effect on perpetrators, and prevent the occurrence of sexual violence against children, the President has issued a Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection on May 25, 2016.

Sanctions in the Child Protection Law are aimed at violators of the prohibitions regulated in the law. Thus, before elaborating on sanctions, it is necessary to first understand the prohibitions regulated in the Child Protection Act, namely:

Article 76A

Everyone is prohibited:

- a. Treating children in a discriminatory manner which causes the child to suffer losses, both materially and morally, thus hampering his social function; or
- b. Treat children with disabilities in a discriminatory manner.

Article 76B

Everyone is prohibited from placing, allowing, involving, ordering to involve children in situations of mistreatment and neglect.

Article 76C

Everyone is prohibited from placing, allowing, committing, ordering to do, or participating in committing violence against children.

Article 76D

Everyone is prohibited from using violence or threats of violence to force children to have intercourse with him or with other people.

Article 76E

Everyone is prohibited from using violence or threats of violence, coercing, deceiving, committing a series of lies, or persuading children to commit or allow obscene acts to be carried out.

Article 76F

Everyone is prohibited from placing, allowing, carrying out, ordering to do, or participating in kidnapping, selling, and/or trafficking children.

Article 76G

Everyone is prohibited from preventing children from enjoying their own culture, acknowledging and implementing their religious teachings and/or using their own language without ignoring access to community and cultural development.

Article 76H

Everyone is prohibited from recruiting or using children for military and/or other purposes and leaving children without life protection.

Article 76I

Everyone is prohibited from placing, allowing, carrying out, ordering to do, or participating in economic and/or sexual exploitation of children.

Article 76J

- 1) Everyone is prohibited from intentionally placing, allowing, involving, ordering to involve children in the abuse, as well as the production and distribution of narcotics and/or psychotropics.
- 2) Everyone is prohibited from knowingly placing, allowing, involving, ordering to involve children in the abuse, as well as the production and distribution of alcohol and other addictive substances.

The sanctions for breaking the prohibition have been determined in Law no. 35 of 2014 Jo. Law No. 1 of 2016 concerning Child Protection, namely:

Article 77 of Law no. 35 Year 2014

Anyone who violates the provisions as referred to in Article 76A shall be sentenced to a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).

Article 77A of Law no. 35 Year 2014

- 1) Any person who deliberately performs an abortion on a child who is still in the womb for reasons and procedures that are not justified by the provisions of the legislation as referred to in Article 45A, shall be sentenced to a maximum imprisonment of 10 (ten) years and a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).

2) The criminal act as referred to in paragraph (1) is a crime.

Article 77B of Law no. 35 Year 2014

Anyone who violates the provisions as referred to in Article 76B, shall be sentenced to a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).

Article 78 of Law no. 35 Year 2014

Anyone who knows and intentionally leaves a child in an emergency situation as referred to in Article 60, a child in conflict with the law, a child from a minority and isolated group, a child who is economically and/or sexually exploited, a child who is trafficked, a child who is a victim of narcotics abuse, alcohol, psychotropic substances, and other addictive substances (drugs), child victims of abduction, child victims of trafficking, or child victims of violence as referred to in Article 59, even though the child needs help and must be assisted, shall be punished with imprisonment for a maximum of 5 (five) years and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).

Article 79 of Law no. 35 Year 2014

Anyone who adopts a child contrary to the provisions as referred to in Article 39 paragraph (1), paragraph (2), and paragraph (4), shall be sentenced to a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).

Article 80 of Law no. 35 Year 2014

1) Anyone who violates the provisions as referred to in Article 76C, shall be sentenced to a maximum imprisonment of 3 (three) years 6 (six) months and/or a maximum fine of Rp. 72,000,000.00 (seventy-two million rupiah).

2) In the event that the Child as referred to in paragraph (1) is seriously injured, the perpetrator shall be sentenced to a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).

3) In the event that the child as referred to in paragraph (2) dies, the perpetrator shall be sentenced to a maximum imprisonment of 15 (fifteen) years and/or a maximum fine of Rp. 3,000,000,000.00 (three billion rupiah).

Article 81 of Law no. 1 Year 2016

1) Anyone who violates the provisions as referred to in Article 76D shall be sentenced to a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).

2) The criminal provisions as referred to in paragraph (1) also apply to anyone who intentionally commits a trick, a series of lies, or persuades a child to have intercourse with him or with another person.

3) In the event that the criminal act as referred to in paragraph (1) is committed by parents, guardians, people who have family relationships, child caretakers, educators, educational staff, officers who handle child protection, or it is committed by more than one person individually. together, the penalty shall be increased by 1/3 (one third) of the criminal penalty as referred to in paragraph (1).

4) In addition to the perpetrators as referred to in paragraph (3), an additional 1/3 (one-third) of the criminal threat is also imposed on perpetrators who have been convicted of committing a crime as referred to in Article 76D.

5) In the event that the criminal act as referred to in Article 76D causes more than 1 (one) victim, causes serious injury, mental disorder, infectious disease, is disturbed or lost reproductive function, and/or the victim dies, the perpetrator is sentenced to death for life, or imprisonment for a minimum of 10 (ten) years and a maximum of 20 (twenty) years.

6) In addition to being subject to the punishment as referred to in paragraph (1), paragraph (3), paragraph (4), and paragraph (5), the perpetrator may be subject to additional punishment in the form of announcing the identity of the perpetrator.

7) The perpetrators as referred to in paragraphs (4) and (5) may be subject to action in the form of chemical castration and installation of electronic detection devices. The action as referred to in paragraph (7) shall be decided together with the main punishment by specifying the period of execution of the action. Additional penalties and actions are excluded for child offenders.

Article 81A of Law no. 1 Year 2016

1) The action as referred to in Article 81 paragraph (71) shall be imposed for a maximum period of 2 (two) years and shall be carried out after the convict has served the principal sentence.

2) The implementation of the actions as referred to in paragraph (1) is under regular supervision by the ministry that administers government affairs in the fields of law, social and health.

3) The implementation of chemical castration is accompanied by rehabilitation.

4) Further provisions regarding the procedure for implementing the action and rehabilitation shall be regulated by a Government Regulation.

Article 82 of Law no. 1 Year 2016

1) Anyone who violates the provisions as referred to in Article 76E shall be sentenced to a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).

2) In the event that the criminal act as referred to in paragraph (1) is committed by parents, guardians, people who have family relationships, child caretakers, educators, educational staff, officers who handle child protection, or it is committed by more than one person individually. together, the penalty is added 1/3 (one third) of the criminal threat as referred to in paragraph (1)

- 3) In addition to the perpetrators as referred to in paragraph (2), the addition of 1/3 (one third) of the criminal threat is also imposed on perpetrators who have been convicted of committing a crime as referred to in Article 768.
- 4) In the event that the criminal act as referred to in Article 76E causes more than 1 (one) victim, causes serious injury, mental disorder, infectious disease, reproductive function is disturbed or lost, and/or the victim dies, the penalty is increased by 1/3 (one third) of the criminal threat as referred to in paragraph (1)
- 5) In addition to being subject to the punishment as referred to in paragraph (1) to paragraph (4), the perpetrator may be subject to additional punishment in the form of announcing the identity of the perpetrator.
- 6) The perpetrators as referred to in paragraphs (2) to (4) may be subject to action in the form of rehabilitation and installation of electronic detection devices.
- 7) The action as intended is decided together by specifying the duration of the action.
- 8) Additional penalties are excluded for child offenders.

Article 82A of Law no. 1 Year 2016

- 1) The actions as referred to in Article 82 paragraph (6) are carried out during and/or after the convict has served the principal sentence.
- 2) The implementation of the actions as referred to in paragraph (1) is under regular supervision by the ministry that administers government affairs in the fields of law, social and health.
- 3) Further provisions regarding the procedure for implementing the action shall be regulated by a Government Regulation.

Based on the description above, the provisions regarding prohibitions on child protection are still guided by the Child Protection Act. The new Child Protection Law has not abolished all the provisions in the old law, but only made changes to some provisions. Based on the principle of *Lex Posterior Derogat Lege Priori*, which means that the new law overrides the old law. This means that regarding child protection, it still refers to the old law as long as it has not been changed with the new law.

IV. CONCLUSION

The results of this study indicate that (1) the philosophical imposition of criminal penalties in the juvenile criminal justice system in Indonesia is a criminal process that is imposed not solely based on the actions that have been carried out by the perpetrator, but the handling of children, the application of punishment is more fostering and protecting children. (2) judges' considerations in imposing crimes against children who are perpetrators of criminal acts in Indonesia must look at the juridical, sociological and philosophical aspects, but judges in imposing a crime must rely on the provisions of the law and based on the conscience of every judge in making a decision, so that every decision which is handed down to children who commit crimes in accordance with justice and can provide legal benefits for children and children's behavior in society can be better. (3) The legal implications of imposing a crime by judges on the existence of community research reports as one of the things that are still essential. Even though the judge's decision was taking into account and including Litmas, the decision did not automatically become null and void and in fact the judge's decision so far could be executed. Another implication that is felt on children, parents and PK itself, so that children's behavior in society is very influential on parents and families and PK Fathers are underestimated because they are not able to help children. Thus the social behavior of children in society does not provide justice and benefits for children.

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