

THE SYSTEM OF SANCTIONS FOR THE CHILD AND ITS IMPLEMENTATION (Study of child protection in the perspective)

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ABSTRACT

The judiciary and Criminal child who in fact is for the protection and welfare of children as part of social welfare, wants sanctions preferred action instead of criminal sanctions. In other words, criminal sanctions would only be used as a last effort (the last resort). But in fact, these types of criminal sanctions, in particular imprisonment sanctions are still used as a sanction "Prima Donna", both in the formulation of the Act No. 3 of 1997 Concerning juvenile court, as well as in its application by judges in juvenile court. Therefore it needed amending System sanctions set in the Juvenile Court Act.

Keywords: protection, justice and criminal

INTRODUCTION

Background

In an effort to combat crime in General, the term criminal policy which is a rational business community in tackling crime. In the meantime, safeguards the rights of the child is determined by the existence of child protection policy (child protection policy), child welfare policy (child welfare policy) that are conducive to the efforts of protection of the rights of the child itself.

Guarantees of legal protection for children to grow and develop, in General has been mandated in various laws and regulations, among other things:

1. Every child has the right to survival, grow and develop, as well as the right to protection from violence and discrimination¹.
2. Child entitled to maintenance and protection, both in the womb during and after birth, the child is entitled to protection of the environment which may endanger or hamper its growth is reasonably².
3. So that every child would be able to shoulder the responsibility as the buds, the young generation, and the potential successor to the ideals of

¹ Pasal 28B (2) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

² Pasal 2 ayat (3) dan ayat (4) Undang-undang Nomor 4 Tahun 1979 tentang Kesejahteraan Anak

the struggle of peoples, has a strategic role to ensure the continuity of the existence of the nation and the State, then it needs to be given to the existence of the opportunity to grow and grow optimally, whether physical, mental, and social events, and noble character. Protection efforts also need to realize the welfare of children by providing a guarantee of the fulfillment of his rights as well as the existence of treatment without discrimination³.

It is in line with the contents of the Declaration of the rights of the child by the United Nations General Assembly on 20 November 1959 the main principle asserts that humanity is obliged to provide the best for the child.

Crime statistics show that in the last decade there is a tendency of an increase in the involvement of children as in some types of crime, either in quantity or in quality. In the city of Makassar, in the last five years (2006-2010), the number of children in conflict with the law that led to their submission to the Makassar District Court reaches an average of 146 persons per year⁴.

Types of criminal acts committed by children are increasingly diverse, are no longer limited to criminal acts which is as light as traffic violations, theft light and so on, but they've been willing to do criminal acts which contain elements of violence, such as extortion, rape, assault, and even murder. The public was shocked by the news that turned out to be among the members of the syndicate of perpetrators of the abduction of Raisya, there are three high school students (High School) that still includes child categories. News about the abuse of narcotics and psychotropic substances among children often fill the print and electronic media in the country.

The growing phenomenon of aberrant behavior that meli-cause the child as the perpetrators are certainly very menghawatirkan and simultaneously invites the concern of all walks of life. Therefore, from the standpoint of positive law, the child's behavior, of course, require them to be dragged into the criminal justice process. But on the other hand, the child's behavior deviation handling through the criminal justice process regardless of the aspect of the protection will cause a negative impact on their development.

The efforts of legal protection for children in the criminal justice system is indeed supported by international legal instruments, among other things, namely:

1. UN Number MU-resolution 44/25 of 20 November 1989 Convention on The Rights of the Child (Convention on the rights of the child) that have been ratified by the Government of the Republic of Indonesia by Presidential Decree No. 36 of 1990
2. UN Number MU-resolution 40/33 of 29 November 1985, the Standard Minimum Rules for the Administration of the Juvenile Justice (provisions of Minimum standards for the execution of Juvenile Justice), often referred to as "The Beijing Rules"
3. UN Number MU-resolution 45/112 of 14 December 1990, Guidelines for the Prevention of Juvenile Delinquency (guidelines for the prevention of Teen), often called "The Riyadh Guidelines"

One of the principles contained in the instruments of the law is that, barring freedom (arrest, detention, and imprisonment) should be placed as the last

³ Bagian konsiderans Undang-undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak.

⁴ Data diperoleh dari Pengadilan Negeri Makassar, Januari 2011

alternative after considering other alternatives made possible by rules of law that exists.

The existence of such an international legal instrument, then followed up by the Government of Indonesia by establishing Act No. 3 of 1997 concerning juvenile court (hereafter abbreviated as: UUP Son) passed and enacted on 3 January 1997 and adhering to it one year after enactment.

Article 67 the UUP expressly declares that at the time of starting the enactment of this Act, the provisions set forth in articles 45, 46 and 47 of the CRIMINAL CODE was no longer valid. As it known that before the enactment of the child, guidelines UUP overthrow sanctions for children who commit a criminal offence provided for in articles 45, 46, and 47 of the CRIMINAL CODE is.

Problem Formulation

Formulation of the problem to be solved data:

- a. What is the nature of the judicial and criminal?
- b. How does the system of sanctions for children after the enactment of?
- c. Application of the system of sanctions for ah boy after the enactment of Act No. 3 of 1997 concerning juvenile court in Makassar District Court?

Results of the study are expected to be useful in:

- a. Input and contribution for the legislature and the Government in formulating policies and set/refinement of legislation in the field of per.
- b. Information, feedback, advice to agency consideration of the associated/instansi in the criminal justice system, to task as well as possible, in order to be achieved the purpose of criminal justice for the child.3. Meto.

Methodology

Study on the system of sanctions for the child and its implementation as a legal protective measures for the child to be made, include the following: first, a review of the nature of judicial and Criminal child, a second, a review of the legal provisions which are in force (ius konstitutum) or positive law, in this case Act No. 3 of 1997 concerning juvenile court with regard to the system of sanctions for children based on the principle of the best interests of the child, which include: the types of sanction (strafsoort), Wright/sanctions (strafmaat), and how to implement sanctions (strafmodus), third, a review of the application of the system of sanctions is regulated in Act No. 3 years 19097 About juvenile court, especially comparing between the application of criminal sanctions and sanctions action by judges in Makassar District Court. Analysis of the third issue was expected to be able to find materials that can be used to formulate new provisions of law/law expected (ius constituendum) relating to child protection rights in the criminal justice system.

To find the answers to these three problems, the formulation used: a. conceptual approach (conceptual approach) and examines the views and doctrines developed in the science of criminal law, b. approaches Act (statute approach)

and examines the substance of the system of sanctions for children set in the UUP, and c. the approach to case (case approach) and examines cases that have been decided by a court and has the force of law remain⁵.

DISCUSSION

The nature of Justice and punishment of Child

Child protection in the criminal justice process, cannot be released from the nature of the purpose or criminal justice elementary children (juvenile justice). With this purpose and rationale recently determined what and how the nature and form of legal protection should be given to the child.

Objectives and rationale the child criminal justice, obviously cannot be released from the main goal for the realization of child welfare which is essentially a part of social welfare. But that does not mean that the interests or welfare of the child are under the interest of the community. It should be seen that give precedence to or give priority to welfare or for the child was in fact the beginning of realization of social welfare. The child's interests should not be sacrificed in the interest of the community⁶.

That view is in line with the view of the Court suggests that Sudarto children give priority to child welfare in addition to the welfare of society. All activities undertaken in the framework of child justice, whether it is done by the police, prosecutors, judges or other officials, should be based on a principle, it is for the welfare of the child. Whether the judge will drop criminal proceedings or actions should be based on what is the best for the welfare of the child.

Child protection efforts in the process of criminal justice manifested for the first time with the establishment of a juvenile court (Juvenile Court) in Illinois, United States in 1899. According to Sudarto legislation that underlies the first juvenile court is based on the principle of parent's patria, which means that authorities must act when a child needs help, children who commit crimes are convicted but instead should be protected and given assistance. In the United Kingdom known to the prerogative of the King to act as parents patria, is to protect the people who need help, including children who need it⁷.

In view of the principle of parent's patria, Sudarto had meant that the law was contrary to the rights of the child itself, so that the judiciary should be able to realize the rights of the child. The child must be given the opportunity to express his opinion and that opinion must be reasonable attention carried. The meaning of "for the sake of the interests of the child" should not be "in the interest of the child according to the mind of the judge only", but really for the sake of the personal development of the child itself in a broad sense. Convention on the rights of the child (UN resolution No. 44/25), which then acquired the force of law in Indonesia through Presidential Decree No. 36 of 1990, and the United Nations

⁵ Penjelasan lebih lengkap tentang macam-macam pendekatan dalam penelitian hukum terdapat dalam karangan Peter Mahmud Marzuki, 2005. *Penelitian Hukum*, Kencana Prenada Media Group, hlm.93-139.

⁶ Muladi dan Barda Nawawi Arief, 1992, *Bunga Rampai Hukum Pidana*, Alumni, Bandung, hlm. 111

⁷ Sudarto, *Op. Cit.* hlm. 131.

Standard Minimum Rules for the Administration of Juvenile Justice (UN resolution 40/33) contains among other things:

1. The next generation of the son as the nation has rights that must be protected, both children in General, as well as the troubled child in his social behavior;
2. Countries through its officials acted as surrogate parents when the parents or guardian because otherwise could not play the role of a parent who is responsible for his sons (principle of parents patria);
3. the handling of the troubled child (in his social behavior-including in the field of criminal law) which is done through the implementation of Criminal Justice directed to remain steadfast on the principle that the implementation of criminal justice is an integral part of child welfare efforts;
4. Children's justice as an integral part of child welfare efforts should be able to provide guarantees of any reaction to the perpetrator of the crime or delinquency has always treated proportionately in accordance with the environmental situation of the offender and his deeds⁸.

The purpose and rationale for giving priority to the welfare of the child is defined in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Resolution MU UN Number 40/33) which refers to two goals or purposes for which it is very important that:

1. Promoting child welfare
The first target was the main focus in the legal system who handle children offenders; in particular in legal systems that handle the criminal justice model should be more emphasis on child welfare. This principle means to uphold principles to avoid the use of sanctions to punish purely.
2. The principle of proportionality
The second goal, namely, the principle of which is a tool to curb the use of sanctions is punitive in the sense of sheer replies.
From the starting point at the problem-oriented approach to the protection and welfare of children, clearly need to approach other specialty or approach on the issue of legal protection for children in the criminal justice process.
The child required is:
 1. Children who commit criminal acts should not be viewed as a villain, but should be seen as a person who needs the help, understanding and compassion.
 2. Juridical approach towards children should prefer the persuasive approach-educational and psychiatric approach (psychological) which means as far as possible avoid the legal process that is purely punitive, exemplary mental degradation and decline in morale, as well as avoiding the stigmatization process can hinder

⁸ Paulus Hadisuprpto, Loc.Cit. hlm. 158.

the process of development, maturity, and the independence of the child within the meaning of the reasonable⁹.

In accordance with article 6, paragraph (2) of Act No. 4 of 1979 concerning child welfare services and that the care given to children who have been convicted of violations of the law by virtue of the ruling of the judge, it is necessary to be completely organized child does not enter into the House of the prison, but reviewed and terminated based on what is best for the child. The settings of the judiciary needs to be based on the principle of children's parents patria, which means (1) the Government/authorities should act when children need help; and (2) children who commit criminal acts, are convicted, but instead he gets protection and assistance.

Commitment to give special protection to the child as it decomposes above increasingly emphasized again with the birth of Act No. 39 of 1999 on human rights. There are 15 that are specifically detailing on the rights of the child. If observed, the material (the charge) to fifteen article about children's rights in the Human Rights Act, essentially adopted from the international legal instruments on the protection of children as expressed before. It means that the instruments in international law on the protection of children has been recognized and accepted as a source of formation of national law.

Especial masters relatad to criminal justice, the Human Rights Act specifies:

- 1) Every child has the right not to be subjected to persecution, torture, or inhuman punishment the overthrow.
- 2) The death penalty or a life sentence could not be imposed for a criminal offence perpetrators who are still children.
- 3) Every child has the right not to be deprived unlawfully.
- 4) The arrest, detention or imprisonment of a child should only be done in accordance with applicable law and can only be exercised as a last effort.
- 5) Every child deprived of freedom deserves treatment humanly and with attention to personal development in accordance with his age and should be separated by an adult, except for the sake of orag significance.
- 6) Every child deprived of freedoms entitled legal aid or other assistance effectively in every stage of efforts applicable law.
- 7) Every child deprived of freedom reserves the right to defend themselves and obtain justice in front of the Court's objective and impartial in the trial that was closed to the public¹⁰.

Based on some of the quotes above, clearly embraced a principle that though forced to a child in conflict with the law must be given a sanction, the sanction is not to forget the importance of the welfare of the child and that any sanctions should be able to provide assurance of the existence of the principle of proportionality in the granting of preferential treatment to the child. Law enforcement in the criminal justice system on behalf of the Government/state still

⁹ Terkutip dalam Muladi dan Barda Nawawi Arief, Loc.Cit, hlm. 113.

¹⁰ Lihat Pasal 66 Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia.

hold fast to the principle of *parens patriae* in dealing with child offender delinquency/crime.

With regard to it anyway, Sarwoko posited:

“Criminal is a series of processes that are manifested in a variety of activities as well as performed programmatically. The central point of which was to restore the mental attitude and behaviour of the convict that child to fitrahnya. In A simple can that deplorable behavior and attitudes that encourage someone so despicable deeds he has done that is what should be cleaned from him”¹¹

Chus there needs to be an awareness that in the face of a child who commits a criminal offence, what matters is not whether the child can be convicted or not, but rather how are actions that should be done to improve and educate these children. Limitation of freedom (arrest, detention, and imprisonment) should be placed as the last attempt (alternate) after considering other alternatives made possible by existing legal rules. Criminal is not intended for punishment, but on condition of the improvement, maintenance and protection, as well as the prevention of a repetition of actions that is constructive.

The system of sanctions for children after the enactment of Act No. 3 of 1997 Concerning juvenile courts.

As has been suggested previously that the current legal basis within the criminal justice process in Indonesia is Act No. 3 of 1997 concerning juvenile court established and enacted on January 3, 1997 (State Gazette of the Republic of Indonesia number 3, 1997). Article 68 the UUP determines that this Act comes into force one year calculated from the date of promulgation, which means that this legislation effectively entered into force on 3 January 1998. Should also be noted that at the time of starting the UUP Child, then the guidelines the overthrow sanctions for children as provided for in article 45, article 46 and article 47 of the criminal law (CRIMINAL CODE) was no longer valid.

Stelsel or arrangement of sanctions is one of the three basic problems in the system of criminal law, in addition to matters subject to another i.e. the formulation of acts that are considered to be a criminal offence and criminal liability.

Muladi, stelsel sanctions according to the connotation is not only a system of substantive nature physic and structurally, but also meaningful cultural, laden with the views, attitudes, values, even philosophy consistently should be lived by the entire criminal justice system. With dramatically called "Value loaded" and not "value-free".

In criminal law, the offender classification is based on the age of the perpetrators of the developmental psychology resulted in what is called the criminal law, which regulate in particular the three basic problems in criminal law, including sanctions for child stelsel.

¹¹ Termuat dalam Majalah *Varia Peradilan*, Nomor 84, Tahun VII, September 1992: 126.

The basic philosophy of the Criminal children in the law of Indonesia, poured in a general explanation of the UUP who among other things confirmed:

“ The relationship between parents and children is an essential relationship, either psychological or mental relationship. Given the characteristics of a typical child, then in dropped or criminal action against a rogue trying to accomplish so that the child is not separated from his parents. If because of the relationship between parents and children is less good, or because of the nature of the acts of particularly detrimental to society so that the need to separate children with their parents, let the segregation envisaged that remain solely for the sake of growth and development of healthy children and reasonable”¹².

In connection with that, the UUP policy setting sanctions regulated Child (exclusion of the Criminal Code) provides for special treatment for the child.

The child determines the UUP policy system use two lines (double track system) in the child's sanctions for stelsel proven guilty of committing a criminal offence. Stelsel sanctions the two lines in question are the following: first; criminal sanctions (punishment; United Kingdom, or the straf; Netherlands) is more oriented on evil deeds (retaliatory in nature) and, second; the sanctions measures (treatment; United Kingdom, or maatregel; Netherlands) is more oriented to the maker or the perpetrator (nature protection). Between criminal sanctions and sanctions action, there is a relationship of mutual exclusion (exclude), meaning that if the judge chose the criminal sanctions, then at the same kind of sanctions action ruled out. Conversely, if the judge chose the sanctions measures, the means of criminal sanctions in line ruled out.

Double track system setting policy regarding sanctions and how its application against the UUP Children are outlined as follows:

1. Criminal Sanctions

Criminal sanctions which can be applied to the child include:

a. Imprisonment

Imprisonment that may be imposed against a rogue who committed a criminal offence in accordance with article 26 (1) longest half of maximum threat of imprisonment for adults. In the event of a criminal offence committed is liable to a criminal to death or imprisonment for life, then for the children, the threat of it being criminal imprisonment to a maximum of 10 (ten) years. With the provision of article 26, the criminal threats against crime, neither of which is found in the Criminal Code and the Criminal Code are scattered outside the culprit was a child, must read half of maximum criminal threats to adults.

For children who have not reached the age of 12 (twelve) years and do a criminal act liable to a criminal to death or imprisonment for life, in accordance with article 24 (1) the letter a, then it cannot be meted out criminal sanctions. But only punishable by either hand it to the country to participate in education, training, and coaching work.

Judges can apply conditional if criminal imprisonment dropped no more than 2 (two) years. Application of conditional criminal is wholly dependent on the assessment of the judge. When it was decided to apply the criminal parole, then determined the general terms and special conditions. General conditions is not going to do the crime again during her criminal past conditional. While the special

¹² Penjelasan Umum Undang-undang Nomor 3 Tahun 1997 Tentang Pengadilan Anak.

conditions, for example, should not drive a motor vehicle, or obliged to follow activities that are Correctional Center (Bapas). So general conditions does not repeat the crime again, while terms in particular is doing or not doing certain things set out in the decision of the judge with still lobbies for freedom of children. A special conditional criminal period should be shorter than the General conditions and the longest of three (3) years.

During her criminal past conditional, supervision of children carried out by prosecutors, while guidance is performed by the supervisor's community. The goal is to keep the child's condition has been determined. Children who undergo the criminal parole supervision in Correctional Center (Bapas) and status as correctional clients. During the client's status as correctional facilities, children can attend school education.

b. Criminal Confinement

Article 27 the child determines that the UUP criminal confinement can be brought down to the child according to Article 1 point 2 letter a (a child who commits a criminal offence), the longest half the maximum criminal threats of confinement for adults. Same is the case with criminal sanctions to imprisonment or fines, criminal confinement sanctions can only be applied to a child who is proven to perform a criminal act liable to criminal confinement.

c. Criminal Fines

Criminal penalties that can be applied to the child according to Article 28 (1) is $\frac{1}{2}$ of the maximum criminal fines threat in crime is concerned, criminal fines, and when it turns out not to be paid, then replaced with a mandatory exercise of work (article 28, paragraph 2). This provision is clearly different from the General provisions of the CRIMINAL CODE (article 30 paragraph 2) which specifies that if the sentenced penalty, and the fines are not paid, then replaced with the penalty of confinement.

Mandatory workplace training in lieu of fines made the longest 90 (ninety) days of work and work practice long no more than four (4) hours per day and not done at night. This provision follows the Number Per. 01/Men/1987 which determines that a child who is forced to work must not work more than four hours a day, and it does not work at night. Mandatory exercises work intended to educate the child in order to have a useful skill for him.

d. The Criminal Supervision

The criminal supervision can be brought down to the child according to Article 1 point 2 letter a most brief 3 (three) months old and most 2 (two) years. The criminal supervision is a special criminal charged to the child, namely the supervision carried out by the Prosecutor against the behavior of children in everyday life in the child's home, and the provision of guidance by supervisor's community.

There are also additional criminal sanctions which can be applied against a rogue can be a deprivation of certain items and/or payment of damages. Things that need to be carried the spotlight in connection with the enforcement of criminal threats and criminal fines, imprisonment of children is developing what is called a minimum specific criminal threats to certain outside crime crime-CRIMINAL CODE such as Narcotics ACT/Psiikotropika. Whether the provisions of the Special minimum criminal threats automatically applies to the child? There is no explanation. Therefore, once did a special minimum criminal threats were multiplied by $\frac{1}{2}$, it was still too heavy to be applied against a child. Especially in terms of the principle that criminal (in particular the imprisonment) as far as possible be the last alternative. Moreover, if the minimum

specific criminal threats were a between two kinds of criminal subject matter namely imprisonment and fines in the Narcotics ACT/psychotropic substances. Is there any type of criminal supervision are placed as a sign of criminal category tree, it seems this type of crime will never be applied. Therefore, there is no explanation in terms of what kind of criminal supervision can be. So far there has never been a formula crime (criminal acts) which is being threatened by criminal supervision. I tend to argue that these types of criminal supervision is more appropriately placed as one of the alternative sanction measures than on placing it as one of the types of criminal sanctions.

2. The Sanctions Act

There are already actions that can be applied to naughty children (Article 24) is:

a. Return to the parent/guardian/Foster Parent.

This can be done if according to the assessment of the judge, the child can still be built on the family environment of parents/carers/parents. However the child still get the supervision and guidance of the supervisor's community, among others, to participate in activities that are beneficial to himself (Scouting and others).

b. Leave it to the State

This action is performed if according to the assessment of the education and training of judges, the child can no longer do in the family environment (article 24 paragraph 1 letter b). If the child is handed over to the State, then it is referred to as children of the State. State children placed in Institutions and children are obliged to follow the Prison of education, coaching, and training work. The goal to give the provision of skills to children, for example, the skills of carpentry, cosmetology, workshop, etc., so that the child undergo following the completion actions can live independently.

The child by the judge terminated and turned over to the State (article 31) placed in institutions of Prison Children as children of the State. Its construction is the responsibility of the institution Prison. To that end, the Agency Head Prison Child may ask permission to the Minister of Justice to make child safety, the country placed in institutions of Prison held by Government or private. The intent is for the benefit and the future, or in terms of the interests of the child require, that child can be handed over to Government or private Social Parlors, or Foster Parents (OTA) are eligible.

When a judge set a child should follow education, work training, and (article 32), the judges in determining the educational institution where the determinations, coaching, and training work was carried out.

c. Leave it to the Department of social or Civic social organization engaged in education, coaching, and training Work

Although in principle education, coaching, and training work was organized by the Government in the institution Prison the child or by the Government in the institution Prison the child or by the Social Department, but if the interests of the child require, the judge may specify the child handed over to civic social organization such as, orphanages, social and other social institutions

(section 24 para 1 letter c). The child was turned over to the social organization of the community, to be aware of the religion of the child.

The sanctions measures that were applied by the judge of the child may be accompanied with a reprimand and the additional terms set forth by the judge (article 24, paragraph 2). The rebuke in the form of a warning from the judge, either directly to the child who is subject to the Act, as well as indirectly through the parents, guardians or parents of the child, so that does not repeat the actions which resulted in it subject to the Act. As for additional requirements such as an obligation to report periodically to the supervisor's community.

In determining the types of criminal sanctions or penalties the action will be dropped, judges pay attention to weight a criminal offence or delinquency committed by the child. In addition, the judge must also pay attention to the circumstances of children, household circumstances of parents, guardians or foster parents, the relationship between family members, and the State of the environment. Similarly, the judge is obliged to heed the report's community supervisor.

Based on the description, it can be concluded that the child who is proven to perform criminal acts can be applied two alternative options i.e. criminal or acts (article 22). However, as also with article 45 of the CRIMINAL CODE, the UUP not expressly specify that, judges must priorities action to apply sanctions to the child than on criminal sanctions. Options (alternatives) between criminal sanctions or actions are open, so the selection of judges in deciding the matter bad boy are free to use those powers to more dropping criminal sanctions instead of dropping sanctions action. Should the child have provisions that UUP insists that the judge must first consider dropping sanctions action on criminal sanctions, not least, the child requires that judges in the UUP consideration of an award to formulate explicitly the reason why he chose to drop the criminal type or types of specific action. This is in line with the principle that Criminal for children is an alternative to the last (the last resort) and taking into account the best interests of the child as big as possible (the best interest of the child)..

1. The application of sanctions for Children After the enactment of Act No. 3 of 1997 Concerning juvenile court in Makassar District Court.

An overview of criminal cases and the application of the system of sanctions for children after the enactment of Act No. 3 of 1997, at the Makassar District Court served in a number of the following table:

Table 1
Data on Criminal child/Makassar District Court Ruling from 2005 – 2010

No.	Year	The Amount Of	
		The Verdict	Child
1	2005	44	47
2	2006	80	83
3	2007	113	125
4	2008	102	115
5	2009	195	235

6	2010	150	176
Total		674	781

Source: Makassar District Court

Seems the child criminal cases increased from year to year. Increased very drastically happened in 2009. This phenomenon is thought to occur due in 2009 is the year of implementation of the legislative and presidential elections in which on the one hand an increase in social and political activities of the community in the form of mass deployment (including children) in the implementation of the campaign publicly that allow the occurrence of friction between supporters of the political party/candidate tangible legislative criminal acts, and on the other hand the police actively do/improve the security conditions in creating order in society in order to secure the implementation of elections as a national agenda.

Table 2
The Distribution of the Child Offender Crime Based On Type of Work

No.	Type Of Work	The Frequency Of	The Percentage Of
1	It does not work	230	29,449
2	Labour	213	27,272
3	Students	168	21,510
4	Private/sales associate	103	13,188
5	Carpenters/Tricycles/Knek	29	3,713
6	Parking	21	2,688
7	Scavenger	9	1,152
8	<i>Cleaning Service</i>	6	0,768
9	Shop Keeper	5	0,648
10	Singer	4	0,512
11	Baby Sitter	3	0,384
Total		781	100

Source: Makassar District Court (after being processed)

Based on the table, older perpetrator crime come from groups with a variety of background jobs: most dominant is the child who has no job, next, daily labors, student/student, private, and pedicabs/taxi/knek. The concern is that a student/student group was ranked third with a percentage of the State%, 21, 51 certainly can be negative on their status as a student/student.

Table 3
Number of children Convicted guilty and Penalized by type Crime/year at the Makassar District Court from 2005 – 2010

No	Types Of Crime	Year						amo unt
		200 5	200 6	200 7	200 8	200 9	2010	
1	Theft (theft, violence, normal)	18	55	81	80	123	113	470

2	Gambling	8	-	-	3	25	-	36
3	Abuse of narcotics/psychotropic substances	7	13	7	7	7	9	50
4	Violence against. people/goods	6	6	12	6	16	27	73
5	Bring sharp weapons/knife.	2	3	-	-	6	3	14
6	Result. Person. Another dead/wounded	3	1	2	7	11	3	27
7	The Persecution	2	3	6	3	8	3	25
8	Forgery alerts tera	1	-	-	-	-	-	1
9	Blackmail	-	1	-	-	-	1	2
10	Interfering in. fights	-	1	-	-	-	-	1
11	Violence against. child	-	-	4	2	21	6	33
12	Stolen cistern	-	-	2	-	3	3	8
13	Fornication/rape children	-	-	4	3	9	2	18
14	Coercion against people. other	-	-	2	1	-	1	4
15	Fraud	-	-	2	-	-	-	2
16	Embezzlement	-	-	2	-	1	-	3
17	Domestic violence	-	-	1	-	1	1	3
18	Run for women	-	-	-	3	1	-	4
19	Murder	-	-	-	-	2	2	4
20	Rape	-	-	-	-	1	-	1
21	Humiliation	-	-	-	-	-	4	4
The Amount Of		47	83	125	115	235	176	781

Source: Makassar District Court (after being processed)

Description:

Data types in table 3 only crime qualified crimes (not including violations such as traffic offenses that also involves a lot of children).

This table shows that there is an increasing trend of crime (evil) which involves children from year to year. In 2005 there were 8 types of crime, in 2006 there were 8 types of crime, 2007 to 12, in 2008 there were 10 types, in 2009 there are 15 types, and in 2010 12th type crime.

Table 4
Crime data conducted by Children sorted by the frequency of the culprit
From 2005-2010

No.	Types Of Crime	The Frequency Of	The Percentage Of (%)
1	Theft (ordinary theft, violence)	470	60,179
2	Violence against. people/Goods	73	9,346
3	Abuse of narcotics/psychotropic	50	6,402

	substances		
4	Gambling	36	4,409
5	Violence against children	33	4,225
6	Due to the mistake others are dead/wounded.	27	3,457
7	The Persecution	25	3,201
8	Fornication/rape children	18	2,304
9	Bring/have a sharp weapon	14	1,792
10	Stolen cistern	8	1,024
11	Imposition/threatens others	4	0,512
12	Murder	4	0,512
13	Run for women	4	0,512
14	Violence in the family	3	0,384
15	Embezzlement	3	0,384
16	Humiliation	3	0,384
17	Fraud	2	0,256
18	Blackmail	2	0,256
19	Rape	1	0,128
20	Forgery alerts tera	1	0,128
21	Also mix in. fights	1	0,128
The Amount Of		781	100

Source: Makassar District Court (after being processed)

The most prominent types of evil/is often done by the child turned out to be a crime of theft (60,179%) followed by the violent crimes against person/goods (9,346), misuse of narcotics/psychotropic substances (6.42%) gambling (4,409), violence against children (4,225), then the crime due to errors resulting in death or wounds another person (3,457), assault (3,201), fornication and rape children (2,304), carry the weapon has a sharp/(1,792 percent), (1,024). Furthermore, this type of crime people, murder, escape, women, domestic violence, embezzlement, fraud, blackmail, humiliation, rape, forgery and tera, sign of interfering in the fight, each with a percentage of less than 1%.

Table 5

Legal counsel in the process of accompaniment of the judiciary in the Makassar District Court

No.	The Number Of Cases	The Frequency Of	The Percentage Of
1	With Legal Counsel	6	17,14
2	Without Legal Advisor	29	82,16
The amount of		35	100

Source: prepared from 35 Ruling PN Makassar

The judiciary are very ignoring the rights of the child to be accompanied by legal counsel. Even though the State is obliged to provide legal counsel for every child in conflict with the law, regardless of whether the child wishes to exercise his right to be accompanied by counsel or not.

Specific data about the application of the sanctions for the child in the last six years at the Makassar District Court presented in the following table:

Table 6
The type of Sanction imposed to the child based on age group from 2005-2010

No	Types Of Sanctions	Age Group		n	
		8 Year > 12 Year	12 Year > 18 Year	f	%
1	<i>Returned to Parents</i>	7	15	22	2,816
2	<i>Subsidiary State</i>	-	3	3	0,384
3	<i>Submitted to Depsos/Cbos</i>	-	7	7	0,896
4	Prison	3	687	690	88,348
5	Confinement	-	-	-	-
6	The Fines	-	-	-	-
7	Supervision	-	-	-	-
8	Fine + Jail	-	59	59	7,554
The Amount Of		10	722	781	100

Source: Makassar District Court (after being processed)

This table shows that the judge in meting out penalties to the child still make criminal sanctions a prison as a "Prima Donna" (over 95%), while the sanction measures only about 4%. Implementation of the fundamental principle that the use of criminal sanctions to imprisonment as a last resort really is far from hopeless. No/no significant difference in the attitude of the judge in the overthrow sanctions for children before and after enactment of the UUP's son.

Even the violation/legal practices whereby fault three children who are not turned 12 years old was sentenced to prison for criminal sanctions. Whereas according to the provisions of article 26 paragraph (3) and paragraph (4) of the UUP, they can only be subject to the Act. Another mistake is when the judge imposed sanctions, then the dropping judge with criminal confinement, whereas Article 28 paragraph (2) children with UUP firmly determined that if it turns out the fines cannot be paid by children, then replaced by compulsory exercises work.

CONCLUSION

Conclusion

1. The nature of the judiciary is to realize the child welfare which is essentially a part of social welfare. Criminal is not intended for punishment, but on condition of the improvement, maintenance and protection, as well as the prevention of a repetition of actions that is constructive.
2. Although stelsel system the sanctions provided for in the child using the UUP double track system (criminal penalties or sanctions Act), but this basically stelsel not unlike stelsel sanctions set forth in article 45 of the Penal Code that has been repealed, as there is no assertion that the judge should prefer applying a type of sanction the action of on the type of criminal sanctions.
3. The application of sanctions on children in Makassar District Court is far from the principle of the protection of children, namely criminal sanctions as a last resort. The judge still more dominant applying criminal sanctions

(imprisonment) compared to sanction action. Even the judge clearly violated the terms of the application of the sanctions provided for in the child with the UUP to apply sanctions to imprisonment to three children who have not yet reached 12 years of age, whereas children aged 12 years can only be subject to the sanctions measures.

Recommendation

1. Need to immediately do the amendment of the substance of the Juvenile Court Act, in particular the sanctions yet stelsel in line with the goals of Justice and could potentially cause problems in its application, which in turn affect adversely the interests of children in the criminal justice system.
2. In examining and break the criminal children, judges should really consider the best interests of the child. The overthrow sanctions for children should be based on the principle of the child's needs individually. Civic research results should really harnessed as part of the consideration of judges in criminal cases is disconnected.

REFERENCES

- Arief, Barda Nawawi. 1998. *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*. P.T. Citra Aditya Bakti, Bandung.
- , 1996. *Bunga Rampai Kebijakan Hukum Pidana*. P.T. Citra Aditya Pratama, Bandung.
- , 2007. *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Menanggulangi Kejahatan*. Kencana Prenada Media Group, Jakarta.
- 2008. *Bunga Rampai Kebijakan Hukum Pidana, Perkembangan Penyusunan Konsep KUHP Baru*. Jakarta
- Ariyanto. 2006. *Implementasi Double Track System dalam Criminal Menurut Undang-undang Nomor 3 Tahun 1997 Tentang Pengadilan Anak*. Tesis pada Program Pascasarjana Universitas Hasanuddin.
- Atmasasmita, Romli. 2010. *Sistem Peradilan Pidana Kontemporer*. Kencana Prenada Media Group. Jakarta.
- Atmasasmita. R. dkk. (penyunting). 1997. *Peradilan Anak di Indonesia*. C.V. Mandar Maju, Bandung.
- Bemmelen, J.M. van. 1986. *Hukum Pidana 2 (Hukum Penitensier)*. Binacipta. Bandung
- Departemen Hukum dan HAM R.I.,2004 *Konsep Rancangan Kitab Undang-Undang Hukum Pidana*.
- Gosita, Arief. 1985. *Masalah Perlindungan Anak*. Akademika Pressindo, Jakarta

Hadisuprpto, Paulus. 1997. *Juvenile Delinquency (Pemahaman dan Penanggulangannya)*. P.T. Citra Aditya Bakti, Bandung.

Koeswaji, Hermin Hediati. 1995. *Perkembangan Macam-Macam Pidana Dalam Rangka Pembangunan Hukum Pidana*. P.T. Citra Aditya Bakti, Bandung.

Marlina, 2009. *Peradilan Pidana Anak di Indonesia, Pengembangan Konsep Diversi dan Restorative Justice*. P.T. Refika Aditama. Bandung

Marzuki, Peter Mahmud. 2006. *Penelitian Hukum*. Kencana. Jakarta

Muladi, 1997. *Hak Asasi Manusia, Politik dan Sistem Peradilan Pidana*, Badan Penerbit Universitas Diponegoro, Semarang.

----- . 1995. *Kapita Selekta Sistem Peradilan Pidana*. Badan Penerbit Universitas Diponegoro, Semarang.

----- . (Editor). 2005. *Hak Asasi Manusia. Hakekat, Konsep dan Implikasinya dalam Perspektif Hukum dan Masyarakat*. Refika Aditama, Bandung.

Muladi, Barda Nawawi Arief. 1992. *Teori-teori dan Kebijakan Pidana*. Alumni, Bandung.

----- . 1992. *Bunga Rampai Hukum Pidana*. Alumni, Bandung.

Purnianti, Supatmi, M.S., Tinduk, N.M.M. Tanpa Tahun. *Analisa Situasi Sistem Peradilan Pidana Anak (Juvenile Justice System) di Indonesia*. Unicef

Sudarto. 1981. *Hukum dan Hukum Pidana*. Alumni, Bandung

----- . 1986. *Kapita Selekta Hukum Pidana*. Alumni, Bandung.

United Nation Chidren Fund (UNICEF). Convention on the Right of the Child.

Koran:

Kompas, 25 Agustus 2007.

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