

# LAW ENFORCEMENT PREPAREDNESS FOR THE IMPLEMENTATION OF INDONESIA'S LAW ON JUVENILE JUSTICE SYSTEM\*

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## Abstract

*Paradigmatic changes stipulated in Law Number 11 of 2012 on Juvenile Justice System, including regulations concerning restorative justice and diversion require the competency and skills of the law enforcement officers. This research identifies measures that have been taken and the existing barriers in preparing for the implementation of this Law. The research demonstrates that the readiness of the investigators and child prosecutors are merely limited to the outreach of Law Number 11 of 2012, whilst knowledge of the court judges only covers the draft Law. The number of officers receiving outreach is limited and should be increased. Negative perception on the officers due to the risk of a bribery accusation is feared to hamper the implementation of diversion regulation based on a restorative justice.*

**Keywords:** juvenile, justice, criminal, diversion, outreach.

## Intisari

Perubahan paradigmatik yang termuat dalam Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak, termasuk diantaranya ketentuan mengenai keadilan restoratif dan diversifikasi, memerlukan kompetensi dan keahlian aparat penegak hukum. Penelitian ini mengidentifikasi langkah yang telah dilakukan dan kendala persiapan implementasi Undang-Undang tersebut. Hasil penelitian memperlihatkan bahwa kesiapan penyidik dan penuntut umum anak masih terbatas pada partisipasi sosialisasi Undang-Undang Nomor 11 Tahun 2012, sedangkan hakim anak memiliki pengetahuan hanya pada Rancangan Undang-Undang. Jumlah aparat yang menerima sosialisasi Undang-Undang masih terbatas dan perlu ditingkatkan jumlahnya. Pandangan negatif terhadap aparat karena bisa menimbulkan dugaan suap dikhawatirkan menjadi penghambat diterapkannya ketentuan diversifikasi dengan pendekatan keadilan restoratif.

**Kata Kunci:** anak, peradilan, pidana, diversifikasi, sosialisasi.

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## A. Background

The issue of child protection is very fundamental and strategic. From the life of a nation and a country's point of view, children are the future of the nation and the successor of the nation's aspiration. Therefore, every child has the right to live, grow and develop, participate and entitled to have the protection against violence and discrimination and civil and freedom rights.<sup>1</sup> It is also defined in Article 28 B, paragraph (2) of the 1945 Constitution of the Republic of Indonesia that every child has the right to live, grow and develop as well as the right to have protection from violence and discrimination.

Based on the above argument, children<sup>2</sup> who faced the law have to get special protection, particularly legal protection in the judicial system. Legal protection must be given so the child has the opportunity to learn to be a useful person for him/herself, family, community and country, and is able to be active in positive ways to pursue his/her life. Literature assessment<sup>3</sup> shows that throughout the history, children confronted with the law have always required different treatment than the adults who have broke the law. The reason behind this idea is that the mental and physical development of children have not been optimized, thus their ability to act and to be responsible is not the same as adults. Law Number 11 of 2012 about Juvenile Justice System is composed to replace Law Nounber 3 of 1997 concerning Juvenile Court because it seemed no longer suitable with the development of law and societal needs since it has not provided comprehensive protection to the child who faced the law. In the reality, the child is positioned as an object and the treatment for the child dealing with the law is likely to give the child disadvantages.

Some of the cases of children conflicted with law which become national-wide case are

Raju case, the suspicion of gamble conducted by 10 (ten) underage boys' case in Tangerang, and the flip flop case in Palu, Central Sulawesi. Most of the children cases Judgements resulted in the child being convicted. Usually the law enforcers would give 'wise' sanctions if the case has been disputed with the mass media. Data from Corrections General Directory on August 2012 showed us that 96.2% of protégé undergo imprisonment. It showed that majority of the treatment for children dealing with law is by giving them sanctions in the form of imprisonment, and also a different direction from children protection instruments because the best treatment for them is to keep them far away from sanctions, moreover imprisonment.

Based on the above discussion, strategic and concrete steps should be done in order to restructure the juvenile court system in Indonesia. It needs paradigm changes in handling children conflicted with law. With the enactment of Law Number 11 of 2012 about Juvenile Criminal Justice System on 30<sup>th</sup> of July 2012, the court can guarantee the protection for the best interest toward the child dealing with law as the nation's successor can be formed. The most basic substance in Law Number 11 of 2012 is a national restorative justice and diversion which has an intention to avoid and keep children from the judicial process to prevent stigmatization of children conflicted with the law, and the child is expected to be back to the social environment aptly. During this time, the investigator, public prosecutor or judge has yet to set out the approach to restorative justice to children in conflict with the law. After the emergence of Juvenile Justice Law, there is no reason anymore for the law enforcement officers not to implement it.

The Law on Juvenile Justice System itself will begin after 2 (two) years counted from the

<sup>1</sup> Description of the Law Number 23 of 2002 about Child Protection State Gazette of the Republic of Indonesia Year 2002 Nomor109).

<sup>2</sup> In the universal norm, a child is holistic person and therefore possess protected human rights. See Hadi Supeno, 2010, *Kriminalisasi Anak (Tawaran gagasan Radikal Peradilan Anak Tanpa Pemidanaan)*, Gramedia Pustaka Utama, Jakarta, p. 27.

<sup>3</sup> UNICEF and Pusat Kajian Kriminologi, 2006-2007, *Analisis Situasi Anak yang Berhadapan dengan Hukum di Indonesia*, Faculty of Social and Political Science, Universitas Indonesia, Jakarta, p. 15.

date of promulgation<sup>4</sup> which is on 30<sup>th</sup> of July 2014. In principle, the juvenile justice system must be implemented in the spirit of restorative justice, and law enforcers are obligated to fight for diversion in the form of seeking the settlement of children cases from the criminal justice process to the process outside from the criminal justice. Even the threat of criminal sanctions such as fines or prison<sup>5</sup> exist for investigators, prosecutors and the judge who deliberately do not implement diversion in the level of investigation, prosecution, and examination in the District Courts (in cases which the alleged is threatened with imprisonment under seven years, and is not a repetition of the crime).

Another crucial issue in the Law on the Juvenile Justice System is the boundaries provision in child's penalty responsibility from 12 (twelve) years old until almost 18 (eighteen) years old, while the age boundary for children who can be charged for detention are 14 (fourteen) years old until almost 18 (eighteen) years of age. Besides the obligation for every party to not publicly expose the child's case, this law also strictly regulates the procedures and time period for arresting, time period of restraining and the classification of the type of punishment. This shows that the Law on the Juvenile Justice System requires the Preparedness from law enforcement officers, investigators, prosecutors, and judges as the essential elements in the providence. Therefore, the readiness of the law enforcement agencies need to be examined profoundly, because inequality still can be found in the level of implementation between what the Constitution wants and its reality. This research limits its discussion to children comes into conflict with the law. Therefore children who became victims

of a criminal offence, and children who act as the witness the crime are not discussed in this study. Based on the background as described above, the issues examined are: 1) what are the steps that have been underfaren by law enforcement officers in conducting the providence of the juvenile justice law?; 2) what are the obstacles confronted and how to improve the law enforcement officers' capacity in conducting the providence of the juvenile justice law?

## B. Research Methods

Legal methods used in this study are normative and empirical legal research.<sup>6</sup> Judging by their very nature, this legal research is descriptive legal research.<sup>7</sup> Materials of research used in this research include secondary data in the form of library materials of primary legal materials, secondary and tertiary legal materials while primary legal materials are obtained directly from the subjects of the research. In this study, the data was collected through research in libraries (library research) and research in the field (field research). Library research is meant to get secondary data, while field research is aimed at obtaining primary data.

On library research document study tools will be used. Next on the field research it will be used to guide the interview. The techniques used is non guided interview in which the interviewer already carried an interview guide that contains key questions for respondents, yet the existence of variations of questions are tailored to the situation when it is possible to conduct interviews.<sup>8</sup> The data and documents obtained from the research library and field research were analysed qualitatively was quantification of existing data. That means the data obtained from this research are selected

<sup>4</sup> Article 108 Law Number 11 of 2012 about Juvenile Criminal Justice System (State Gazette of the Republic of Indonesia Year 2011 No. 153, Supplement to State Gazette of the Republic of Indonesia No. 5332).

<sup>5</sup> Article 96 Law Number 11 of 2012 about Juvenile Criminal Justice System (State Gazette of the Republic of Indonesia Year 2011 No. 153, Supplement to State Gazette of the Republic of Indonesia No. 5332).

<sup>6</sup> Ronny Hanitijo Soemitro, 1994, *Metodologi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta, p.52.

<sup>7</sup> Soerjono Soekanto, 1984, *Pengantar Penelitian Hukum*, UI-Press, Jakarta, p.10.

<sup>8</sup> Ronny Hanitijo Soemitro, 1995, *Metodologi Penelitian Hukum*, Ghalia Indonesia, Jakarta, p.73.

according and related to quality and quantity in which problems are discussed and developed, described and analysed resulting in a conclusion to address problems in this research

### C. Results and Analysis

#### 1. The Steps which have been done by Law Enforcement Officers in Conducting The Providence of Juvenile Criminal Justice System

Children who are dealing with the law require special treatment that is different from the treatment for adults. The process which begin with investigation, prosecution, trial, and ends with the verdict is so susceptible to discrimination<sup>9</sup> and deprivation of the rights of children, so that children conflicted with the law must be protected. Various studies on the treatment of children in conflict with the law shows a trend of getting tough against children, which is considered the most appropriate solution is a penalty that is both retributive and punitive.<sup>10</sup> To actualize this, a good preparation in both competence and expertise from law officers are required. Here's an overview of the results of research and discussion.

##### a. Steps Undertaken by the Investigators<sup>11</sup>

The justice solution consists of several stages. Path to know the existence of a criminal offence may be through a complaint, report, and caught the in hand. The handling of cases of children in the Sleman District Police office is immediately directed and managed by women and children service unit that is structurally under the Head of Investigation and Crime Sleman District Police. Based on the Regulations of The Chief of Police of

the Republic of Indonesia No. Pol 10/2007 on The Organization and the Perkapital procedure in the women and Children service Unit, the police unit from child investigator is under the women and children's unit, in which the police regulations stated that the women and children unit is a unit that is in charge of providing services, in the form of the protection of women and children who are victims of crime and the enforcement of the law against the perpetrators.<sup>12</sup> The scope of the task in women and children service unit includes criminal acts against women and children as well as other cases where the perpetrators were women and children.<sup>13</sup>

Based on the results of the research, the women and child service unit in Sleman Police is led by a non-commissioned officer, and not an officer as set forth in the regulations of the Republic of Indonesia National Police Chief Number Pol 10 of 2007 on The Organization and The Procedures of The Women and Children Service Unit in Police Neighbourhood of the Republic of Indonesia. Beside that 9 (nine) of investigators are consisting of four (4) women and five (5) men in women and children service unit Sleman Police, none of which is a children's investigator, but only the investigator in charge of defending child in women and children Service Unit Police Sleman.

The data resulted from the research portrayed the children cases from the Sleman Resort Police handled from year 2011 and year 2012. In 2011 from 25 cases written in the registry book, there were 15 cases (60%) in which all of them were processed further to

<sup>9</sup> Discrimination is the root of exploitation on children. See Savitri Goonesekere, 1998, *Children, Law, and Justice a South Asian Perspective*, UNICEF and Sage Publications, New Delhi, p.140.

<sup>10</sup> UNICEF and Pusat Kajian Kriminologi, *Op.cit.*, p. 56.

<sup>11</sup> The research shows that no child investigators available at Sleman Polices. Investigators assigned to Women and Children Service Unit handled the criminal juvenile cases, but they are not child investigator.

<sup>12</sup> Article 1 point 1 Regulation of Chief Police of the Republic of Indonesia, No. Pol. 10/2007 about Organization and Procedure of the Women and Children Service Unit in the Police Department Republic of Indonesia.

<sup>13</sup> Article 6 Paragraph (3) Regulation of Chief Police of the Republic of Indonesia, No. Pol. 10/2007 about Organization and Procedure of the Women and Children Service Unit in the Police Department Republic of Indonesia.

the office of the Prosecution, meanwhile the rest of 10 cases (40%) were solved outside the juvenile justice system. As for the year 2012, from 9 cases written in the book, 6 cases (66,7%) were processed further to the office of the prosecution, and the rest of the cases, 3 cases (33,3%) were solved outside the justice system. From the data in the year 2011 and 2012 above we can conclude that almost all of the children inspected by the Investigators had their process continued to the office of the prosecution.

In the juvenile justice system, investigators are the first gate of treating the children's case. The children's path in justice process is determined by the attitude and knowledge. In the process of treating a child's case, investigators in women and children service unit Sleman Police usually attempted to make a settlement between the suspect or his family with the victim or his family and also involving the village's officer or the RT/RW chief in neighbourhood which the investigator is facilitated.

It is based the discretion authority owned by police officer referred to the Law Number 2 of 2002 on the police of the Republic of Indonesia, namely in Article 18 Paragraph (1), Article 18, paragraph (2), Article 19, paragraph (1), and Article 19, paragraph (2). Peace efforts and deliberations that have become accustomed to Police investigators in Sleman Regency are definitely not a practice of diversion as set forth in Law, Number 11 of 2012 about the Cumendari Justice System, because there are certain conditions for process of diversion by the investigators.

Based on Law Number 11 of 2012 on the Juvenile Justice System there is a new obligation that must be carried out by the investigator, which is to attempt diversion with restorative justice approach within 7 (seven) days after the proceeds of investigation. The diversion process will be

executed in at least 30 (thirty) days after the commencement of the diversion. From the results of research on women and children service unit in Sleman Police, the steps have been made concerning the readiness of the investigators in the enactment of Law No. 11/2012 about Juvenile Criminal Justice System is as follows:

- 1) There is 1 (one) investigator who had attended the outreach that was held by regional police DIY regarding Law Number 11 of 2012 about the Criminal Juvenile Criminal Justice System on the 17<sup>th</sup> until 19<sup>th</sup> of September 2012.
- 2) There's been a limited understanding about the subject from investigators, although by the not deeply ditch who had attended the outreach about new provisions concerning the treatment for children dealing with the law as set forth in the Law Number 11 of 2012 about the Juvenile Criminal Justice System. Investigators at least understand that at this point there has been a new legislation i.e. Law No. 11/2012 about the Juvenile Criminal Justice System which will be applied within 2 (two) years time. In addition, the investigators also have understood even though only in the form of a general overview about the existence of diversion provisions with restorative justice approaches. Other new provisions investigators should understand is the existence of sanctions conceived for law enforcement agencies who do not implement diversion.
- 3) Investigators stated that they were ready if in the future the diversion will be implemented, because attempts for peace between the suspect and the victim and involve other related parties such as local community



leaders are already in practice, especially in certain criminal acts, which seem can be solved peacefully before it is decided whether or not the case will be continued at the stage of investigation or not. However, the investigator understanding regarding the diversion should be elaborated further, because diversion is not only an attempt to reconcile with deliberation, but the principle of the best interest for the child must be the priority.

- 4) Investigators do peacekeeping efforts in a special room which is available in the women and Children unit in Sleman Resort Police.
- 5) Investigators conduct the detention of children, whose placement is separated with adult. However its placement is not in the Sleman Resort Police but in Beran Sector Police.
- 6) Investigators entrusting children whom do not have any family or carers to Social Service so that the child still feel protected.

#### **b. Steps undertaken by the Children's Prosecutors**

When the investigation has been started by investigators in Polres Sleman, Polres Sleman investigators will then inform the District Attorney's Chief of Sleman, that investigation of a case has been commenced. Next the head of District will appoint the public prosecutor who handled the case.<sup>14</sup> Currently, the public prosecutor who served on the District Attorney's Sleman, are three (3) people, where all of them are a woman

and already married. It is based on consideration that married women are more confidence in dealing with children with any kind of problem.<sup>15</sup> So far not every child prosecutor in the District Attorney's Sleman had attended the children outreach, and the responsible unit is under the public criminal, not a criminal unit in the special unit like on the police institution that has had a special unit which is a unit of women and children service.<sup>16</sup>

On the other hand, the results showed that at this stage of the investigation, the child's public prosecutor may coordinate with the investigators with trying to give advice to the investigating authority using discretion authority to reconcile the offender with the victim, so that the matter can be halted and did not continue to the stage of prosecution.<sup>17</sup> These efforts are solely conducted to provide the best protection for the child. Such coordination is carried out because when a case has been assigned at the stage of the prosecution, the public prosecutor had no authority to seek peace between the perpetrator and the victim. Based on the results of the study revealed that during this time the public prosecutor in the Sleman District Attorney indeed never did attempt peace so that the matter did not proceed at this stage of the prosecution case, though the child's case is considered mild.<sup>18</sup> In this case the public prosecutor does not have the authority except as provided for in Article 140, paragraph (2) of the Law Number 8 of 1981 on the Law of Criminal Procedure.<sup>19</sup> Hence the public prosecutor does not have the authority to reconcile the offender with

<sup>14</sup> Interview with Indri Astuti as the Juvenile Prosecutors in the Sleman District Attorney, 14 November 2012.

<sup>15</sup> Interview with Yacob Hendrik as the Head of Children District Attorney in the Sleman District Attorney, 14 November 2012.

<sup>16</sup> Interview with Indri Astuti as the Juvenile Prosecutor in the Sleman District Attorney, 14 November 2012.

<sup>17</sup> Interview with Wahyuning Dyah as the Juvenile Prosecutor in the Sleman District Attorney, 12 December 2012.

<sup>18</sup> Interview with Indri Astuti as the Juvenile Prosecutor in the Sleman District Attorney, 14 November 2012.

<sup>19</sup> In cases where a prosecutor decides to discharge due to insufficient evidence or the event is not a criminal act or discharge before the law, a prosecutor reveals those consideration in a decree.

the victim. What always happen in Sleman District Attorney are the children's case continued to the examination stage.<sup>20</sup>

During this time the public prosecutor in the District Attorney's Sleman, still holds that the use of criminal sanctions is the ultimate choice in dealing with the children case. According to the children cases data in Sleman District Attorney, in 2012, of the 79 cases, the number of children criminal offence offenders charged with criminal sanctions is up to 78 people (98.8%), while only 1 person (1.2%) is being charged with sanctions. It portrays that the majority of the public prosecutor conducts the prosecution by invoking this type of criminal sanctions in the children case, although in juvenile criminal justice action sanctions is also known.<sup>21</sup>

In the Law Number 11 of 2012 about the Juvenile Justice System, there is a new task for the public children prosecutor which is to seek diversion. It will not be obstacles for the public prosecutors in the Sleman District Attorney if they must implement new terms regarding the diversion, although during this time when the docket has been delegated to the level of prosecution, the public children prosecutor never did attempt peace in handling the matter because the child prosecutor did not have the authority.<sup>22</sup> Because Law Number 11 of 2012 on the Juvenile Justice System will be enacted, the public prosecutors in the District Attorney's Sleman have made steps to prepare themselves to meet the new legislation, which are:<sup>23</sup>

- 1) They have attended events which were the consultation on the draft Law, organized by the Government

of DIY, along with other relevant agencies in the handling of the matter, such Social Services and Correctional Centre.

- 2) 1 (one) public children prosecutor in the outreach of Law Number 11 of 2012 on Juvenile Justice System organized by the regional offices of the Ministry of Law and Human Rights.
- 3) The public children prosecutor has attended forums about communication and coordination between law enforcement officers who handle children's case in Jogjakarta. The public children prosecutors also coordinate often with investigators when handling the children case from Sleman Police.
- 4) The public children prosecutor already attended many seminar related to children's case, so they could gain more knowledge in handling children cases.
- 5) In line with the enactment of the Law Number 11 of 2012 about the Juvenile Criminal Justice System, the new regulations pursued by the law has already been discussed in the national meeting of prosecutors of the Republic of Indonesia.
- 6) The child prosecutors often attempted peace when the investigators send The Starting of Investigation Notification Letter and suggested the victim and the suspect to reconcile, and therefor light cases are not required to continue to the next stage.
- 7) At this moment there is a separated sub section namely the Other Criminal

<sup>20</sup> Interview with Wahyuning Dyah as the Juvenile Prosecutor in the Sleman District Attorney, 12 December 2012.

<sup>21</sup> As stipulated in Article 24 Law Number 3 of 1997 about Juvenile Court (State Gazette of the Republic of Indonesia of 1997 Number 3).

<sup>22</sup> Interview with Indri Astuti as the Juvenile Prosecutor in the Sleman District Attorney, 14 November 2012.

<sup>23</sup> Interview with Indri Astuti as the Juvenile Prosecutor in the Sleman District Attorney, 14 November 2012.

sub Section under the coordination of General Criminal Offense Section, of which one of their task is to handle children' criminal cases. However this condition is still limited to the neighbourhood of the High Judiciary of Yogyakarta Special Region.

**c. Steps undertaken by the Children Judge**

In Sleman Public Court the lawsuit devolution letter to the court has been addressed to the court's chief. After the letter was be accepted by the registrar, then it would be noted in a list (registry) of the lawsuit and furthermore would be given to the chief of court. Hereinafter, the chief of court would be assigned a child's judge to check the case. After it the assigned children's judge would determine the day of hearing for the case examination.<sup>24</sup> The children judge as the law enforcement officers especially in children cases in Sleman Public Court have done a few steps to prepare themselves to meet new provisions in the Juvenile Criminal Justice System Law, which are:

- 1) 1 (one) judge participation in the outreach but it should be done when it was at the draft stage.
- 2) Providing a special court room which is separated for children court room and children waiting room in Sleman Public Court so it can help the children judge's performance in his/her work.
- 3) The judge in hearing the child's case already conducted particular provisions applied in Law Number 3 of 1997 about Juvenile Court as arranged in the Juvenile Criminal Justice System Law, such as not wearing cassocks in examination,

the hearing is closed for public, and the hearing is attended by the child with his/her parents or guardian, legal counsellor and community supervisor.

**2. Constraints Faced and Efforts Made to Improve The Capacity of Law Enforcement Agencies in Meeting Juvenile Criminal Justice System Law**

**a. Obstacles Faced and The Efforts Made to Improve The Capacity of Investigators**

Based on the results of the research that has been done, investigators encountered various obstacles in the introduction of new provisions in Law Number 11 of 2012 about the Juvenile Criminal Justice System, i.e.:<sup>25</sup>

- 1) No investigator in the Police Special Duty of Sleman District Police is assigned specially to handle children' case, because children case are handled by investigators assigned to women and children service unit, but they are not children investigators.
- 2) The investigator's understanding about various new provisions in the Juvenile Criminal Justice System Law is not yet adequate and equitable since the outreach has only been executed 1 (one) time with only 1 (one) investigator at the women and children Service Unit in Sleman Police attendance which is organized by DIY Regional Police.
- 3) Investigators have less awareness and their own initiative to study and understand a new statutory provision because they contended that they have to wait for instructions from the Police Headquarters of the Republic of Indonesia.

<sup>24</sup> Article 152 paragraph (1) Law Number 8 of 1981 about Criminal Law Procedure (State Gazette of the Republic of Indonesia Year 1981 Number 76, Supplement to State Gazette of the Republic of Indonesia Number 3209).

<sup>25</sup> Interview with Desi Ryan Kristanti as an investigator at the Sleman District Police, 30 October 2012.



- 4) Chief of Sleman Regency Police did not have initiatives for disseminating the provisions of the legislation of Juvenile Criminal Justice System internally in his office because he assumed to wait for an instruction from the head of the regional police of DIY that is part of a command system.
- 5) For investigators, time to seek diversion is too short i.e. 7 (seven) days, so that the victim and her family are still in emotional conditions that complicate the diversion efforts done by investigators.
- 6) Investigator done an early evaluation after any report or complaint in a special room women and children Service Unit, however the room is not set aside for children only, but is also used for the examination of child victims with adult offenders.
- 7) When Law Number 11 of 2012 on the Juvenile Justice System has been put in place, while the society still need time to understand the changes in the legislation related to the implementation of diversion and restorative justice approaches, the investigator is worried negative views of society against investigators who conducted the diversion will appear, for example, deemed to have accepted bribe from the crime offender's family.

The efforts made by the child investigators related to new provisions in the Law Number 11 of 2012 on the Juvenile Criminal Justice System which will prioritize the settlement of children cases when the new legislation has been enacted.

#### **b. Obstacles Faced and The Efforts Made to Enhance The Capacity of The Public Children Prosecutor**

Based on the results of the research that has been done, the Sleman District Attorney's Sleman encountered various obstacles, namely:<sup>26</sup>

- 1) The Juvenile prosecutor understanding Law No. 11/ 2012 on the Juvenile Justice System Should be evenly distributed, because the outreach was only attended by 1 (one) public prosecutor out of 3 (three) public children prosecutors in the Sleman District Attorney.
- 2) Juvenile prosecutors have a lack of awareness and initiative to learn and understand new Statutory Provision- Here, they contended that this is due to waiting for instructions from their superiors.
- 3) The Juvenile prosecutor in the Sleman District Attorney still hold in view that cases which bestowed in the stage of the application of criminal prosecution, criminal penalty is the ultimate choice in resolving the matter. This is showed by the year 2012 data which show that only 1.2% action sanctions prosecutions is implemented by the public prosecutor.
- 4) Head of Sleman District Attorney is being passive as in facing the enactment of in Law Number 11 of 2012 on the Juvenile Justice System. Internally, the Sleman District Attorney, until recently had never held on outreach programme discussing the draft Law No. 11/2012 on the Juvenile Criminal Justice System, and

<sup>26</sup> Interview with Indri Astuti as the Juvenile Prosecutor in the Sleman District Attorney, 14 November 2012.

there is no training that is specifically held to increase the capacity of the public children prosecutor related to the provision in the Law yet.

- 5) The Head of Sleman District Attorney did not have initiatives for disseminating the law to the prosecutor in internal of the Sleman District Attorney, due to assuming there should be instructions in advance from the Office of General Attorney of the Republic of Indonesia.
- 6) In dealing with a case, Juvenile prosecutors only continue a prosecution based on news of the proceedings in the police department. Although often seeking peace between the suspect and the victim by way of coordinating with investigators, when investigators delivered a notice of commencement of investigation, so at the stage of investigation they can be reconciled.
- 7) There is no special examination room to inspected children cases in Sleman District Attorney, so the examination is still made in the same room to investigate adult offenders.
- 8) The District institution performances are still viewed negatively, which made the public prosecutor in the Sleman District Attorney faced with a dilemma, should they implement the provisions in the Law Number 11 of 2012, especially the diversion provisions. Therefore outreach to the community related to provisions in the Law Number 11 of 2012 should be held so the society could face of the enactment of the law.

Based on the results of the research undertaken, the public prosecutor efforts to face the enactment of such laws include:<sup>27</sup>

- 1) Inspired from this research, the prosecutor in the District Attorney's Sleman will encourage internal discussions held in Sleman District Attorney;
- 2) To face the enactment of the Law Number 11 of 2012 about Juvenile Justice System, the Juvenile prosecutors will simplify the process of judicial bureaucracy at the stage of pre-trial prosecution. This is done by directly meeting the child and have regular discussion to complete the incomplete docket altogether, so that the child's examination can be done rapidly;
- 3) Attorney institutions will revise the Standard Operational Procedures (SOP) in handling child cases where it will be adjusted to the Law Number 11 of 2012;
- 4) To anticipate the enactment of this law, government regulations is to be made with regards to the diversion as mandated by law, where the Attorney General Office will make a more flexible technical instruction.

#### **c. Obstacles Faced and the Efforts Made to Improve the Capacity of Children Judges**

To face the enactment of the new provisions of juvenile criminal justice system law related to the steps done as described previously, the judge child encountered constraints as follows:

- 1) Children judges' understanding related to the provisions of the new law has not been adequate and

<sup>27</sup> Interview with Indri Astuti as Juvenile prosecutor in the Sleman District Attorney, 14 November 2012, and an interview with Tri Subardiman as the Assistant of General Crimes, Province Attorney of the Special Region of Yogyakarta, 12 December 2012.

equitable because out of 8 (eight) children judges, no one ever attended the outreach programmes of juvenile justice system. There is only 1 (one) children judge who had attend the outreach, but only in the form of juvenile justice system bill. Thus knowledge of children judges are still limited to the understanding of the Draft Law on the Juvenile Justice System.

- 2) Children judge is lack of the initiative to learn new statutory provisions, although in the judges' code of ethics it is asserted that the judge should be professional, should take steps to maintain and enhance the knowledge, skills and personal qualities to be able to carry out judicial duties well.<sup>28</sup>
- 3) Based on the code of ethics of judges, in order to attempt peace the judge must confront both sides of litigants in person, appropriately in one of the room in the court. In reality to make the both parties meet is very difficult, because in most cases the victim and her/his family are still carried with emotions so they are reluctant to agree to the peace effort and deliberation.
- 4) The Head of Sleman District Attorney acted passively and waited for instructions from his/her superiors regarding the efforts done to welcome the enactment of the law.
- 5) Judges at Sleman District Court until now are still focused on the imposition of criminal sanctions for children as the perpetrators of criminal acts. The judge argued so, because by

dropping criminal sanctions it given more justice especially for victims, and provide more legal certainty.<sup>29</sup> It is shown in data of adjudged children cases in Sleman District Court that in 2012 there are 26 cases children as perpetrators of criminal acts that have been adjudged. The verdict of giving criminal sanctions is as much as 25 cases (96%) whereas decision to drop sanctions Act is only 1 case (4%). In the meantime, based on the recapitulation of children' case data from the year 2008 up to October 2012 also showed the same thing, in which child offenders are more likely to be subjected to criminal sanctions more than sanctions action. These data indicate that the rights of the children have not been fully protected. As one of the law enforcement agencies, children judges must pay attention to the best interest for the child and attempt to maintain the family-like atmosphere.<sup>30</sup>

- 6) Examination time in the trial stage that is too short will make it difficult for judges in conducting an examination session, as well as the detention of the child offender.<sup>31</sup> In which the examination in the proceeding is not yet completed and terminated until the period of detention, a child can be released from custody. It is so lucrative because it is advantageous that children can be out of detention, but on the other hand it is feared the children would perform a criminal act again.

<sup>28</sup> Quoted from the Collective Decision Head of the Supreme Court and Head of Judiciary Commission Republic Indonesia Number 047/KMA/SKB/IV/2009 and Number 02/SKB/P.KY/IV/2009 about Code of Ethics and Guideline of Proceedings for Judges, p. 10.

<sup>29</sup> Interview with Subachran Hardo Mulyono as the Head of Sleman District Court, 18 October 2012.

<sup>30</sup> Article 18 Law Number 11 of 2012 about Juvenile Justice System (State Gazette of the Republic of Indonesia Number 153 of 2011. Supplement to State Gazette of the Republic of Indonesia Number 5332).

<sup>31</sup> Interview with Asep Koswara as a Juvenile Judge at Sleman District Court, 24 October 2012.

- 7) Criminalization against judges who deliberately made no attempt at diversion as set forth in the Law No. 11/2012 bothered the judge's independency in doing his/her work.
- 8) The unprepared society towards the implementation of diversion in criminal proceedings. Implementation of the diversion might make the lawsuit stop (because it has reached peace) prior to examination in court. This can result in the onset of negative stigma against children's judges who are appointed to examine the case, this can occur because there is no public's understanding about the Ordinance diversion effort undertaken at each stage of criminal proceedings, so that the community argued that the judges had received bribes so that the case stalled without any inspection in court done.

Efforts have been made by the children judge regarding the new provisions in the Law Number 11 of 2012 about the Juvenile Criminal Justice System which is already filed a judicial review to the Constitutional Court through the Union of Indonesia's Judges (IKAHI) regarding the provisions of penalties for the judge if intentionally not attempting diversions.

#### D. Conclusions

The steps that have been undertaken by law enforcement officers in implementation of the law on the juvenile are namely as follows justice system: **Firstly**, investigators and the Prosecutors have attended the outreach programme on the Law Number 11 of 2012 on the Juvenile Justice System, however Juvenile judge who had never participated in the outreach programme Posseses knowledge of the draft law only. Thus there is a lack of knowledge in Juvenile judge as their understanding is

limited on the draft law. **Secondly**, investigators are used to pursue a settlement between the accused and or their family and the victims and or their family, and if required with involving local community leaders. The prosecutors often arrange a settlement when the investigator send a letter for the proceeding of investigation (*Surat Pemberitahuan Dimulainya Penyidikan (SPDP)*), and suggest the investigators so that the accused and victim could be settled and therefore light crimes are not continued to the criminal charge. For Juvenile Judges, the attempt for a settlement between accused and victim is often difficult to implement, although the code of ethics allows the practice to take place.

The obstacles faced by and efforts to be taken to improve the capacity of the enforcement officers toward the implementation of the juvenile criminal justice system: a) The children investigators and prosecutors have not all understand the new regulation stipulated on the Law Number 11 of 2012 on the Juvenile Justice System. Only 1 (one) investigator and 1 (one) child prosecutor followed the outreach. Understanding of Juvenile Judges in the Law is insufficient since no Judges received the outreach. Only 1 (one) judge followed the outreach, although at the Draft Law stage; b) Law enforcement officers have a lack of awareness and initiative to learn and understand new regulation related with their duties, mostly on the absence of superior orders; c) Law enforcement officers prefer criminal sanctions in the juvenile criminal cases; d) Negative public perception toward law enforcement officers' performance presents a dilemma when considering a diversion with restorative justice approach due to the fear of bribe accusation from the accused and or their families.

Child investigators views that they will prioritize the juvenile case process when the related new regulations stipulated in the Law Number 11 of 2012 is fully in force. In the Sleman District Attorney's office, understanding about the Law is undertaken through internal

discussions and simplifying the bureaucratic process at the pre-prosecution stage. The judges on the other hand, are promoting a judicial review to the Supreme Court through the Association of

Indonesian Judges (*Ikatan Hakim Indonesia*) on the criminalization of law enforcement officers deliberately not implementation diversion regulation.

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