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**THE CONCEPT OF CRIMINAL WARNING AGAINST  
CHILDREN IN CONFLICT WITH THE LAW**

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## The Concept Of Criminal Warning Against Children In Conflict With The Law

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### Abstract

Fundamentally, Children can't be protected themselves from many kinds of action that can raise the mental, physical and social loss in many aspects of life and cost of living. The children should be assisted by other persons for protecting themselves, reminding the situation and condition, especially in the implementation of Children Justice that was strange for them. The children need to get the protection from the application of wrong laws using and treated to them, that cause the loss of mental, physical and social. Criminal warning is one of the laws produced in Indonesia Law No 11 in 2012 about the justice system of children criminal offence that was made and implemented. This study research has an objective to explain the decision and formulation of criminal law in Indonesia Law of Children Justice System, understanding and explaining the concept for criminal warning for children that was conflicted by law, also to comprehend and explain briefly the criminal warning for children in reducing the number of convicted children who has the problem with justice conflicted with the law.

### Keyword

Criminal warning, Children, System of Criminal Justice Children

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### A. Introduction

Criminal law is the law that stated about the criminal act and stated about the mistake and punishment for offender (substance Law of Justice Pidana) and law that deceived about the implementation of substance of criminal law (Criminal Procedure Law)[1]. From those kinds of punishment in article no 10 of (KUHP),<sup>1</sup>obligate every punishment that stated still has a guideline at the main punishment or additional punishment.[2] In Law Number. 11 in 2011 about the system of Children Justice, and also was found main punishment and additional punishment such mentioned in article 71(1).[3]

From that brief explanation of both description of those articles has the similarity between the main punishment and additional punishment but the different is only in the content, it should be the specific rule in punishment also guided with the main justice and additional of criminal justice, it make easy in implementation.

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<sup>1</sup> R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) also comments and completes with articles*, Politeia, Bogor 1988, page 34, see also Yulies Tiena Masriani, *Introduction Law of Indonesia*, Sinar Grafika, Jakarta 2004, pages 65-66.

The laws number 11 in 2012 about the children justice system of children criminal, speacially about legality what hd used by the judge to punish main criminal

of punishment such as the criminal warning, to the children who conflicted with the law in its norm and it was not explained yet strictly and explicitly so it will raise the conditon of an obscure legal norm (*Leemten van Normen*). And also put forward unclear and real norm in regulation (Empty Norm)

Based on the explanation above, so its very urgen that to comprehen/examined, "Application of Children criminal warningIn Children Justice System". Because the Tendency of sentencing punishment which is not consistently about the purpose and objective that would be reach in the result of unclear of that punishment system, this case wasn't at all showed that a clear objective and purpose abput what would be reach or expected actually, including also the Qanun Number 11 in 2008 about the Children Protection.

## **B. Problems**

Based on the the description above so, the writers formulated the problems as follows: The Concept of Criminal Warning against Children in conflict with the Law

## **C. Results and Discussion of Research The Concept of Criminal Warning against Children in conflict with the Law**

Criminal sanction of Laws Number. 11 in 2012 [7] about the Child criminal justice couldn't follow the criminal sanction as mentioned in article 10 of KUHP, but make a sanction separately as mentioned in article number 71, specially mentioned in article 71 verse (1) about main criminal section a about the criminal warning, in article 72 also, still offend about the crinminal warning, according to the writer there wasnt clear statement about and those procedures of criminal warning, so those articles is rarely to be used by the judge in decided the case related to the child who has the conflict with the law.

Here are some procedure of imposition sanctions proces to the child according to te writer:

1. In the system of Child criminal Justice, mentioned in case of the person whom are not adult yet, because conduct and do an action before enough age in sixteen years old, the judge could certained and difined: command, that the guilty is returned to their parent or guardian or the care without any criminal or command to the guilt that was submitted to the goverment so, he will encountered to the home of state education and they will get the education from goverment or in the future with another way or submitted to the certain person whom lives in Indonesia or to a foundation with the legal entity or charity foundation which placed in Indonesia to conduct an education or in the future on behalf of goverment with the other way, and both of case as long as the guilty person has enough age until eighteen years old.
2. In a customary law, There are many custom law in Indonesia and it can be a good solution for completion for child case out of court, however, the exsintences were not recognized by the state or it was not modiflicated in the

national. Customary law could complete the conflict which rise in the community and give the satisfaction to the conflicted parties. The specific characteristic from the case completion for the child out of the justice, the crime was placed as the syndrome that become a part of social action and it was not only as the offense of criminal law. The crime was viewed as the action that harm and damage social relationship, and its only can be solved by customary meeting. Different with criminal law that has been withdrawn as the case of state. Only the state that has the right to punish, even though, actually the customary community could give the sanction.

3. In Islamic Law, a child was not subjected to get punishment only for the crime committed, because there was no the load of responsibility of law on a child what ever their age until he/she reach the age of puberty, "*qadhi*" or Judge only will have the right to their mistake or false or state some limitation for them and help to revise it and stop them from making and repeating for the mistake in the future. Islamic laws has clear rule and regulation to the child position in Islam as the "*amanah*" or a trust and need and obligation to keep care and protect them by their parent. Their obligation also to give them the best education and act well as well as guided in the religion. If there were any kind of deviation in child's behaviour, Islam in a certain condition still give the leniency. Such as signed in one hadith that was stated "*innocent*" (*rafuqalam*) a child until they reach *akil baligh* (puberty), signed by rising the "*dream*" (*ihtilam*) at the man and *haid* for woman. If one child who steal, or kill at once, he/she could not be punished any kind of punishment or sanction. In Islamic criminal Court, The criminal responsibility could be eliminated because the certain caused as well as related with the action of a *dader* or the cause that related with the condition of offender. Such as the crime that has been conducted in , there wont be a prosecution of law on behalf this case as long as it was proved in real in fact, Then, the crime that was conducted in unintentionally condition such as in a state being forced, even though he looks like watch out, but he/she still sleep. Legally, he wont have responsibility, and also, likewise the criminal acts that has been done by some one who still child and someone in crazy or having nerve disturbance.
4. In criminal law was defined as the child who conduct the (*crimes actor; dader*). The action could ask take responsibility of criminal law, it was the criminal that the action that suitable with the legality fundamentals, the action that was prohibited by the laws. In criminal law, an action could not be convicted, except based on the strength of the Laws of existing criminal legislation

The punishment of children in conflict with the law cannot be separated from the existence of a Juvenile Court, considering that the decision containing the sentence is a product of the court and the estuary of all processes in handling children in conflict with the law. The form of imposing a warning against child convicts in Law Number 11 of 2012 is a minor crime that does not result in restrictions on children's freedom, in the theory of punishment, namely the theory of relative theory or theory of purpose (utilitarian / *doeltheorie*en).

It was pioneered by Nigel Walker, who started on the basis that crime is a tool for enforcing order (law) in society. the premise that a crime can be sentenced means that criminal punishment has a specific purpose, for example improving mental attitude or making the perpetrator harmless, a mental attitude development process is needed.

Furthermore, the purpose of criminal sanctions in Indonesian criminal law is to prevent perpetrators from retaliating. Such views and understandings are in accordance with the outlook on life of the Indonesian nation which is embodied in the values of Pancasila which upholds human values. Sanctions are a logical consequence of an act committed. Sanctions can have the same meaning as punishment but the meaning is different from punishment. Criminal is a sanction that is only applied in the field of criminal law.

In the juvenile criminal justice system, children who are in conflict with the law are subject to action penalties, namely being returned to their parents, or surrendering to someone, treatment in a mental hospital and treatment at the Social Welfare Organizing Institution (LPSK), but in criminal law against children who commit Crime is not imposed on other people or on their parents, as well as on the surrounding community, because children who commit crimes are not perpetrators but victims of their parents, society and the criminal justice system.

Punishment is a feeling of discomfort (for example in the form of restrictions, fulfillment of certain obligations) imposed by the state through criminal justice because a person or legal entity who is sentenced to a crime violates the law legally and is convinced guilty.

The lightness of the act, the child's personal condition, or the circumstances at the time of the act or what happened later can be used as the basis for judge's consideration not to impose a sentence or impose an action taking into account the aspects of justice and humanity

In the concept of customary law and Islamic law, children who are not yet *aqilbaliq* are not required to be punished and returned to their parents to be educated, even in Islamic law parents are directly responsible for the actions committed by their children, so that the punishment is not on the child but on other people. old.

#### **D. Conclusion**

The concept of criminal warning to the children who had conflict with the law, is in term of and guarantee and law assurance or legal certainty for children who had done the criminal action. Specailly in article 71 verse (1) about principal crime section a about the criminal warning, still found the lacks, so that article is seldom used by judge in decide tha child case who had conflict wit the law. And it wasn't found yet the procedure of criminal warning dropping, so, to fulfill the vacancy, the wrieter recommended the procedure as follow; 1). Remind the attemp and effort so, the action wouldn't repeat infornt of their parent., 2),remind that the action was repeated, so it will be punish by sanction of punishment of jail sentence. and 3), surrendered to the certain person who has reposibility and live in Indonesia orto one foundation or institution or charity institution in Indonesia to held the

education on behalf of government guarantee as long as the children who convicted reach the age on eighteen years

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