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BASIC CONSIDERATIONS OF LAW ENFORCERS IN IMPOSING PUNISHMENT AND ACTIONS IN CRIMINAL CASES OF CHILDREN IN CONFLICT WITH THE LAW. (A STUDY IN KENDARI, SOUTHEAST SULAWESI)

St. Fatmawati.L., Basoddin and Suriani BT.Tolo

Sulawesi Tenggara University, Kendari, Southeast Sulawesi, INDONESIA

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ABSTRACT

The consideration basic of law enforcer in imposing sanctions and action in the children criminal cases in conflict with the law that suitable with the best interests for children is legal justice which must be suitable with the material law of the Criminal Code or outside the Criminal Code based on the principle of legality, whereas formal law is suitable with the authority given by constitution for every law enforcer. As well as the consideration basic based on social justice in accordance with the authority granted by the Police Law to investigator is discrete, the Attorney Law such as the opportunity principle for the Public Prosecutor and the Judicial Power Law is a legal discovery that the judge can dig the living laws in society.

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INTRODUCTION

Background

Indonesia is one of 191 countries that have ratified the Convention on the Rights of the Child in 1990 through Presidential Decree No. 36 by 1990. By ratifying this Convention, Indonesia has an obligation to fulfill the rights of all children without exception, one of the rights of the child who needs attention and protection is the right of the Child in conflict with the law, in the juvenile court system. This means that the handling of criminal matters involving children does not always refer to the punishment for mistakes that have been done, but to take into consideration of the lesson and experience aspects that will be useful for the child's positive psychological development. The specificity of handling the child's delinquency problem because in addition to child's delinquency is an anti-social act that can disturb community, the issue of handling a child suspected of committing a crime is a common phenomenon that should be accepted as a social fact.

Before the introduction of the SPPA Law, the settlement of children's cases regulated in the Juvenile Court Law which had various disadvantages, particularly regard to the regulation of a

criminal case, in which the classical paradigm influence of the retributive of justice (retaliation) as the objective of punishment still seemed very inherent. So the criminal application of children in conflict with the law does not reduce the number of criminal acts committed by children and does not prevent children from committing criminal a crime.

One form of treatment of AKH regulated in Article 16 paragraph (3) of the Juvenile Court Law states that the arrest, detention, or imprisonment of children is only done if it is suitable with applicable law and can only be done as the last resort. This regulation is suitable with the Convention of the Right of The Child which has been ratified by the Indonesian government by Presidential Decree No. 36 of 1990 on the Convention on the Rights of the Child by stating that the law process is carried out as a last resort and for the shortest and most appropriate period. Juridical protection of children is an attempt to prevent children from being abused either directly or indirectly in order to ensure the survival, growth and development of the child, physically, mentally and socially.

The basic philosophy of the treatment of AKH in the child criminal justice system is for the best interests of the child, so the SPPA Law established since July 30, 2012 and valid two years later is July 31, 2014 its essence for the benefit of

*Corresponding author: **St. Fatmawati.L**

Sulawesi Tenggara University, Kendari, Southeast Sulawesi, INDONESIA

children who are dealing with law, one of them AKH. The most fundamental substance in the SPPA Law as a fundamental change of the law is the strict regulation of restorative justice through the Diversion system intended to avoid and keep children away from the judicial process so can avoid stigmatization to children in conflict with the law and hopefully the children can return to the social environment fairly.

Whereas Article 1 point 6 of the SPPA Law is formulated that: Restorative Justice is the settlement of criminal cases involving perpetrators, victims, families of perpetrators / victims, and other related parties to jointly seek a fair settlement by emphasizing restoration back to the original state, rather than retaliation.

Restorative Justice is a Diversity process, that is, all parties involved in a particular crime jointly solve problems and create an obligation to make things better by engaging victims, children and the community in finding solutions to improve, reconciliation, and reassurance that is not based on retaliation. As Article 1 point 7 of the SPPA Law, it is formulated that Diversion is the transfer of the settlement of a Child's case from the criminal justice process to proceedings outside the criminal justice. Diversion system is a criminal case settlement of outside the formal law process based on restorative justice concept. One of variation the restorative justice mechanism is the diversion system.

According to Jack E. Bynum¹, diversion system is diversion is an attempt to divert, or channel out, youthful offenders from the juvenile justice system. Since the enactment of the SPPA Law to date, it is still very taboo for law enforcers to seek diversion through a restorative justice approach to solve childhood cases, generally, AKH's cases in processed until it reaches imprisonment. From the past to the present time, lawbreakers are still seen as parties who must get retaliation, detention and imprisonment. Imprisonment should be the last resort, but the fact is still the prima donna and the most commonly alternative applied by law enforcer.

In the SPPA Law, it is obligatory for law enforcers to prioritize restorative justice approaches at all stages of law process from pre-adjudication, adjudication to post- adjudication of the criminal justice system is required to seek diversion. Restorative justice approach on the criminal justice system is implemented based on the Law of the Republic of Indonesia Number 8 of 1981 on Criminal Procedure Code (hereinafter abbreviated as Criminal Procedure Code), the SPPA Law, At the level of Child Crimes investigation will be carried out by the Police namely Law of the Republic of Indonesia Number 2 Year 2002 on the State Police of the Republic of Indonesia (hereinafter abbreviated as the Police Law), the level of criminal prosecution of the Child by the Public Prosecutor Office, namely the Law of the Republic of Indonesia Number 16 Year 2004 regarding the Attorney of the Republic of Indonesia (hereinafter referred to as the Prosecutor Law), the Court's trial conducted by the judge Republic of Indonesia Number 48 Year 2009 on Judicial Power (hereinafter referred to as the Law of Justice).

Police cases handled by the police and processed in court from year to year showed an increase so that impressed every act of child can be always processed through legal channels. Certainly, this is very contrary with the philosophy of handling children who put the interests of children above all else. For the best interests of the child, law enforcer officers should apply restorative justice approach from now on. There is a need for comprehensive coordination between law enforcer officers in order to create an Integrated Criminal Justice System to equate perceptions in AKH handling. It takes awareness of law enforcer officials who have an important role in providing a sense of justice, child welfare and AKH's future in its consideration. Law enforcer in its consideration needs to pay attention to social Justice (legal justice) besides being obliged to consider legal justice (justice based on legislation) so as achievement of precise justice (the highest award for justice). Juridical, the implementation of restorative justice to the AKH's treatment has been accommodated, although not yet comprehensively. However, in reality many AKHs who commit minor crimes are then processed in legal procedures without prioritizing the diversions so AKH gets criminal sanctions. And the victim of a crime committed by a child does not get any recovery from the crime. On the other hand, the increase in crime committed by children increases and varies both in mode and type of crime.

Another phenomenon is the existence of values living in communities that have local wisdom in dealing children there is away deal with AKH has not become a primary consideration of law enforcement officers. Law enforcers prioritize judicial considerations formally that are limited and inflexible in fulfilling community change. Similarly law enforcers tend to vary in giving consideration to impose sanctions and actions in child criminal cases in conflict with the law.

Problems

To the extent that the basis of law enforcement considerations in imposing sanctions and actions in child criminal cases in conflict with the law is in the best interests of the child?

Research Methods

The type of research that the writer uses is descriptive research type with normative legal method, and sociological research (socio legal research). The approach used by the researcher is a combination approach between normative research and research Sociological (socio legal research),

The location chosen as the research area is: Kendari Police, Kendari Base, Kendari State Attorney, Kendari District Court, Populace in this research is all law enforcement officers are police, prosecutor, bass and judge and child as victim, samples drawn in research This consists of: Police of children, Prosecutors children, Judges children of conflict with the law (AKH), the families of the victims, To obtain primary data will be collected directly from the respondents through questionnaires and interviews directly with the respondent While to obtain secondary data in Collect through searches in related literature archives and periodical reports and annual reports. The overall data and information obtained from

primary and secondary data were processed and analyzed qualitatively.

DISCUSSION

Basic Considerations of Law Enforcement in Judgment and Action in Criminal Cases against Children in Conflict with the Law

Basic Considerations as Legal Justice

Legal justice can be seen from the prevailing laws and regulations. This means that the Doctrine of *nullum delictum nulla poena sine praevia lege poenali* than became a principle and is a general rule in the Criminal Code, namely in Article 1 paragraph (1) of the Criminal Code stipulates that "No act can be punished except on the strength of criminal rules in the legislation that existed, before the deed was done".

The sound of Article 1 paragraph (1) of this Penal Code, in detail, there two important matters, namely: (1) a crime must be formulated in advance in legislation; (2) legislation must exist prior to the commencement of a crime (not retroactive). The legality principle requires that an act can be declared as a criminal offense if there is a rule before explain that the act is as a crime. Article 1 paragraph (1) of this Criminal Code is the basis of criminal law enforcement in Indonesia, especially in relation to legal certainty. Thus, law enforcers in giving consideration to solve the criminal cases committed by children should pay attention to legal justice.

According to Schafmeister and J.E. Sahetapy (1996: 6-7) the principle of legality contains seven meanings, namely:

1. Cannot be punished except under criminal law according to the law;
2. There is no application of criminal law by analogy;
3. Cannot be punished only by habit;
4. There shouldn't be unclear formulation of offense (*lex certa* condition);
5. No retroactivity of criminal provisions;
6. No other criminal except as provided by law; and
7. The criminal prosecution only in the manner prescribed by law.

Legal justice in law enforcement is must be the foremost consideration, therefore, law enforcers, both police, prosecutors, and judges in settling a criminal act are always based on prevailing laws and regulations including criminal acts committed by children, unless there are other treatments that are legislated against Children in Conflict with the Law. Legal justice which is the basis of the consideration is adjusted to the type of crime committed that has been formulated in the legislation as a criminal offense that can be subject to criminal sanctions or actions. Therefore, the criminal data that the child always ends up in court then subject to criminal sentence as well as actions.

This indicates that the legal justice as the first consideration becomes an unavoidable option, in addition the prosecutor as the second sub-system simply continues the efforts that already undertaken by the investigator, and only the judge can influence the parties to be able to reconcile or exercise their authority for the best interests against AKH.

Judge as a third sub-criminal justice system but has the authority to determine the best fate of AKH as well as law enforcement and justice for the victims. So that the State in exercising judicial power as Article 24 of the 1945 Constitution states:

1. Judicial Power is an independent power to administer justice to uphold law and justice.
2. Judicial power shall be exercised by a Supreme Court and the lower courts within the general judiciary, the jurisdiction of the judiciary, the military court environment, the administrative court of the state, and by a Constitutional Court.
3. Other bodies whose functions relate to the judicial authority shall be regulated in law.

Article 1 no. 1 The Law on Judiciary Power explains that Judicial Power is the power of an independent state to administer the judiciary to enforce law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia for the sake of implementation of the State of the Republic of Indonesia.

Judiciary is one of the three powers within a country that specifically enforce justice under applicable law. The independent character indicates the independence of the judge in deciding the case confronted to him without the interference of other parties, whether executive or legislative or otherwise. Nevertheless, its independence is not absolute, but limited by applicable law. Thus, in addition to being influenced by his integrity in determining what is right and unright, their also should decided in accordance with what is deemed right by law. And tied by material laws and existing procedural law.

Associated with the material law is still conform to the principle of legality in deciding a case. Article 1 Paragraph (1) of the Criminal Code stating that no act can be criminal except on the strength of the criminal code in existing legislation, before the act is committed. The existence of material and formal provisions gives the judge the limit to provide a decision on a case both against adults and children. The verdict is the final stage and is the final aim of each examination. The decision determines whether or not the defendant misbehaved. In the case of the judgment where did by single judge, the deliberation is not necessary but in the case of the composition of the judges of the consensus assembly is mandatory.

According to the judges' statements at Kendari District Court, the verdict is as a judges' crown, its mean, the decision of the deceased actually can be known how a judge actually examines, hears and decides a case. The verdict is not a conclusion because the decision is based on deep considerations of each case. This consideration is derived from the facts revealed in the proceedings A verdict containing sentence is preceded by a legitimate statement of a person legally and guilty of a particular offense. Associated with sentence or punish to mischievous children can be either criminal or action. While the basis of judge consideration in the imposition of a punishment would be determined whether the verdict of a judge is considered fair or determine whether the verdict can be accounted for or not.

The basis of the judge's consideration in deciding the judgment can be used as an analysis of the judge's orientation in deciding

the judgment and also to see how the awarded decision is relevant to the intended purpose of punishment. In general it can be said that the judge's verdict which is not based on the correct orientation, in the sense that it is not in accordance with the predetermined objective of punishment, will negatively affect to crime prevention process itself and will not benefit to convicted person.

Judicial considerations are the judge's judgment based on the revealed factors r at the proceedings and the rule has been established as to be contained in the decision. Juridical considerations include:

1. The indictment of the public prosecutor.
2. Criminal charges.
3. Witness statements.
4. Defendant's description.
5. Evidence.
6. Articles in the Act.

The judge's decision to impose a prison as a punishment toward the child based of the above considerations indicates that the judge is only oriented to prohibited acts which means its just oriented to incriminating considerations. Because the act of defendant (child as the perpetrator of narcotic crime) is considered disturbing the society, damaging the people's mentality, destroying the people's generation, destroying the morals and health of the nation, didn't support the government program in eradicating the narcotics crime, then the judge concludes that the child in question needs to be prison sentenced.

Judges tend to impose the deprivation of independence as punishment sentence toward AKH, Judges also tend to impose imprisonment on children who abuse narcotics and ignoring the reality that children are not only criminals but also victims. The tendency of judges in imprisonment to children is less concerned with the fact that the negative impacts of imprisonment on children are contradictory to the efforts of coaching and child protection.

From the interviews with Judge Budi Prayitno, he stated that for the past seven years he has been a judge and has been the last 4 years often deal with children in conflict with the law there has not been a single case that the defendant was sentenced to alternative sanctions/returned to his parents, because the demands of the prosecutor. So that the criminal sanction is forced to be punished on the grounds that it will be a legal effort by the prosecutor, if not in accordance with their demands, so that the constraints that the judge faces are the Attorney General sometimes refused to accept if the child is returned to his parents, so the prosecutor's office against us with legal efforts.

Furthermore, Budi Prayitno said that as long as the child's judge has not been defendant returned to his parents, all sentenced to prison because the prosecutor demanded it so. So that the data/number of children in conflict with the law from the year 2013-2017 as many as 178 people/children, and all of them were sentenced to criminal sanctions, and none were given alternative sanctions (returned to their parents).

This indicates that the AKH case processed by the judge in the trial is not a diversion attempt; the judge is only based on the

indictment and the prosecutor's demand. So the judge is only based on the indictment of the public prosecutor. This shows that has not been interpreted and implemented the will of the SPPA Act for the best interests of children, although there is an obligation for law enforcement officers, especially judges to be required to seek diversion.

The data shows that the SPPA Act has not been optimally implemented by the prosecutor or judge in completing AKH case by giving priority to the best interests of the child. so there needs to be a legal breakthrough by the Supreme Court with a circular regarding the handling of AKH cases in the courtso that there is a standard procedure which is the reference for the judges in giving the opportunity to the perpetrator and the victim to make a diversionary effort as the obligation of the judge to provide peace for the parties in the criminal case. Thus, the observer observed that there was a gap between the duties and authorities set forth in the Judicial Power Law and the SPPA Act with reality in practice.

Therefore, all judges' verdicts, in any case, shall be pronounced in court open to the public. Although in the case examination conducted in a closed session, however at the pronouncement of the verdict is still done in a session that is open to the public. It is intended to put forward the objective attitude of a judiciary. With a trial open to the public, anyone can attend the hearing and know the whole contents of the verdict.

Considerations Basic as Social Justice

It was realized that Wet Boek van Strafrecht (WvS) was a Dutch colonial relic. So in its implementation requires some adjustment in the context of Indonesia. As a rule of Dutch legacy, the principle of legality then becomes a problem in its application. The principle of legality confronts the reality of heterogeneous Indonesian society.

The Criminal Code, as well as the criminal provisions outside the Criminal Code, still leave the field of action which the community considers to be a prohibited act, whereas written laws do not regulate the prohibition or otherwise prohibit but are no longer appropriate to the development of society. Then legal justice as the main consideration should be other considerations that can be used by law enforcement officers to actualize the justice of society, so the basis of other alternative considerations is social justice. Nevertheless, in the history of Indonesian criminal law, social justice considerations may be applied because of the change in society and the development of living law, so it affects the sense of community justice itself. The happiness in question is not a mere individual happiness, but is reciprocal; that is fun for ourselves and fun for others. Nevertheless, there is no society that can truly satisfy everyone without exception. Justice and happiness that may be realized are of a general nature, including as many people as possible. It is the greatest possible happiness of the greatest possible number of individuals, as Jeremy Bentham points out. It is not the justice that has a subjective meaning, but it has the collective objective meaning. Therefore, it is necessary to understand about the satisfaction of certain needs "(recognized by the authority of the community, in terms of the need to be fed, clothed, and the like) this is the legislator, as satisfying needs, such as the need for food, clothing, housing, etc.).

According to Kelsen (1996: 24), justice that can be realized is justice that is relative to human limitations. For him, justice from the point of view of a scientist is that the social order provides protection against the fertility of the search for truth. He says that "My" justice, then, is the justice of freedom, the justice of peace, the justice of democracy - the justice of tolerance. Kelsen's opinion seems to satisfy everyone's justice is clearly difficult to create it. therefore the emphasis of justice can be focused on majority opinion. Justice perceived by the majority of the population can be viewed as justice representing society in general.

Majority justice leads to a democratic system prevailing in modern countries. Legislation products that reflect legal justice come from democratically elected representatives of the people and from legitimate governments. Some cases of children in restorative Justice, such as the example of such assault, consider that by mediation/peace between the victim/parents of the victim and the perpetrator/parents of the perpetrator is very beneficial to the child, where the child's right not taken away to follow the lesson in school, also the process is fast that does not take a long time and the process is not convoluted. especially if the crime committed by the child does not cause great harm or injury or death.

This thing becomes a consideration for the investigators to make room for both parties to settle their criminal cases outside the court, but the authority to enforce the law remains on the part of the Police. As the affirmation of Article 13 Sub-Article b of the Police Law which reads the Police Main Task is to enforce the law. But it is not possible for the police to act outside the provisions of the law in force for the common good. Based on Article 18 Paragraph (1) of the Police Act, it is given an opportunity to act in its own judgment for the public interest. At the police level (stage of investigation and police investigation), social justice balance can be used based on discretionary powers. The discretionary authority is one of the means that give space for government officials or state administrative bodies to act without being fully bound by law. The discretionary authority is granted to the government (the ranks of state administrative bodies) in view of the functioning of government/state administration, namely to hold general welfare. The provision of general welfare and the realization of it is a logical consequence of the concept of "Welfare State" and as an alternative to filling shortcomings and weaknesses in the application of the legality principle ("wetmatigheid van bestuur"). Therefore, the things that must be considered in taking the discretionary authority are:

- a. It should not opposed to basic rules that containing discretionary discourse described. In this case Article 15 paragraph (1) letter b and letter f Law no. 2 In 2002, that: In the framework of carrying out the duties as referred to in Articles 13 and 14, the Indonesian National Police is generally authorized:
 1. Help resolve community disputes that may disrupt public order.
 2. Conducting particular investigation as part of police action in the context of prevention.
- b. Do not opposite with common sense.
- c. Must be carefully prepared; all interests, circumstances, and alternatives that need to be considered.

- d. The content of the policy should be clear about the rights and obligations of the affected citizens.
- e. The objectives and the basics of consideration of the policy to be pursued must be clear.
- f. Must fulfill the requirements of material legal certainty, it means that the rights obtained from citizens that affected by the wisdom should be respected, as well as the expectations of the citizens who deserve to have been inflicted not to be denied.

The use of discretionary authority should consider the following:

- a. In accordance with the objective of the law which gives space for freedom of action (discretionary authority).
- b. Must be based on applicable general laws, such as:
 1. The principle of "equal before the law"
 2. The principle of propriety and fairness
 3. The principle of equilibrium
 4. The principle of fulfillment of needs and expectations
 5. The principle of public interest and citizens
 6. Appropriate with the goal to be achieved

Furthermore, the prosecutor as a sub-system of the criminal justice system in handling children cases in conflict with the law has been trying to prioritize the interests and welfare of children such as by publishing the internal rules supporting the SPPA Act as well as guidelines and procedures for prosecution conducted by AKH and the latest is in the Joint Decree between the Chief Justice of the Supreme Court, the Attorney General, the Chief of Police, the Minister of Law and Human Resources, and the Minister of Women's Empowerment and Child Protection of the Republic of Indonesia on the handling of children in conflict with the law on 22 December 2009.

Based on Article 35 Sub-Article A of the Prosecutor Law that the prosecutor's office in its duty to establish and control law enforcement and justice policies within the scope of its duties and authorities, the prosecutor can develop law enforcement and justice policies within the scope of restorative as part of its authority can use social justice considerations. Diversions and restorative programs may be considered as other authorities of the statutory prosecutor's office. Other authorities of the prosecutor's institution are reinforced by Article 32 of the Prosecutor Law that "in addition to these duties and authorities in this law, the prosecutor may be assigned other duties and authorities under the law".

In this case the other duty and authority under the law is to exercise the authority of the diversion / restorative justice under the SPPA Act, which is declared effective in July 2014. In relation to the criminal justice system of children governed by the SPPA Act, the prosecutor's office under Article 32 The Attorney Law can directly seek diversionary programs in the context of restorative justice can use social justice considerations. Therefore, in Indonesia is the principle of legality not applied purely as required by Article 1 of the Criminal Code. This can be seen with the coming into effect of the Judicial Power Law. Article 4, paragraph 1 states that "the courts prosecuted at law by not discrimination. The word "law" here clearly has a broad meaning, not just the laws of legal justice, but also the social justice. Judging according to the law is one of the principles of realizing the state based on the law. Each judge's decision must have a substantive and procedural legal basis.

The law of judgment must be interpreted more broadly than the written and unwritten law. Laws in certain cases or circumstances include notions that bind the parties, good morals and public order. In addition, judges appointed by law also bear jurisprudence which may be used by judges in the future as a consideration in deciding cases. Thus, the more democratic a political and legal system in a country, the more justice that has belong the country. An apprehensive phenomenon of law enforcement and justice, including in Indonesia, is the legal justice of the state that is inconsistent with community justness. In other words, the existence of court decisions it's not regarding with the norms of society.

Long before the independence of Indonesia, the Dutch colonial government had controlled various legal systems in the Indonesian Archipelago. After independence, in addition to continuing the Dutch heritage, Indonesia has also sought to foster a more characteristic law of Indonesia. Nevertheless, jurists often argue that Indonesian law today is based on three legal systems, namely Western law, customary law and Islamic law. Indonesia's future national law will be largely determined by the interaction, even the battle, between these three legal systems.

As it is known that at the hearing of the case the child has not been opened (started) the community counselor is ordered by the judge to submit a report on the results of the community research of the child who became the defendant in the hearing (Article 56 of the Juvenile Court Law). The report is one of the most important materials for judges in their decision. Why is it called an important material? Because the report of the social guidance in accordance with the provisions of Article 59 paragraph (2) shall be considered in the decision of the judge, the law does not explain what the reason is so it is the duty of the judge. If we look at the contents of the report of the social guidance, among others, is put forward about the social life of the child and the conclusion or opinion of the social counselor, this means that the judge must consider in his decision.

In this regard, what matters is whether the report includes evidence? If the report is presented outside the court session, it is clear that the report is not as evidence. However, if the report is in written form, can it be included as proof of letter, because as proof of the letter must be made on oath of office and followed by oath (Article 187 KUHAP). If the guidance counselor performs his duties as a sworn official, it does not matter if the report is the result of his expertise. Otherwise, it is not evidence according to KUHAP.

In determining the criminal penalty/ punishment or acts that may be imposed on a child, the judge takes note of the severity of the crime or mischief committed by the child concerned. In addition, the judge is also obliged to pay attention to the state of the child, the circumstances of the parents' household, guardian or foster parent, the relationship between family members and the circumstances of the environment.

Likewise, it should pay attention to the report of the mentorship of the community. By paying attention to all these aspects, it is expected that the judge can pass judgment in accordance with the sense of justice. In criminal law science, a judge shall not impose a prison sentence exceeding the maximum limit

established by a statutory provision. The judge can only decide the most severe punishment equal to the amount of prison imprisonment as set out in the relevant regulations. Its mean the judge may impose a sentence under such maximum threat, in accordance with legal considerations, truth and justice. The judges should further explore the living and developing values of society for the effort to provide protection to AKH, because globally, the international community has a special interest in AKH. A judge should have a sense of the future of the child as a successor to the nation should be able to provide a favorable consideration for the future of the child.

CONCLUSION

The consideration basic of law enforcers in imposing the punishment and actions in AKH criminal cases that correspond to the best interests of the child in the form of legal justice that should be in accordance with the material law in the Criminal Code as well as outside the Criminal Code based on the principle of legality, whereas formal law is in accordance with the authority granted by law every law enforcer. As well as the basis of consideration based on social justice in accordance with the authority granted by the police law for investigators in the form of discretion, the prosecutorial law is the principle of opportunity for the public prosecutor and the judicial power law in the form of legal discovery ie the judge can dig the living law in the community.

References

- Bryan A. Garner (Ed). 1999, *Black's law Dictionary*, Seventh Edition (St. Paul: West Publishing Co)
- _____, 1998, *Some Aspects of Policy Enforcement and Development of Criminal Law*, PT. Citra Aditya Bakti, Bandung.
- _____, *CriminalLaw Policy Development of Drafting New Criminal Code*, Pidana Prenada Media Group, Jakarta, 2008.
- DS. Dewi, Fatahilla A.Syukur, *Penal Mediation: Implementation of Restorative Justice at Indonesian Juvenile Court*, Indie Pre Publishing, Depok, 2011.
- Dwidja Priystno, *Implementation System of Prison Criminal at Indonesia*, PT. Rafika Aditama, Bandung. 2006.
- Enny Rosyidah Badawy, *Training of Law Enforcement Officials on Child Protection, Indonesian Child Protection Commission*, Jakarta, 2006.
- Eva Achjani Zulfa, *Restorative Justice in Indonesia (Study of the Possibility of Implementation of Restorative Justice Approach in Criminal Law Enforcement Practice)*, Summary of Dissertation, Faculty of Law Study Program of Law Science University of Indonesia, Jakarta, 2009
- Gerry Johnstone, 2006, *A Restorative justice Reader , Texts, Sources, Context*, Willan Publishing , T.J. Internationa Ltd. Padstow , Cornwall.
- Gordon Graham, *theories of Ethics: An Introduction to Moral Philosophy with a Selection of Classic Readings*, (New York: Routledge,2011.
- Hadi Supeno, *Child Discrimination (Transformation toward Child Protection in Conflict with Law) The Indonesian Child Protection Commission*, CV Graha Putra, Jakarta, 2010.

Hans Kelsen, *What Is Justice? Justice, Law, and Politics in the Mirror of Science* (Berkeley and Los Angeles: University of California Press, 1957).

Hidayat, Taufik, *Restorative justice as Alternatif, (Restorative) Institution of Advocacy of Child Rights*, Bandung, 2005

H.L.A. Hart, *the Concept of Law*, Oxford: Oxford at the Clarendon Press, 1988

Howard Zehr, *Menegakkan Keadilan Bagi Anak Berdasarkan Restorative Justice*, LAHA. Bandung, (dalam Utomo, 2004).

J.E. Sahetapy (Ed.), *Criminal Law*, Penerbit Liberty, Yogyakarta 1996.

John M. Echols dan Hassan Shadily, *An Indonesia – English Dicsionary*, third edition, PT. Gramedia, Jakarta, 1997.

John Rawls, *A Theory of justice*, (United States of America: Harvard University Press, 2005

Tony F Marshall, *Retorative Justice an Overview*. London: Home Office, Information & Publications Group, 1999.

Topo Santoso, Eva Achajani, *Criminology*, PT. Raja Grafika Persada, Jakarta 2005.

Regulation

The 1945 Constitution of the Republic of Indonesia

Law of the Republic of Indonesia Number 4 year 1979 concerning Child Welfare

Law of the Republic of Indonesia Number 8 year 1981 concerning Criminal Procedure Code

Law of the Republic of Indonesia Number 3 year 1997 concerning Juvenile Court

Law of the Republic of Indonesia Number 2 year 2002 concerning Police of the Republic of Indonesia

Law of the Republic of Indonesia Number 23 year 2002 concerning Child protection

Law of the Republic of Indonesia Number 16 year 2004 concerning The Attorney of the Republic of Indonesia.

Law of the Republic of Indonesia Number 48 year 2009 concerning judicial power

Law of the Republic of Indonesia Number 11 year 2012 concerning Child Criminal Justice System

Law of the Republic of Indonesia Number 35 year 2014 concerning Changes to the Act

Number 23 year 2002 concerning Child Protection.

Minister of Justice and Human Rights of the Republic of Indonesia, Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia Number: M.HH-OT. 02. 02 Year 2009 concerning Blueprint Renewal of Implementation of Penitentiary System, Department of Law and Human Rights Directorate General of Correctional Jakarta, 2009

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