

## **LEGAL CONSTRUCTION IS IDEAL FOR INLAND CHILDREN INVOLVED IN SMUGGLING EXPLOSIVES USING BOATS IN THE WATERS OF CENTRAL KALIMANTAN**

Dasuki Herlambang<sup>1</sup>, Yusriadi<sup>2</sup>, Sukirno<sup>3</sup>

1Doctoral Program in Law, Faculty of Law, Diponegoro University, Semarang

2.3Lecturer in Doctoral Law, Faculty of Law, Diponegoro University, Semarang

[dasukiherlambang@students.undip.ac.id](mailto:dasukiherlambang@students.undip.ac.id).

### **ABSTRACT**

This study aims to examine the ideal legal construction for inland children involved in smuggling explosives using boats in the waters of Central Kalimantan. This research is normative juridical. This research uses various approaches: Statute *approach*, conceptual approach, and case study. The results showed that; 1) The legal status of children who are in conflict with the law in carrying explosives is as follows; Children who are in conflict with the law can be pinned on every child who has the status of suspect, victim, and witness in a criminal case. Children who are facing the law according to Article 1 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System are children who are facing the law are; a) children who are in conflict with the law, b) children who are victims of the law, and c) children as witnesses to criminal acts. 2) Ideal Legal Construction for Inland Children Using Boats in Central Kalimantan Waters through the Settlement of Child Criminal Cases through Penal Mediation. In the event of a criminal act committed by a child under the age of 18 years and submitted but has not reached the age of 21, the child is still submitted to the juvenile court.

*Keywords: legal construction, ideal, inland child, explosives, boats, waters, Central Kalimantan*

## INTRODUCTION

### Background

Criminal acts committed by children as criminal offenders, which in the end the consequences of the act require the child as a criminal offender to carry out a criminal sanction based on the criminal act that the child commits and the behavior can actually be categorized as an act of child delinquency. Child delinquency is known as the term Juvenile delinquency which comes from Juvenile which means young, children, young people, characteristic traits in youth, typical traits in the adolescent period. Meanwhile, delinquency means wrong doing, neglected/neglected which is then expanded to mean being evil, a-social, criminal, rule-breaker, usurper, troublemaker, terrorist, irreparable, wicked and others.<sup>1</sup>

*Juvenile delinquency* is a child's behavior that is an act that violates norms, which when committed by an adult is referred to as a crime and is too cruel if the child criminal offender is referred to as a child criminal, not a juvenile delinquency while if you pay attention to the Implementation/Executive policy related to children who commit delinquency, the mention of children in Correctional Institutions not as "Child Inmates" but as "Correctional Students". The 1945 Constitution in the third amendment ratified on November 10, 2001 affirms in Article 1 Paragraph (3) that Indonesia is a state of law (*Rechtsstaat/rule of law*).<sup>2</sup>

The handling of criminal cases against children who are in conflict with the law and are recidivists, is carried out by applying criminal witnesses, this can be seen that every child criminal perpetrator will receive a prison sentence as a form of responsibility for the criminal offense committed and even more so when the child perpetrator repeats his criminal act. So, the charges and verdicts that will be received by the child offender will again be sentenced to prison.

Juridically, based on Law No. 31 of 2004 concerning Fisheries and Law No. 45 of 2009 concerning Amendments to Law No. 31 of 2004 concerning Fisheries, several types of fisheries offenses are known, regulated in articles 86 to 101. The fisheries offense is divided into pollution offenses, destruction of fish resources and fishing using explosives, fish resource management offenses and pollution offenses, destruction of fish resources and fishing using prohibited substances. The use of

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<sup>1</sup> Nasriana, *Criminal Law Protection for Children in Indonesia*, (Jakarta: Grafindo Persada, p. 25.

<sup>2</sup> Friedrich Julius Stahl stated that *Rechtsstaat* has the following characteristics: 1) Human rights; 2) Political Triage; 3) Government based on regulations (*wetmatigheid van bestuur*); 4) Administrative Courts in Disputes. A.V.Dicey, an Anglo Saxon Expert gives the following characteristics of the Rule of Law: a. Rule of Law, in the sense that there should be no arbitrariness as a person should only be in law if he violates the law; b. equal standing before the law both for ordinary people and for officials; and c. the guarantee of human rights by the Law and Court Decisions. See: Moh.Mahfud, 2000, *Democracy and the Constitution in Indonesia*, Studies on Political Interaction and Constitutional Life, Jakarta: Rineka Cipta, pp. 27-28. See also: Zulkarnain Ibrahim, *Regulation of Wages in an Effort to Realize Social Welfare with Substantive Justice*, Dissertation, Postgraduate Law of UNSRI Palembang 2014, p.1

chemical, biological, explosives, tools and/or methods, and/or buildings that can harm and/or endanger the sustainability of fish resources and their environment which not only kills fish directly, but can also endanger human health and harm fishermen and fish farmers. If damage occurs as a result of the use of the materials and tools in question, retrieving the original state will take a long time, and may even result in extinction.<sup>3</sup>

The use of fishing gear that is not suitable and that is in accordance with the requirements or standards set for the type of equipment determined by the State includes fishing gear that is prohibited by the State. The prohibition of the use of fishing gear and/or fishing aids is necessary to avoid fishing using equipment that can be detrimental to the sustainability of fish resources and the environment. This is done considering that Indonesia's fisheries management area is very vulnerable to the use of fishing equipment that is not in accordance with the characteristics of nature, as well as the fact that there are various types of fish resources in Indonesia that are very varied, avoiding the catch of fish species that are not the target of catch.<sup>4</sup>

The facts in the field are that the use of aquatic resources, especially fish, is not in accordance with the rules that are enforced. The use of chemicals, explosives, anesthesia, and the use of trawl fishing gear (tiger trawler) that can endanger the sustainability of fish resources and the environment. The use of such fishing gear is prohibited by the state and is included in the criminal act. This activity causes the disruption of marine biota ecosystems and damage to coral reefs. The problem of illegal fishing is rampant in Indonesian waters carried out by irresponsible individuals, especially large-scale and small-scale fishermen.

This is due to the high market demand and demand and increasingly fierce competition. On the one hand, fishermen, especially small fishermen, do not have modern fishing equipment compared to large-scale fishermen. So they use instant and practical ways to get the catch. One of them is by using bombs and chemical substances that are very dangerous both for the marine environment and endangering the fishermen themselves. Poverty and weak oversight of fishing practices in developing countries lead to relatively greater destruction of ecosystems, especially in Asia, such as the Philippines, Thailand and Indonesia.

The use of chemicals, biological materials, explosives, tools or means, or buildings for fishing and fish cultivation as intended in paragraph (1), is allowed only for research (paragraph 5). Further provisions regarding the use of biological materials, chemicals, explosives, tools or means, or buildings as intended in paragraph (5), are regulated by government regulations paragraph (6). With the regulation of the prohibition of using explosives for fishing, it will have a big impact on the existence

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<sup>3</sup> Suharto, *Chemical Waste in Air and Water Pollution*, (Yogyakarta: Andi Offset, 2011), p. 61.

<sup>4</sup> Kusnadi, *Fishermen's Empowerment and Coastal Ecosystem Dynamics*, (Yogyakarta: ArRuzz, Media, 2009), p. 37.

of fish habitats and fish resources themselves, because naturally the use of explosives and the like will kill all types of fish without exception, including plankton that are food for the fish themselves. Meanwhile, in article 9 of Law No. 45 of 2009 concerning amendments to Law No. 31 of 2004 concerning fisheries. states that: Everyone is prohibited from owning, possessing, carrying, and/or using fishing gear and/or fishing aids that disturb and damage the sustainability of fish resources as intended in paragraph (1) regulated by the Regulation of the Minister paragraph (2).<sup>5</sup>

In prosecuting, judges try to re-apply the law that has been violated, one of the efforts to apply the law is through the Children's Court, as an effort to protect children to educate children without ignoring the upholding of justice. Juvenile justice is held with the aim of re-educating and improving children's attitudes and behaviors so that children can abandon bad behaviors that children have been doing. Child protection, which is sought by providing guidance or education in the context of rehabilitation and resocialization, is the foundation of the Juvenile Court.

Article 1 point 1 a of Law Number 4 of 1979 concerning Child Welfare specifies "Child Welfare is a system of life and livelihood of children that can guarantee their growth and development reasonably both spiritually, physically and socially". Realizing the welfare of children, upholding justice is the main task of the judiciary according to the law. The judiciary not only prioritizes criminal imposition, but also protection for the future of children, which is the goal achieved by the Children's Criminal Court.

The philosophy of Juvenile Justice is to realize the welfare of children, so that there is a close relationship between the Juvenile Criminal Court and Law Number 4 of 1979 concerning Child Welfare. The Juvenile Court should provide protection, guidance, and education through the decisions handed down. The aspect of Child Protection in juvenile criminal justice is reviewed from a psychological perspective so that children avoid violence, neglect, persecution, pressure, improper treatment such as obscenity, anxiety and so on. To realize this, there needs to be a law that is based on it, as a guideline and a means of achieving welfare and legal certainty to ensure the treatment and actions taken against children.

In realizing child welfare, children need to be tried by a separate judicial body. Efforts to realize children's welfare are part of increasing coaching for all members of society, which is inseparable from the continuation and preservation of the nation's civilization, which is important for the future of the nation and state.<sup>6</sup>

Children's issues are an important topic to discuss because "Children are part of the younger generation as one of the human resources who are the potential and successors of the ideals of the nation's struggle. Children have a strategic role and have special characteristics and traits, requiring Coaching and Protection in order to

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<sup>5</sup> Article 9 of Law Number 45 of 2009 amends Law Number 31 concerning fisheries.

<sup>6</sup> Darwan Prinst, *Indonesian Children's Law*, (Bandung: Cita Aditya Bhakti, 2003, p. 2

ensure physical, mental and whole, compatible, harmonious and balanced growth and development.

In an effort to realize the welfare of children by providing guarantees for the fulfillment of their rights and the existence of treatment without discrimination, children need to get the widest opportunity to grow and develop and be optimal both physically, mentally and socially and have noble character, so that in the future they will be able to shoulder responsibilities as a generation of the ideals of the nation's struggle, as the goal of the Protection of Children.

Responding to children who have problems or are dealing with the law, namely those who commit acts that violate the provisions of the applicable norms or legal circumstances, must be carried out specifically or differentiated starting from investigators, public prosecutors, and judges and the court is also special.

### **Problem Statement**

1. What is the legal status of inland children involved in carrying explosives using boats in Kalimantan waters?
2. What is the ideal legal construction for inland children who use boats in the waters of Central Kalimantan?

### **THEORETICAL FRAMEWORK**

The crime of fishing using explosives is one of the essential problems in criminal law, the problem of the crime of fishing with explosives needs to be given an adequate explanation because the explanation of this problem will provide an understanding of when an act can be qualified as a criminal act/act and not. Qualification ( *qualification, characterization, qualify*) is an action that must be carried out in the process of making judicial decisions.

The function of the qualification is to organize a set of facts at hand, in other words, the qualification as an interpreter of the facts by fulfilling the criminal elements so that the juridical meaning can be known. To find out whether the qualification of the crime of fishing with explosives is a fishing crime that is covered by prohibited acts and liability, the following is a summary of the case decision regarding the explanation of the elements of the crime of fishing using explosives.

In order to provide protection and legal protection to Indonesian children who have a deviant attitude and commit unlawful acts, so that they can grow and develop as the shoots of the nation that behave well and responsibly and grow and develop healthily both physically and spiritually. As a young generation, children are also human resources which are the dominant factors for the progress and development of the nation. Based on this mindset, the law on Juvenile Criminal Justice is a must for the existence of children in this archipelago. Criminal justice for children of

perpetrators has a different side, on the one hand as recognized by the children's convention, that children need special protection. On the other hand, these "child criminals" are dealing with the position of society that feels disturbed by the evil behavior of these children. Then these children will be confronted with law enforcement officials who are narrowly only tasked with implementing the law so that there are violations and procedures for protecting children's behavior.

Law for children can be interpreted as an effort to protect the law against various fundamental *rights and freedoms of children* as well as various interests related to child welfare. So the issue of legal protection for children covers a very wide scope. Departing from the discussion above, the scope of legal protection for children includes:<sup>7</sup>

- a. protection of children's freedom,
- b. protection of children's human rights,
- c. protection of all interests of the child related to welfare.

From the perspective of the state, the state's commitment to protect its citizens, including children, can be found in the preamble to the 1945 Constitution. This has been written and reflected in the sentence "then to form a government of the State of Indonesia that protects the entire Indonesian nation and all Indonesian blood and to advance the general welfare, educate the life of the nation, and participate in implementing a world order based on independence, lasting peace and social justice".<sup>8</sup>

The legal protection for children provided by the Criminal Code is as follows:<sup>9</sup>

- a. maintaining the modesty of children, which is contained in Article 283 of the Criminal Code prohibits children from offering, renting for their dives or temporarily, conveying in their hands or showing a writing, drawing, item that is offensive or modest. For example, pornographic images, pornographic writings or contraceptives.
- b. The prohibition of having sex with an underage person, in Article 287 of the criminal code prohibits people from having sex with a woman who is not even 15 (fifteen) years old. Both the intercourse is carried out on the basis of consensuality between the perpetrators.
- c. The prohibition of sexual immorality with children is regulated in Article 290, Article 294, Article 295 and Article 297 of the Criminal Code. Article 290 explains the prohibition of sexual immorality with adults, both men and women, who are in a state of fainting or in a state of helplessness. Article 294 concerning the prohibition of persons who commit obscenity with their own children or pets or minors, orphans, and pets under his supervision

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<sup>7</sup> Waluyo, *Child Protection Law*, (Bandung: Mandar Maju, 2009), p. 1.

<sup>8</sup> Ibid.

<sup>9</sup> Darwin Prints, *Indonesian Children's Law*, (Bandung: Ciytra Aditya Bakti, 1997), p. 99



## RESEARCH METHODOLOGY

### 1. Types of Research

This research is normative juridical. This research uses various approaches, with the aim of obtaining information from various aspects of the issue under study.<sup>10</sup> Therefore, to solve the problems that are the subject of discussion in this study, the following approaches are used: Statute *approach*, conceptual approach, and case study.

### 2. Research Data Sources

The data source of a study is primary data and secondary data. Because this research is empirical and normative legal research, the sources studied are primary data sources, secondary data, and tertiary data.<sup>11</sup>

Primary legal materials are data that are materials in binding legal research sorted based on the hierarchy of legislation.<sup>12</sup> Secondary legal materials, which can be in the form of draft legislation, research results, textbooks, scientific journals, newspapers (newspapers), *pamphlets*, *lefleats*, brochures, and internet news.<sup>13</sup> Tertiary legal material, in the form of dictionaries, encyclopedias, lexicons and others related to the problem under study.<sup>14</sup>

### 3. Technical Data Collection

The studies conducted are field studies (*field research*) and literature studies (*library research*) which use primary data and secondary data. Perimer data through field studies, secondary data in this study were obtained through literature studies.

### 4. Data Analysis

The research technique in this study is descriptive analytical, where the analysis is carried out critically. The data collected in this study will be analyzed

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<sup>10</sup> Johnny Ibrahim, *Theory and Methodology of Normative Legal Research* (Malang: Banyumedia Publishing, 2006), p. 101.

<sup>11</sup> Soekanto and Mamudji, *Normative Legal Research, A Brief Review*.

<sup>12</sup> Mahmud Marzuki and Peter Mahmud, "Legal Research," *Journal of Legal Research* (Jakarta: Kencana Prenada Media Group, 2011), p. 25.

<sup>13</sup> Satjipto Rahardjo, *The Science of Law: The Search, Liberation and Enlightenment*. (Semarang: Diponegoro University, 2003).

<sup>14</sup> Marzuki, *Legal Research*.

descriptively with a *qualitative approach*, namely by providing a thorough and in-depth explanation and explanation (*holistic / verstelen*).<sup>15</sup>

## RESEARCH RESULTS

### Legal Status of Children Facing the Law in Carrying Explosives

Provisions that regulate the possession of sharp weapons are Emergency Law Number 12 of 1951. The provision aims as a preventive effort to prevent or reduce the use of sharp weapons for crimes. In the Emergency Law, in addition to regulating firearms, and explosives, it also regulates sharp weapons. Sharp weapons may be used under Emergency Law Number 12 of 1951, for agriculture or for household work or livelihood that does not conflict with the applicable laws and regulations.

The exception of sharp weapons can be owned by a person, namely ancient heirlooms, if they are to be used, they must obtain permission from the police or have been registered with the Ministry of Education and Culture and have a certificate as an ancient heirloom, and can be used for the purposes of customary events. In Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, Article 15 paragraph (2) letter e, it is explained that what is meant by sharp weapons is a stabbing weapon, a sharp stabbing weapon, a sharp weapon that beats, does not include objects or goods used for agriculture, for household work, for the purpose of legal work, and as ancient heirlooms for the benefit of customs.

Sharp weapons are categorized in Emergency Law Number 12 of 1951, as follows: Battering weapons (*slag wapen*); stabbing weapons (*weapon stabs*); and stabbing weapons (*weapon thrusts*).

According to Andi Hamzah, the explanation presented in the law is not specific or not yet explicit regarding slashing weapons such as klewang and machete. Because it is not explicitly and specifically stated, this can raise doubts about sharp weapons. The Law that regulates the Juvenile Court is Law No. 3 of 1997 which came into effect on January 13, 1998 or one year from the date of promulgation of the Law. The Children's Court was formed as an effort to foster and protect children in order to ensure the growth and development of children's physical, mental, and social development in a whole, harmonious, harmonious and balanced manner. Therefore, the provisions regarding the implementation of courts for children are carried out specifically. However, the applicable procedural law (KUHP) is also applied in the

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<sup>15</sup> Sugiyono, "Quantitative, Qualitative and R&D Research Methods," 26th (Bandung: Cv. Alfabeta, 2018), p. 34.



procedural law of the juvenile court, unless otherwise specified in Law Number 3 of 1997 (article 40).

Regarding the duties and authority of the juvenile court (juvenile court), article 3 of Law Number 3 of 1997 states that the juvenile court is tasked and authorized to examine, decide, and resolve juvenile cases as stipulated in the law. Article 21 affirms that the juvenile court is authorized to examine, decide and resolve criminal cases in the case of delinquent children. In principle, the duties and authority of the high school juvenile court with the court of other criminal cases. Although the principle is the same, it must still be noted that child protection is the main goal. Children are part of the young generation as one of the human resources, are potential and successors to the ideals of the nation's struggle. In addition, children as part of the family, are the baby, successors, and hopes of the family. That is where the importance of juvenile court lies as one of the means for the protection of children who are disturbed in their mental and social balance so that they become delinquent children.

#### 1. Suspects and Defendants

The issue of age, of course, must also be related to the time of committing a criminal act. Regarding the issue of age, article 4 39 of Law Number 3 of 1997 stipulates as follows:

- 1) The age limit for delinquent children who can be filed for a juvenile trial is at least 8 (eight) years old but has never been married.
- 2) In the event that the child commits a criminal act at the age as intended in paragraph (1) and is submitted to the juvenile court after the child concerned exceeds the age limit, but has not reached the age of 21 (twenty-one) years, it shall still be submitted to the juvenile court.

#### 2. Rights of the accused

There are several rights of suspects or defendants that are sourced from the regulations of the Juvenile Court Law. The rights that can be intervened include the following:

- 1) The right of children who have not reached the age of 8 (eight) years to be handed back to parents, guardians or foster parents to be fostered. If it cannot be built again, it will be returned to the social department.
- 2) The right to remain in the juvenile trial, even if they commit a criminal act together with an adult or a member of the ABRI (article 7).

- 3) The right to be examined in a closed session, except in certain cases and deemed necessary can be done in an open session (article 8 paragraphs (1) and (2).
- 4) The right to be abbreviated by the name, name of the parent, guardian, parent of the caregiver if the notification of the case process is made from the investigation until the moment before the pronouncement of the court decision (article 8 paragraph (5).
- 5) The right to be examined by investigators in a family atmosphere, for example, investigators do not wear official clothes and a sympathetic approach (article 42 paragraph (1).
- 6) The right to remain confidential in the investigation process (article 42 paragraph (3).
- 7) The right to be detained in a special place for children in the Rutan environment, Rutan branch, or certain places (article 44 paragraph (6).
- 8) The right to continue to meet the physical, spiritual, and social needs of children while in detention (article 45 paragraph (4).
- 9) The right to obtain legal assistance from one or more legal counsel since arrest or detention at the time and at the time of the investigation (article 51 paragraph (1).
- 10) The right to be in direct contact with legal counsel without being heard by an authorized official, if arrested or detained (article 51 paragraph (3).

### 3. Child Investigator

- a. The qualifications of child investigators are determined based on the decree of the Chief of the National Police of the Republic of Indonesia or officials appointed by the Chief of the National Police of the Republic of Indonesia. The investigator referred to above can be confirmed to be a child investigator from the Police Investigator. Appointment or appointment as a Child investigator by the Chief of the Indonesian National Police (Kapolri) or other appointed officials. Regarding qualifications, to be designated as a child investigator, the following conditions must be met:
  - 1) Have experience as an investigator of criminal acts committed by adults,
  - 2) Have interest, attention, dedication, and understanding of the child's problems.

- b. Obligations of Child Investigators There are certain obligations that must be carried out by child investigators, especially based on article 42 of Law Number 3 of 1997, which are as follows:
  - 1) The obligation to examine the suspect in a family atmosphere, the meaning in a family atmosphere 42, among others, when the suspect is in a state of emergency, the investigator does not wear official clothes and approaches effectively and sympathetically (article 42).
  - 2) The obligation to ask for advice from community advisors, and if necessary, can also be asked for advice from education experts, mental health experts, religious experts, or other community officers.
  - 3) It is mandatory to keep the investigation process secret for delinquent child cases.
- c. Authority of the child investigator Along with the inherent obligation is also the authority of the child investigator. In order to conduct an investigation into delinquent children, child investigators have the following authority, among others:
  - 1) To arrest delinquent children, for the purpose of examination for a maximum of 1 (one) day.
  - 2) Detention of children who are strongly suspected of committing criminal acts based on sufficient preliminary evidence, for a maximum of 20 days.

#### 4. Children's Public Prosecutor

- a. Qualifications for a child public prosecutor The conditions that must be met to be determined as a child public prosecutor (article 53 paragraph (2)) are as follows:
  - 1) Have experience as a Public Prosecutor for crimes committed by adults.
  - 2) Have interest, attention, dedication, and understanding of the child's problems.
- b. Obligations of the Children's Public Prosecutor The obligations of the Children's Public Prosecutor that can be intervened under Law Number 3 of 1997, including the following: Mandatory in the immediate future to make an indictment;
  - 1) Must be present at the children's hearing.
  - 2) Within a period of 25 (twenty-five) days, the Public Prosecutor must transfer the child's case file to the District Court.

- c. The Authority of the Public Prosecutor of the Child Through article 46 paragraph (1) of Law Number 3 of 1997, it is concluded that for the benefit of the prosecutor, the Public Prosecutor is authorized to conduct detention or further detention. It is further regulated that the detention is for a maximum of 10 (ten) days (article 46 paragraph (2)). At the request of the public prosecutor, it can be extended by the chairman of the District Court for 15 (five 44) days (article 46 paragraph (3)). Thus, the duration of detention is 25 (twenty-five) days (article 46 paragraph (1)). Regarding this authority, Law Number 3 of 1997 also regulates the authority of the prosecutor to supervise:
- 1) Conditional penalty.
  - 2) Criminal supervision.
- d. Juvenile Judge Based on article 1 number 7 jo articles 9 and 10 of Law Number 3 of 1997, certain matters related to the determination as a child judge and the conditions that must be met. From these articles, it is stated as follows: Juvenile judges are determined based on the decree of the Chief Justice of the Supreme Court on the proposal of the Chief Justice of the District Court concerned through the chairman of the High Court: 2. The requirements to be appointed as a juvenile judge are: Have experience as a judge in the court in the general judicial environment; and Have interest, attention, dedication, and understanding of the child's problems.
- e. Legal Counsel Unlike other law enforcement officials who have been put forward for Legal Counsel, it seems that it is not called Legal Counsel 45 children. Article 1 point 13 only mentions that the Legal Advisor is the Legal Advisor as referred to in Law Number 8 of 1981 concerning the Criminal Procedure Law. At least, law No. 3 of 1997 regulates legal counsel and legal aid in articles 51 and 52. The outline in these articles is the right of delinquent children to get legal assistance since they are arrested or detained.
- f. The Law breaks down community officers into 3 (three) years as read in Article 33 of Law number 3 of 1997, which is as follows: a. Community supervisor from the Ministry of Justice b. Social workers from the Social Department c. Volunteer social workers from community organizations Community supervisors are correctional officers at correctional centers who provide guidance to citizens assisted by correctional facilities (article 1 point 11) who are on duty (Article 34 paragraph (1)). a. Help facilitate the duties of investigators, public prosecutors, and judges in the case of delinquent children, both inside and outside the court by making reports on the results of community research b. Guiding, assisting and supervising delinquent children who are sentenced to parole based on court decisions.

## **Ideal Legal Construction for Inland Children Using Boats in Central Kalimantan Waters through Settlement of Child Crime Cases through Penal Mediation**

Based on a comparison of the implementation of penal mediation from several countries, Barda Nawawi grouped penal mediation into six models, which are as follows:<sup>16</sup>

### **1. Informal Mediation**

This model is carried out by *criminal justice personnel* in their normal duties, namely:

- a. The Public Prosecutor invites the parties to an informal settlement with the aim of not continuing the prosecution if an agreement is reached;
- b. Social workers or probation *officers* who are of the opinion that contact with the victim will have a great influence on the perpetrators of criminal acts;
- c. Police officials called for family disputes that might have calmed the situation without criminal prosecution;
- d. The judge may also choose an out-of-court settlement and dismiss the case.

This type of informal intervention is common throughout the legal system. *Traditional village or tribal moots* according to this model, the entire community meets to solve crime conflicts among its citizens. This model is in some less developed countries and in rural/inland areas. This model precedes the benefits for the wider community. This model predates the Western model and has inspired most modern mediation programs. Modern mediation programs often try to introduce various benefits of tribal *moots* in a form tailored to the structure of modern society and the rights of individuals recognized under the law.

### **2. Victim offender mediation**

This model involves various parties meeting with the attendance of appointed mediators. Many variations of this model. The mediator can be a formal official, an independent mediator or a combination. This mediation can be held at any stage of the process either at the stage of prosecution habituation, the stage of police discretion, the criminal stage or after the sentence. This model is applied to all types

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<sup>16</sup> Barda Nawawi Arief, Penal Mediation in Dispute Resolution Outside the Court, Paper presented at the National Seminar on Corporate Legal Accountability in the Context of Good Governance, Jakarta, March 27, 2007.

of criminal offenders, some are specifically for children, some are for certain types of criminal acts (e.g. shoplifting, robbery and acts of violence) and some are mainly aimed at child offenders, novice offenders, but there are also for serious offenses and even for recidivism. Reparation negotiation programs This model is solely to assess/assess the compensation or reparations that must be paid by the perpetrator of a criminal act to the victim, usually during the examination in court. This program is not related to reconciliation between the perpetrators but only related to the planning of material improvements. In this model, the perpetrator of a criminal act can be subject to a work program that can thus save money to pay compensation/compensation.

### *3. Community panels or courts*

This model is a program to divert criminal cases from prosecution or trial to more flexible and informal community procedures and often involve elements of mediation or negotiation. Local officials can have their own institutions/bodies for the mediation.

### *4. Family and community group conferences*

This model has been developed in Australia and New Zealand, involving community participation in the Criminal Justice System. Not only does it involve the victim and the perpetrator of the crime, but also the perpetrator's family and other community members, certain officials (such as the police and juvenile judge) and the victim's supporters. The perpetrator and his family are expected to produce a comprehensive agreement that satisfies the victim and can help to keep the perpetrator out of the next distress/problem.

Regulation of the Minister of State for Women's Empowerment and Child Protection of the Republic of Indonesia Number 15 of 2010 concerning General Guidelines for the Handling of Children in Conflict with the Law regulates the handling of restorative justice approaches for children who commit criminal acts with the following types:

1. Mediation of the victim with the perpetrator. The purpose of mediation is to resolve disputes through a negotiation process to obtain agreement between the parties with the assistance of a mediator. As a mediator, a neutral party helps the parties find various possible solutions without using the means of deciding or forcing a settlement.
2. Family deliberations are intended to resolve children's cases through deliberations involving the perpetrator's family and the victim's family facilitated by a facilitator from a neutral party in order to obtain an agreement from both parties. In family deliberation, the following things need to be considered:



- a. The involvement of related parties which includes the victim, the perpetrator, the family and people close to the child;
  - b. Other parties that need to be involved are those who support the victim and those who support the perpetrator;
  - c. Other things that need to be considered include providing information to the parties regarding the place, time and mechanism of the meeting.
3. Community deliberation is intended to resolve children's cases through deliberation involving the perpetrator's family, victim's family and community/religious leaders facilitated by a facilitator from a neutral party in order to obtain agreement from both parties. In community deliberations, the following matters need to be considered:
- a. The involvement of related parties includes victims, perpetrators, families and people close to children, community/religious leaders and anyone harmed by the act;
  - b. Other parties that need to be involved are those who support the victim and those who support the perpetrator;
  - c. Other things that need to be considered include providing information to the parties regarding the place, time and mechanism of the meeting.

The handling mechanism with a restorative justice approach described in the Regulation of the Minister of State for Women's Empowerment and Child Protection of the Republic of Indonesia Number 15 of 2010 concerning General Guidelines for the Handling of Children in Conflict with the Law is as follows:

1. Investigators, public prosecutors and judges in resolving children's cases with a restorative justice approach must consider the following:
  - a. Categories of criminal offenses;
  - b. The age of the child;
  - c. The results of community research from the Correctional Center;
  - d. Losses incurred;
  - e. The level of public attention;
  - f. Support for the family and community environment.
2. Stages in deliberation
  - a. Stages of digging for information
    - 1) Perpetrator information
      - a) The facilitator held a meeting with the perpetrator by involving related parties (family and people close to the perpetrator, BAPAS community

counselors and social workers without involving the victim and the victim's family;

- b) Welcome and introduction;
- c) The facilitator reads out the chronology of the case in detail;
- d) The perpetrator provides an opportunity to respond to the chronology of the case and the perpetrator can accept or refuse to be responsible for the act;
- e) If the child admits his actions and wants to take responsibility, the settlement of the case can be continued with deliberation;
- f) However, if the child does not admit his actions, the deliberation cannot be continued and the case must be returned to a formal process;
- g) Efforts must be made to encourage children to say what really happened.

## 2) Victim information

- a) The facilitator held a meeting with the victim by involving related parties (family and people close to the perpetrator, BAPAS community counselors and social workers) without involving the perpetrator and the perpetrator's family.
- b) The victim was given the opportunity to talk about what had happened, how he was harmed, and what the perpetrator considered necessary to do in order to make amends.
- c) Family considerations The families of each party are given the opportunity to negotiate and must answer the following questions:

3) How can children replace mistakes with good for the victim, family and society;

4) What plans can children do with their families to prevent the recurrence of these acts.

b. Negotiations and Facilitator agreements are required to check the following:

- 1) Whether this plan has met the needs of the victim;
- 2) Whether this plan has met the needs of the community;
- 3) Whether the plan is realistic and achievable;
- 4) Whether the plan is carried out within the relevant time frame;

- 5) Whether the plan is measurable;
- 6) Whether the plan is feasible and proportionate;
- 7) Whether this plan protects children's rights and advances child development;
- 8) Does this plan predict what will be done in anticipation if this plan succeeds or does not work?

After checking the plan, the facilitator began to negotiate by involving the perpetrator's family, the victim's family (for family deliberation). For community deliberation, it is also necessary to involve community leaders/religious leaders. The decision as a result of the deliberation must obtain the consent of the victim and his family as well as the consent of the child as the perpetrator and his family. The outcome of a restorative justice agreement can be the following: Peace with or without compensation; Submission back to parents/guardians; Participation in education or training to educational institutions, social welfare institutions or social welfare institutions; Community services.

The implementation of the juvenile criminal justice system has entered a period of 2 (two) years since the issuance of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) which was then enacted in 2014. The issuance of the SPPA Law affects the dynamics and development of the law, especially the criminal law system. Therefore, the legal analysis and evaluation of the juvenile criminal law system does not solely dissect the SPPA Law but also includes other laws and regulations that have a relationship and relationship with children in terms of content. There are at least 14 (fourteen) laws and regulations related to the juvenile criminal law system and have been analyzed and evaluated.

Broadly speaking, based on the results of legal analysis and evaluation, it shows that the laws and regulations that have been tested materially have tried to provide protection for children and provide specific legal arrangements for children that are different from the adult group. However, in terms of understanding and apparatus, it still needs to be improved by conducting socialization and integrated education on all laws and regulations related to children.

The thing that causes the implementation of the child criminal law system is the lack of complete availability of supporting facilities and infrastructure in accordance with the mandate contained in the law, so that it has a great influence on the pattern of coaching and protection for a child who is facing the law.

## CONCLUSION

The results showed that; 1) The legal status of children who are in conflict with the law in carrying explosives is as follows; Children who are in conflict with the law can be pinned on every child who has the status of suspect, victim, and witness in a criminal case. Children who are in conflict with the law according to Article 1 paragraph (2) of [Law Number 11 of 2012](#) concerning the Juvenile Criminal Justice System are children who are in conflict with the law are; a) children who are in conflict with the law, b) children who are victims of the law, and c) children as witnesses to criminal acts. 2) Ideal Legal Construction for Inland Children Using Boats in Central Kalimantan Waters through the Settlement of Child Criminal Cases through Penal Mediation. Children who are in conflict with the law consist of: a) Children in conflict with the law, namely children who are 12 years old but not yet 18 years old who are suspected of committing criminal acts; b) Children who are victims of criminal acts, namely children under the age of 18 who have experienced physical, mental, and/or economic suffering caused by criminal acts; c) A child who is a witness to a criminal act, namely a child who is not yet 18 years old who can provide information for the purposes of investigation, prosecution, and examination in court about a criminal case that he himself hears, saw, and experienced. In the event of a criminal act committed by a child under the age of 18 years and submitted but has not reached the age of 21, the child is still submitted to the juvenile court.

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