

## **Criminal System and Classification of Criminal Witnesses in Indonesia**



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**ABSTRACT:** This study aims to discuss problems regarding the criminal system for children who are perpetrators of criminal acts and discuss the classification of criminal sanctions against children who commit crimes in Indonesia. This research is a normative yiridis research using secondary data and analyzed based on the laws and regulations related to the juvenile criminal justice system in Indonesia. Based on the results of the study, it is known that the criminal system for child crimes, since the issuance of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, prioritizes Restorative justice in the process of handling child cases. The classification of criminal witnesses as regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System is divided into two, namely the main crime and additional punishment.

**KEYWORDS:** System; Justice; Child; Classification; Sanctions

### **BACKGROUND**

Children are national assets that must grow and develop into a generation that has the potential, plays a role and participates in national development towards achieving the goals of the Republic of Indonesia as mandated in the Preamble to the 1945 Constitution of the Republic of Indonesia. Therefore, the state is obliged to provide protection for children who are growing up. the development is still in the stage of looking for a form of identity, especially when they are dealing with or experiencing conflict with the law, then in the context of social order a juvenile criminal justice system is needed that is able to provide protection and a sense of justice for children so that they still have hope to look to their future. without having to be hampered by suffering from past traumas that have experienced excessive legal action in court.<sup>1</sup>

Legal action imposed on them must prioritize the development and restoration of their rights without being subject to excessive legal action. It becomes a complicated issue in terms of justice, if a legal conflict occurs not only between children and the state or society, but the legal conflict also occurs in relations between children who both have the right to be protected<sup>2</sup>, then how the path of justice should be pursued? Along with the development of the concept of restorative justice, the practice of the juvenile criminal justice system that has been implemented so far is as regulated in Law Number 3 of 1997 concerning Juvenile Courts.

In Law No. 23 of 2002 concerning Child Protection has regulated the rights of a child, both children as victims of a crime and children as perpetrators of criminal acts. Article 18 states: "Every child who is a victim or perpetrator of a crime has the right to legal assistance and other assistance." 11 of 2012 concerning the Juvenile Criminal Justice System which more specifically regulates the system for handling children who are victims and even perpetrators of criminal acts.

Law No.11 of 2012 concerning the Juvenile Criminal Justice System has been ratified and promulgated as a legislative product of the DPR-RI and the Government of 2012, replacing Law no. 3 of 1997 concerning juvenile justice which is no longer in accordance with the times. In this new law, a restorative justice approach is used. Article 6 of Law no. 11 of 2012 defines Restorative justice as follows: "Restorative Justice is the settlement of disputes in criminal cases by involving the perpetrator, victim, family of the perpetrator/victim and other related parties to jointly seek a fair solution by emphasizing restoration back to its original state, not revenge.

The formation of this new law that upholds restorative justice is an affirmation that children who are in conflict with the law are not to be punished but must be guided and fostered so that they can return to being good because the main purpose of restorative justice

<sup>1</sup> Sri Rahayu, 'Diversi Sebagai Alternatif Penyelesaian Perkara Tindak Pidana Yang Dilakukan Anak Dalam Perspektif Sistem Peradilan Pidana Anak', *Jurnal Ilmu Hukum*, 6.1 (2015), 127–142. Hlm. 129.

<sup>2</sup> Rr. Putri A. Priamsari, 'Mencari Hukum Yang Berkeadilan Bagi Anak Melalui Diversi', *Jurnal Law Reform*, 14.2 (2018), 220–235. Hlm. 227.

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is to return to their original condition and provide the inculcation of responsibility to them child.<sup>3</sup> The question now is whether Law no. 11 of 2012 can guarantee an improvement in the criminal justice system for children in Indonesia compared to the previous law, namely Law no. 3 of 1997 concerning Juvenile Court, to ensure justice for children, both children as perpetrators of crimes and children as victims, which is the main goal of the child criminal system is justice.

### PROBLEMS

1. How is the criminal justice system for children in Indonesia?
2. How is the Classification of Child Criminal Witnesses according to Law no. 11 Year 2012?

### RESEARCH METHODS

This study uses a normative juridical research method where the analysis is based on the laws and regulations<sup>4</sup> namely Law no. 11 of 2012 can guarantee the improvement of the criminal justice system for children in Indonesia. The legal data used in this study is secondary data consisting of primary legal materials, namely laws and regulations related to research problems and secondary legal materials related to the problems in this research. The legal data was obtained based on a literature search. Furthermore, the data and legal materials were analyzed descriptively analytically to answer research problems and draw research conclusion.<sup>5</sup>

### DISCUSSION

#### a. Child Criminal System in Indonesia The process of handling children in conflict with the law in Juvenile Criminal Court Procedures:

##### 1) Investigation (Articles 26-29 of Law No.11 of 2012)

Article 1 paragraph (2) of the Criminal Procedure Code states "An investigation is a series of actions by investigators in terms of and according to the method regulated in this law to seek and collect evidence that occurred and to find the suspect". In the applicable law, especially in the Criminal Code, it is known that there are two kinds of investigators, namely officers from the Indonesian National Police (Polri investigators) and certain civil servants who are given special authority by law (PNS investigators). As stated in Article 1 paragraph (1) of the Criminal Procedure Code, namely "Investigators are State Police Officers of the Republic of Indonesia or certain Civil Service Officers who are given special authority by law to conduct investigations.

The case "Criminals committed by children, in general the provisions that are violated are criminal regulations in the Criminal Code, then the investigation is carried out by public investigators in this case Polri investigators.<sup>6</sup> In line with this, with the enactment of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, it has been emphasized that investigations of children's cases are carried out by Polri investigators. The legal basis is in Article 26 paragraph (1) of the Juvenile Criminal Justice System Law which stipulates that investigations into children's cases are carried out by investigators determined based on a Decree of the Head of the Indonesian National Police or other officials appointed by the Head of the Indonesian National Police.

Investigators on duty are Polri investigators, but not all Polri investigators can conduct investigations into child cases. In the Juvenile Court Law, it is known that there are child investigators, these investigators are authorized to carry out investigations. Child investigators are appointed by the National Police Chief with a separate decree for this purpose.<sup>7</sup> In order to be appointed as a child investigator, the Juvenile Criminal Justice System Act through article 26 paragraph (3) stipulates the conditions that must be met by a member of the National Police, there are three, namely first having experience as an investigator, second having interest, training, dedication, and understand children's problems, and the third has attended technical training on juvenile justice.

Being a child investigator is not enough just based on an adequate rank, but also requires someone's experience in conducting investigations, so that it is very supportive from the technical side of the investigation. Besides that, no less important, is the interest, attention, dedication, and understanding of children's problems will encourage child investigators to gain knowledge about children's problems so that in carrying out their duties investigators will pay attention to the interests of children.<sup>8</sup>

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<sup>3</sup> Yul Ernis, 'Diversi Dan Keadilan Restoratif Dalam Penyelesaian Perkara Tindak Pidana Anak Di Indonesia', *Jurnal Hukum*, 10.2 (2015), 136–147. Hlm. 145.

<sup>4</sup> I Made Pasek Diantha, *Metodelogi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* (Jakarta: Prenada Media Group, 2017). Hlm. 47.

<sup>5</sup> Galang Taufani Suteki, *Metodologi Penelitian Hukum ( Filsafat, Teori, Dan Praktik)* (Depok: Rajawali Pers, 2017). Hlm. 62.

<sup>6</sup> Josephin Mareta, 'Mekanisme Penegakan Hukum Dalam Upaya Perlindungan Hak Kelompok Rentan (Anak Dan Perempuan)', *Jurnal HAM*, 7.2 (2016), 141–155. Hlm. 147.

<sup>7</sup> Darwan Prinst, *Hukum Anak Indonesia* (Jakarta: Citra Aditya Bakti, 2009). Hlm. 38.

<sup>8</sup> Yulia Kurniaty Purnama, Pancar ChandraJohnny Krisnan, 'Pelaksanaan Diversi Ditingkat Pengadilan Berdasarkan Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak', *Varia Justicia*, 12.1 (2016), 222–234. Hlm. 231.

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Because there are no child investigators, an ordinary investigator can carry out investigations for criminal acts committed by adults, or other investigators determined by applicable law. Investigations of children take place in a family atmosphere, and for this reason, investigators are required to ask for consideration or advice from community advisors in accordance with Article 64 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System. Examined in a family atmosphere, meaning that when examining a child suspect, investigators do not wear uniforms/services and approach effectively, actively and sympathetically. A family atmosphere also means that there is no coercion, intimidation, or the like during the investigation.

### 2) Arrest and Detention (Article 30-40 Law No.11 Year 2012)

The beginning of the process of a criminal case begins with the act of arresting someone suspected of committing a crime. The arrest is for the purpose of investigation or for the purpose of investigation (Article 16 of the Criminal Procedure Code). Arrest is an act in the form of temporary restraint on the freedom of a suspect or defendant by placing him in the State Detention Center (Rutan). According to Darwan Prinst, the conditions for making an arrest are:<sup>9</sup>

The first requirement is the Formal Terms which consist of; The first is carried out by the POLRI investigator or investigator on the orders of the investigator, the second is accompanied by an arrest warrant from the investigator, and the third is to submit an arrest warrant to the suspect and a copy thereof to his family. In addition to the formal requirements, there is also a second requirement, namely Material Requirements which consist of; First, there is sufficient initial evidence (Article 17 of the Criminal Procedure Code), and second, namely the maximum arrest for one time 24 hours.

The arrest of a child turns out to be in the Law on the Juvenile Criminal Justice System and the previous law does not regulate the matter of arrest, therefore the act of arresting a child applies the provisions of the Criminal Procedure Code as a general rule.<sup>10</sup> The authority to arrest and detain children according to the provisions of Article 43 of Law no. 3 of 1997 concerning Juvenile Justice stipulates that activities related to arrest and detention follow the provisions of the Criminal Procedure Code.

Article 21 of Law no. 11 of 2012 states that, in the event that a child under 12 years of age commits or is suspected of committing a crime, investigators, community advisors and professional social workers make a decision to hand over to parents/guardians or to participate in education and coaching programs in government agencies at least 6 months, but if within that time the child still needs education, it can be extended for 6 months. Thus, the position of the child in the process of investigation and examination there are things that give rise to children's rights in particula.

Detention is "the placement of a suspect/defendant in a certain place (State Detention House) by investigators, or public prosecutors, or judges. For this reason, there must be a detention order from the investigator or public prosecutor or a detention order from the judge which when carrying out the detention is handed over to the suspect/defendant and a copy is submitted to the family. The detention itself is in accordance with the rules contained in Article 1 number 21 of the Criminal Procedure Code. Article 22 of the Criminal Procedure Code states that the types of detention can be in the form of; State detention, which may include; Correctional Institutions, Police Stations, Prosecutors' Offices and others. In addition there is also House Arrest and City Detention.

Detention must meet formal and material requirements.<sup>11</sup> The formal condition for carrying out a detention is that it is carried out by an investigator or assistant investigator upon the delegation of authority from a public prosecutor investigator or judge and is accompanied by a warrant for detention or determination of detention from the investigator, or legal prosecutor or judge. Meanwhile, the material requirement for making detentions in accordance with Article 21 of the Criminal Procedure Code is that the suspect/defendant is suspected of committing a crime based on sufficient preliminary evidence, who is feared to have fled, damaged/lost evidence or committed a suspected criminal act or a certain crime.

Detention "of a child can only be carried out on the following conditions: a). The child is 14 (fourteen) years old or more. and b). Suspected of committing a crime with a threat of imprisonment of 7 (seven) years or more. As long as the child is in detention, the physical, spiritual and social needs of the child must be met. In terms of detention of children, Law No. 11 of 2012 regulates several time limits for detention of children based on the classification, namely:

- a) a) Detention "based on article 32, namely detention of a child so as not to escape or damage and destroy evidence for the purpose of investigation is carried out for a maximum of 7 (seven) days. The period of detention may be extended at the request of the investigator and extended by the public prosecutor for a maximum of 8 (eight) days. However, within the period as stipulated, the child must be expelled by law. (article 33)."
- b) b) Detention in the interest of the Prosecution, the Public Prosecutor may hold detention for a maximum of 5 (five) days. And it can be extended by a district court judge for a maximum of 5 (five) days. (article 34)"
- c) c) Detention "in the interest of examination in court the judge may apply for detention for a maximum of 10 (ten) days and can be extended by the chairman of the district court for a maximum of 15 (fifteen) days. (article 35)"

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<sup>9</sup> Prinst. *Op cit.* Hlm. 40

<sup>10</sup> Lilik Purwastuti Yudaningsih, 'Penanganan Perkara Anak Melalui Restorative Justice', *Jurnal Hukum*, 13.1 (2014), 67–79. Hlm. 70.

<sup>11</sup> Nur Hidayati, 'Peradilan Pidana Anak Dengan Pendekatan Keadilan Restoratif Dan Kepentingan Terbaik Bagi Anak', *Ragam*, 13.4 (2013), 144–151. Hlm. 148.

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- d) d) Detention "for the purpose of examining the appeal level, the appellate judge may make a detention for a maximum of 10 (ten) days and can be extended by the chairman of the court for a maximum of 15 (fifteen) days."
- e) e) Detention "in the case of necessity for the sake of examining the level of cassation, the judge of cassation can hold detention for 15 (fifteen) days and the Chairperson of the Supreme Court can extend it for a maximum of 20 (twenty) days."

### 3) Prosecution (Article 41-42 of Law No.11 of 2012)

The purpose of prosecution is "to sue a defendant before a judge by submitting a case file to the judge with a request, so that the judge examines and then decides on the criminal case against the defendant, the same applies to children as defendants. If the investigation of a child's case against the law is carried out with a child investigator, then at this stage of prosecution it is carried out" by the child public prosecutor, whose legal basis is regulated in Article 41 paragraph (1) which reads "Prosecution of children's cases is carried out by the public prosecutor determined based on the prosecutor's decision. attorney general or other officials appointed by the attorney general."<sup>12</sup>

The requirement "to become a Public Prosecutor is regulated in Article 41 paragraph (2) which is the main requirement, namely, Having experience, having interest, attention, dedication, understanding children's problems, especially having attended technical training on juvenile justice. However, if there is no public prosecutor who meets the existing requirements, the prosecution can be carried out by the public prosecutor who carries out the task of prosecuting adults. Prosecuting a child who is a defendant, the main thing that the public prosecutor does is seek diversion.<sup>13</sup> Diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside of criminal justice. In other words, the public prosecutor carries out the first process, namely the process of bringing together the perpetrators and victims in a family manner to discuss the cases that occurred. The concept of diversion is prioritized in order to maintain and protect the interests of children to reach the best agreement for children. The prosecution process "attempts at diversion must be attempted no later than 7 (seven) days after receiving the case file from the investigator, and diversion efforts are carried out no later than 30 (thirty) days. In the event that the diversion is successful in reaching an agreement, the public prosecutor submits the diversion report along with the diversion agreement to the head of the district court for determination. However, in the event that the diversion fails, the public prosecutor is obliged to submit the official report and submit the case file to the court. As regulated in the Juvenile Criminal Justice Act, during the Prosecution period, if necessary, a child may be detained for a maximum of 5 (five) days after taking into account the considerations that underlie the child's obligation to be detained in the prosecution process. There are several children's rights that must be considered in the prosecution process, namely:

- a) Determining the detention period for children, only from the point of view of the interests of the examination.
- b) Making an indictment that the child understands;
- c) Immediately delegate the case to the district court;
- d) Carry out the determination of judges with the soul and spirit of coaching or carry out rehabilitation.

Protection of children in the examination by the prosecutor and reading the indictment before the court will give rise to children's rights that are protected by law, including the right to get relief from the detention period from the prosecutor, the right to be protected from threats, persecution from any party, the right to get facilities in the context of an examination. and prosecution and even the right to be accompanied by legal counsel to defend the interests of children.

### 4) Examination in Court Sessions (Articles 52-62 of Law No.11 of 2012)

Examination of the "Children's Court" is carried out by a special judge, namely a child judge. The appointment of child judges in accordance with Article 52 paragraph (1) which stipulates that judges who handle children's cases are judges appointed by the head of the court, who are appointed no later than 3 (three) days after receipt of case files from the public prosecutor. At this stage, the judge is also obliged to re-attempt the diversion effort within 7 (seven) days after being appointed by the head of the district court as a juvenile judge. The diversion process can be carried out in the mediation room provided in the district court or at a place agreed by the parties, essentially the place is not open to the public.<sup>14</sup>

Examination of "trials in children's cases by judges is a judge who has been appointed based on a decision of the Chief Justice of the Supreme Court at the suggestion of the head of the district court concerned. By fulfilling every requirement of the judge as regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System in Article 43 paragraph (2). Examination and decision of children's cases in the first instance even up to the level of cassation using a single judge. Handling with a single judge is intended so that the child's trial can be completed quickly."

Examination of the "children trial of examining officers, namely judges, public prosecutors and legal advisors, does not use a gown. Also, the clerk on duty does not wear a suit, with the aim that in the trial it does not give a scary and scary impression to the child

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<sup>12</sup> M.Nasir Djamil, *Anak Bukan Untuk Dihukum* (Jakarta: Sinar Grafika, 2012). Hlm. 51.

<sup>13</sup> Marlina, *Pengantar Konsep Diversi Dan Restorative Justice Dalam Hukum Pidana* (Medan: Universitas Sumatera Utara, 2010). Hlm. 47.

<sup>14</sup> Nurini Aprilianda, 'Implikasi Yuridis Dari Kententuan Diversi Dalam Instrumen Internasional Anak Dalam Hukum Anak Di Indonesia', *Jurnal Arena Hukum*, 5.1 (2012), 31–41. Hlm. 36.

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being examined. In addition, to make the trial run with full family. In the implementation of juvenile court proceedings, it is carried out behind closed doors in accordance with Article 153 paragraph (3) of the Criminal Procedure Code and Article 54 of the Juvenile Criminal Justice System Law. A closed trial is required for a child defendant to be accompanied by a parent/guardian, an advocate or other legal aid provider, and a community advisor.

The trial of children basically adheres to the In Absentia Court system, which is an attempt to try someone and punish him without the defendant being present. At the trial to hear witness testimony, it could be heard even though the child defendant was not present. Although in principle every witness is heard at trial in the presence of the defendant so that the defendant can refute the witness's statements for things that are not true, in cases of children this is not always the case. At the level of witness examination, the defendant may not be present in accordance with the provisions of Article 58 paragraph of the Juvenile Criminal Justice System Act, the judge may order the child under the courtroom to leave the courtroom with the intention of avoiding things that can affect the child's soul.

### **b. Classification of Child Criminal Sanctions According to Law no. 11 Year 2012**

In criminal law, a judge may not impose a prison sentence that exceeds the maximum limit set by a statutory provision.<sup>15</sup> In the case of children, the law on the child protection system has regulated the maximum threat of imprisonment which is different from adults. The punishment for children is divided into 2 (two) namely:

#### **1) Principal crime**

"Main criminals consist of warnings (Article 72 of Law No.11 of 2012), Criminal conditions with conditions, Job training (Article 78 of Law No.11 of 2012), Coaching in institutions (Article 80 of Law No.11 of 2012), and Prison. (Article 81 of Law No.11 of 2012). What is meant by the warning penalty is a minor crime that does not result in restrictions on children's freedom. In other words, the punishment is a warning in the form of a warning and a warning received by the child so as not to repeat mistakes/violations that may harm others.

Furthermore, what is meant by "criminal" with these conditions, Article 73 of the Juvenile Criminal Justice Act regulates the maximum sentence imposed by a judge in the case of a maximum imprisonment of 2 (two) years. However, it has general and specific requirements. The general requirement is that the child will not commit a crime again while serving a criminal period with conditions. Meanwhile, special requirements are requirements issued by judges to commit or not to commit certain criminal acts that have been determined by the judge. Certain criminal acts that cannot be violated by children are the main requirements, besides that there are several things that will be issued by the judge as conditions that must be carried out by children, including reporting obligations and other conditions that must be obeyed by children. Criminal conditions imposed by judges have several types of detention for children with the aim of fostering children, namely in the form of: "Coaching outside the institution (Article 75) Coaching outside the institution can be in the form of participating in mentoring and counseling programs carried out by coaching officials and from social organizations. public. Community service (Article 76) The Community Service Crime is intended to educate children by increasing awareness in terms of positive activities in the community. Supervision (Article 77) Supervision for children is placed under the supervision of the public prosecutor and is guided by a community advisor.

Furthermore, "what is meant by job training (Article 78 of Law No. 11 of 2012) is that it is carried out in institutions that carry out job training according to the age of children with job training for a minimum of 3 (three) months and a maximum of 1 (one) year. What is meant by criminal coaching in institutions is carried out in training places organized by the government or the private sector. This guidance is imposed if the circumstances and actions carried out by the child do not endanger the community, with a minimum of 3 (three) months and a maximum of 24 (twenty four) months. However, with the condition that children with good behavior who have undergone (one half) of the coaching period of more than 3 (three) months get parole.

Imprisonment (Article 81 of Law No. 11 of 2012) is that in terms of imprisonment for children can only be done as a last resort and children who are sentenced to prison in the Special Child Development Institute (LPKA) only if the child's condition can endanger the community, with a criminal threat imprisonment that can be imposed for a maximum of (one-half) of the maximum penalty of imprisonment for adults. The duration of child development is carried out until the child is 18 (eighteen) years old, and children who have undergone (one half) of the length of coaching and have a record of good behavior are entitled to parole. If the crime committed by a child is an act that can be punished for life, the child can only be sentenced to a maximum imprisonment of 10 (ten) years.

#### **2) Additional Criminal**

Pidana tambahan yang dapat dijatuhkan kepada anak yang terpidana adalah perampasan keuntungan yang di peroleh dari tindak pidana; atau pemenuhan kewajiban adat. Tindakan yang berlaku dalam Undang-undang Sistem Peradilan Pidana Anak, tindakan itu meliputi; Pengembalian kepada orang tua. Penyerahan kepada seseorang. Perawatan di rumah sakit jiwa, Perawatan di Lembaga Penyelenggaraan Kesejahteraan Sosial (LPKS). Kewajiban mengikuti pendidikan formal dan/atau pelatihan yang diadakan oleh

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<sup>15</sup> Marcus Priyo Gunarto, 'Sikap Memidana Yang Berorientasi Pada Tujuan Pemidanaan', *Jurnal Mimbar Hukum*, 21.1 (2019), 83–108. Hlm. 92.

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pemerintah atau badan swasta. Pencabutan surat ijin mengemudi, Perbaikan akibat tindak pidana.

### CLOSING

#### Conclusion

The criminal system for criminal acts of children, since the issuance of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, prioritizes Restorative justice in the process of handling child cases. Starting from the investigation process to the judge's decision in this law, the interests of children during the trial period are very important, especially in handling the child's psyche. With the aim of protecting the rights of children, especially the rights of children who are in conflict with the law, in order to avoid trauma and even disorders of the child's psyche and the process of resolving children's cases with methods and ways that are more focused on the welfare and well-being of children.

The classification of criminal witnesses as regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System is divided into two, namely the main crime and additional punishment. The main punishment consists of a warning sentence, conditional punishment, job training, coaching in institutions, and imprisonment. Meanwhile, additional punishment is the deprivation of profits obtained from criminal acts or the fulfillment of customary obligations.

#### Suggestion

Indonesia "indeed already has good legal principles and rules related to the juvenile criminal justice system. However, in its implementation in the field, it is necessary to have good coordination from the police, prosecutors and judges in handling children who are in conflict with the law in accordance with applicable law, especially cooperation in monitoring and fostering children in institutions must also be in accordance with the rules and regulations for the achievement of children's welfare. In essence, every existing process is carried out in accordance with applicable rules and there are no deviations, the goal in the Juvenile Criminal Justice System Act is to achieve justice based on Restorative justice. However, the role of families, communities and the surrounding environment is very important, especially in terms of preventing criminal acts by children, as well as the role of the community in post-completion recovery.

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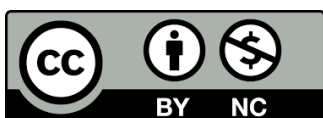
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