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RESEARCH ARTICLE

CONSTRUCTION OF CHILDREN UNDER 12 YEARS OF AGE IN CONFLICT WITH THE LAW IN THE CHILD CRIMINAL JUSTICE SYSTEM IN INDONESIA

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Abstract

In the Act No. 11 of 2012 about the Juvenile Criminal Justice System, it explains the age limit for juvenile criminal responsibility for those who commit criminal acts, as regulated in Article 1 point 3. The children between 12 (twelve) years old and 18 (eighteen) years old are suspected of committing a crime. The purpose of this study was to analyze the construction of the regulation of children under the age of 12 in the Constitution of the Republic of Indonesia Number 11 of 2021 on the Juvenile Criminal Justice System. This type of normative legal research uses a statute approach and a case approach through a literature study. The results of the research on the Construction of Regulations for Children under the Age of 12 in Act Number 11 of 2021 concerning the Juvenile Criminal Justice System as Children in Conflict with the Law. There is a need for additional rules or amendments to the provisions of criminal sanctions for children, where criminal sanctions will be given to children aged at least 10 years, where these rules consist of basic criminal sanctions, such as community service or supervision, job training, coaching in institutions. This sanction is carried out by considering the rights of children as perpetrators, children as victims and children as witnesses who are underage, without eliminating the implementation of applicable legal obligations.

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Introduction:-

In Act No. 11 of 2012 about the Juvenile Criminal Justice System, it explains the age limit for child criminal responsibility for those who commit criminal acts, as regulated in article 1 point 3. 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime. Provisions on the age for liability for criminal acts of children as stipulated in the Law on the Juvenile Criminal Justice System with a view to applying the principle of the best interests of the child.

Article 21 paragraph (1) about c the child is not yet 12 (twelve) years old, commits or is suspected of committing a crime, investigators, community advisors, and Professional Social Workers shall make a decision to: a. Give it back to the parent/guardian, or b. Participate uniformly in education, coaching and mentoring programs in government agencies or LPKS in agencies dealing with social welfare, both at the central and regional levels, for a maximum of 6 (six) months.

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In the norm as article 1 point 3 and article 21 paragraph (1) of the SPPA Law explains the age limit for children who commit criminal acts, children must not be less than 12 years old for a criminal justice process to be carried out so that they cannot balance the interests of both the victim and the victim. community with child offenders, in connection with the rise of serious criminal acts committed by children under 12 years of age.

The results of a survey by the Witness and Victim Protection Agency (LPSK) stated that every year there was an increase in requests for protection against sexual violence against children from 2016 to 2019 which continued to increase from the number of LPKS applicants., There are at least 4 cases of sexual abuse committed by children almost every week. From several child criminal cases, there are incidents of unlawful acts committed by children who are less than 12 years old, for example, the case of the death of SR (8) a State Elementary School (SDN) student. The second grade elementary school student died allegedly after fighting with his friend in the elementary school yard in the Cicantayan District, Sukabumi, West Java, on Tuesday 8/8/2017) morning.

Act Number 11 of 2012 concerning the Juvenile Criminal Justice System, provides special protection, especially legal protection in the criminal justice system carried out by children. Children who take legal actions will receive special protection, by prioritizing the best interests of children and providing opportunities for children to be responsible and useful for themselves, their families, society, nation and state. Norms that specifically regulate the criminal liability of children under the age of 12 in the Juvenile Criminal Justice System, article 1 no 3 of the Juvenile Criminal Justice System Act:

“A child who is in conflict with the law, hereinafter referred to as a Child, is a child who is 12 years old, but not yet 18 (eighteen) years old who is suspected of committing a crime.”

Article 21 paragraph (1) of the Juvenile Criminal Justice System Act. About a child under the age of 12 (twelve) years old commits or is suspected of committing a crime, investigators, community advisors, and professional social workers shall make decisions to:

1. Hand it back to the parent/guardian, or
2. Participates in education, coaching, and mentoring programs in government agencies or LPKS in agencies dealing with social welfare, both at the central and regional levels, for a maximum of 6 (six) months.

The Act of Criminal Justice System on the substance of norms regulates the age limit of children. However, serious criminal events committed by children under the age of 12 disrupt the security, public order and the environment is not conducive. This is because there is no balance of interests between perpetrators of child crimes, victims, witnesses and the community.

Criminal liability for children who are less than 12 years old with consideration of (a) sociological, psychological and pedagogical considerations, (b) children who are not yet 12 years old and in the age range of 12-18 years still need guidance from their parents, (c) age sufficient for the child to understand the consequences of the crime committed, and (d) the age range of 12-18 years does not yet have emotional, mental and intellectual maturity.

The development of information technology and science has brought about fundamental social changes to change children's behavior to do positive and negative things in their lifestyles and the development of mindsets that lead to an increase in legal actions committed by children.

Criminal liability is the imposition of punishment on legal subjects who have committed acts that violate norms. Criminal liability is determined on the fault of the maker, not only the fulfillment of all elements of the crime. Thus, error is a determining factor for criminal liability and is not seen as only a mental element in a crime. Criminal liability is different from criminal acts.

Children have different levels of development. In theory, child psychology is part of developmental psychology, which studies child development. Developmental psychology covers several fields of psychology, namely child psychology, adolescent psychology, adult psychology and the psychology of the elderly (elderly). Developmental psychology is defined as a branch of psychology that studies changes in behavior and abilities throughout the developmental process from conception to death. Developmental psychology questions the general factors that influence the developmental process that occurs in a typical person.

Adolescence is a period of developmental transition between childhood and adulthood, which involves biological, cognitive, and socioemotional changes. The change starts from the age range of 10 to 13 years and ends at the age of about 18 to 22 years.

It is difficult to pinpoint exactly at what age this pure or adolescent period begins and when it ends. There are experts who say the age of 10-12 years is what determines the age of 12 to 14 years but it can be stated that these pure symptoms can continue well beyond the actual puberty.

The pre-pubertal or pre-pubertal period is marked by the development of abundant physical energy. This situation causes the child's behavior to look rough, awkward, delinquent, impolite and others. At this time, the child's physical growth is very rapid so that he grows fast and his body weight increases and his body grows in length. Along with the rapid growth of the body, there is also a very intensive intellectual development so that children's interest in the outside world is very large. This intellectual development builds various psychic functions and spiritual curiosity (Psychologicalcuriosity, geestelijkenieuwsgierigheid) so that there is a strong urge to seek new knowledge and experiences. Rapid physical growth also continues during puberty and adolescence. The very rapid increase in length and weight at the age of pre-puberty and puberty seems to follow a rhythm with a certain growth and take place alternately.

This period of accelerated growth with the increase in body weight and length is not constant generally lasts from the age of 11 to 15 years. In connection with this, the rapid growth of the bones and body of this child raises a growing awareness of the strength of one's own body. Since the age of 10 years, there is also an expansion of the community in the child, infection in the child as well as the child's physical and endurance. These two kinds of diseases and the reaction to grow to the maximum by the abundant physical development resulted in a rush of activity so that the child looked rude, awkward, wild and impolite. However, the form and content of these activities were different in girls and boys where the increase in activity did not mean an increase in the child's aggressiveness but was:

1. The process of intensification of children's adaptability to the realities of the world;
2. Is an attempt to better control the environment and overcome the difficulties of life.

All of these activities are made possible by the principle of dynamic active development in children, the sources of all these activities are as follows:

1. the drive to grow or the ability to be and;
2. independent encouragement (self-supporting drive).

So in every normal individual there is always an urge to develop to process "becoming" which is always undergoing dynamic changes and progress. This dynamic development is based on heredity factors (innate, hereditary factors) which are supported by various influences from the environment.

Beside, the urge to develop forever is accompanied by the urge to fight and the urge to achieve achievement, all activities, both in the form of games, learning efforts and carrying out developmental tasks, are essentially expressions of the functioning of psychic and physical abilities, namely in the form of a serious effort to fight and achieve.

Emotional fluctuations that occur in adolescents, various thoughts, feelings, and actions occur, such as between pride and humility, good intentions and temptations, happiness and sadness, and other contradictory conditions that change in a short time. At this stage, they begin to be able to think logically about concrete objects, but their way of thinking is hampered by egocentrism (the inability to distinguish between one's own perspective and the others). However, not all teenagers have self-identity. from the peak of the crisis between identity and identity confusion in adolescence.

Identity exploration is part of the period of identity formation. In the exploration of identity, adolescents experience a psychosocial moratorium. The psychosocial moratorium is the gap between childhood security and autonomy in adulthood. In addition, in the process of identity exploration, adolescents often experiment with various roles.

Piaget revealed that adolescence is the age when individuals integrate with adult society. Age is a benchmark in the definition expressed by Piaget even though adolescents actually have a broad meaning that includes mental,

emotional, social, and physical maturity (Piaget in Hurlock, 1980). Piaget stated that cognitive development is not only the result of the maturity of the organism, nor the influence of the environment alone but the result of the interaction between the two.

According to Piaget, cognitive development has four aspects:

1. Maturity as a result of the development of the nervous system;
2. Experience, namely the reciprocal relationship between organisms and their world;
3. Social interaction, namely the effects obtained in relation to the social environment;
4. Equilibration is the ability or system to regulate within the organism so that it is always able to maintain balance and adapt to the environment.

Legal acts committed by children who are less than 12 years old, as according to psychological theory, must be able to be held accountable for the legal actions committed. As with psychological theory, children are able to reason logically about concrete events and objects, by referring to the child's age due to concrete operations or when a child is 11 years old who is able to reason by thinking realistically and pragmatically or as the fourth and final stage of cognitive development begins. or formal operational stage.

Protection of children is an important work that must be carried out by all elements of the state. These forms of child protection are also carried out from all aspects, starting from fostering the family, social control of children's associations, and proper handling through good regulations made by a country.

The scope of the definition of protection and the purpose of child protection is in line with the Convention on the Rights of the Child (KHA) and the protection of human rights which are enshrined in the 1945 Constitution of the Republic of Indonesia. Article 22 B paragraph (2) of the Indonesian Constitution affirms:

"Every child has the right to survival, growth and development and the right to protection from violence and discrimination".

Child protection can also be interpreted as all human efforts so that the potential and successors of the ideals of the nation's struggle in the future have a strategic role and have special characteristics and characteristics and require special guidance and protection as well. In international meetings, legal protection for children can cover various aspects, such as the protection of human rights and freedoms aimed at preventing, rehabilitating and empowering children who have experienced child abuse, exploitation and neglect, in order to ensure their survival. and growth and development of children naturally, both physically, mentally and socially.

The purpose of this research is to analyze the construction of the regulation of children under the age of 12 in the Law of the Republic of Indonesia Number 11 of 2021, the Juvenile Criminal Justice System.

Research Methods:-

This research is juridical-normative research, a legal research which is conducted by examining literature materials using the object of research in the form of existing libraries, so this research is also literature research. In legal research, an approach method is needed which is intended to obtain information from various aspects regarding the legal issues that are being tried to find answers.

The research approach is carried out as follows: The Statute approach, a normative research must use this Legislative approach because the various legal regulations that are the focus and the central theme of a study are studied. The Statute approach is carried out by reviewing and analyzing various laws and regulations governing the age limit of children in criminal liability. Case Approach; The main purpose of analyzing legal materials is to find out the meaning contained by the terms used in laws and regulations conceptually as well as knowing its application in practice and legal decisions.

Legal research sources can be divided into research sources in the form of primary legal materials and secondary legal materials. Primary legal materials are legal materials that are authoritative, meaning they have authority. Primary legal materials consist of legislation and judges' decisions. Meanwhile, secondary materials are all publications on law which are not legal documents which are not official documents. Publications on law include textbooks, legal dictionaries, legal journals and comments on court decisions. Primary legal materials are legal

materials that are authoritative, meaning they have authority, where this legal material consists of legislation, official records or minutes in making laws and judge decisions if needed which includes the Criminal Code, Act Number 3 of 1997 concerning Juvenile Court, Act Number 39 of 1999 concerning Human Rights, Act No. Number 23 of 2002 concerning Child Protection, as well as Act Number 11 of 2012 concerning the Juvenile Criminal Justice System. Secondary legal materials are the work meeting minutes on the draft of the juvenile justice law and the minutes of the working meeting of the draft law on the juvenile criminal justice system, research results and legal literature, as well as articles and legal journals from the internet relating to the age limit for juvenile criminal responsibility, in Criminal Law in Indonesia in the form of all publications on law that are not official documents, usually in the form of legal books or references, scientific papers, the internet and even mass media letters, all of which are related to existing legal issues. Tertiary legal materials were obtained from the Big Indonesian Language Dictionary and the General Indonesian Dictionary, as well as the Oxford Dictionary obtained from accessing the internet, which are legal materials that must also be able to explain primary legal materials and secondary legal materials. This legal material is needed to support other legal materials.

The analytical technique used in this research is descriptive analysis. Descriptive analysis begins with grouping the same data and information according to sub-aspects. Furthermore, interpretation is carried out to give meaning to each sub-aspect and its relationship to one another. Then, an analysis or interpretation of all aspects is carried out to understand the meaning of the relationship between one aspect to another and with all aspects that are the subject matter of research carried out inductively so that it gives a complete picture of the results. In addition to obtaining a complete picture, there are times when the next step is determined by taking into account the special domains that are interesting to study. Thus, the next research material makes it possible to be more focused and focused on more specific problems.

Discussion:-

Construction of arrangements for children under the age of 12 as children in conflict with the law in the Law of the Republic of Indonesia Number 11 of 2021 on the Juvenile Criminal Justice System. Criminal law is part of the overall law that applies in a country that has the rule of law. The law is coercive and binding, so it has consequences for its implementation. The consequences are in the form of sanctions, both criminal sanctions and action sanctions (maatregel).

In the initial development of positive criminal law in Indonesia, Indonesian criminal law has indeed recognized the existence of action sanctions, in addition to criminal sanctions. Although, the Criminal Code only adheres to the Single Track System where there is only one type of regulation, namely criminal sanctions in Article 10 of the Criminal Code, where criminal sanctions emphasize the existence of rewards commensurate with the actions, but this has implications for the birth of a misery for children. In terms of objectives, criminal sanctions aim to provide suffering and reproach for what he has done.

Meanwhile, the threat of action sanctions in the act of the Republic of Indonesia Number 11 of 2021 on the Juvenile Criminal Justice System shows that this sanction is another means that is owned as a means of overcoming crimes other than crime. Action sanctions are based on guarantees for the protection of children as perpetrators of criminal acts. This sanction also has an educational purpose so that in the future the maker will no longer do the same act. The presence of action sanctions as an alternative to criminal, makes the juvenile criminal justice system more progressive. RoeslanSaleh stated that action sanctions are an effort to achieve a goal that is not only criminal, but there are other goals that seek to maintain security in society.

The difference between the two sanctions orientations is based on the paradigm behind the two different concepts. But unfortunately, the two sanctions have not been regulated to be applied simultaneously, especially in the context of criminal acts committed by minors because the child is in a developmental period.

Starting from the conceptions of the flow of criminal law that affect the sanction system in criminal law, the idea of criminal individualization emerged which has the following characteristics:

1. Criminal liability is personal/individual (personal principle);
2. Criminals are only given to people who are guilty (culpability principle, "no crime without guilt");
3. The crime must be adapted to the characteristics and conditions of the perpetrator. This means that there must be flex for judges in choosing criminal sanctions (type and severity of sanctions) and there must be the possibility of criminal modifications (changes/adjustments) in their implementation.

As a consequence of the idea of criminal individuality, the punishment system in modern criminal law is in turn oriented towards the perpetrator and the deed (*daad-daderstrafrecht*), which is called the balance of interest model. This model is a realistic model that takes into account various interests that must be protected by criminal law, such as the interests of the state, the public interest, the interests of individuals, the interests of the perpetrators of crimes, and the interests of victims of crime. This theory is in accordance to the responsibility of children who are less than 12 year old. The types of sanctions applied include not only criminal sanctions, but also action sanctions. This recognition of the equality between criminal sanctions and action sanctions is the basic essence or basic idea of the double track system concept.

The double track system is both, which places the two types of sanctions on an equal footing. The emphasis on the equality of criminal sanctions and action sanctions within the framework of the double track system is actually related to the fact that the elements of reproach/ suffering (through criminal sanctions) and elements of guidance (through action sanctions) are equally important.

As a result of the emergence of the criminal system in modern law, Indonesia is one of the countries that finally uses the application of two criminal sanctions at once, namely in the form of criminal (*straf*) and action (*maatregel*) in the country's criminal law. The concept of individualization of punishment is seen as very good for building a modern criminal paradigm in criminal policy, especially for children under 12 years old. Through the implementation of a two-track system (Double Track System), the criminal sanctions imposed will better reflect justice, both children as perpetrators, children as victims and society.

In the dimension of punishment, which is the implementation of a crime in the application stage of criminal law, if the criminal or action imposed by the court is in accordance with the convict's condition and does not injure the sense of justice of the community and does not harm the victim, then the judge who decides on the criminal case has actually started to apply the concept of individualization of punishment. An example is a case against the law committed by a child who is less than 12 years old, where the case of the death of SR (8) is a State Elementary School (SDN) student. The second grade elementary school student died allegedly after fighting with his friend at the elementary school yard in the Cicantayan District, Sukabumi, West Java, Tuesday (8/8/2017) morning. In this case, the criminal law system used is more accommodating to the settlement of cases in the form of diversion, where this process is aimed at changing the judicial process to a process outside of criminal justice. This process is carried out by holding deliberation/mediation between children as perpetrators and their parents, children as victims and their parents, community participation and related teams. Sentencing for children as perpetrators is not only to seek justice for children who are victims, but to carry out the process of resolving cases while prioritizing the best interests of children as perpetrators and so that there are no violations of children's rights.

The difference between action sanctions and criminal sanctions here is somewhat vague because the sanctions for actions are depriving children of independence, for example in this case the result is that children as perpetrators will be included in LPKS and their progress will be monitored and evaluated. So putting this child under the age of 12 into forced education which named LPKS can be said to be depriving him of his independence as a child. Another type of action sanction that can be taken is to return the defendant to his parents, but the victim and his family and the community will certainly not agree with this because the perpetrator's actions are included in crimes that are not light (having caused the victim to die). So, law enforcement officers should not only think *zakelijk* normatively who views the action from the end point or its impact, without wanting to think wisely and maturely, both sociologically, psychologically and pedagogically as well as philosophically, especially if the perpetrator is a minor.

According to Law Number 11 of 2021 concerning the Juvenile Criminal Justice System (UU.SPPA). which uses the terminology "Children's Criminal Court", is not defined as a Judicial Body as regulated in Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that judicial power is exercised by a Supreme Court and a Judicial Body which is under the jurisdiction of the Republic of Indonesia. general courts, religious courts, military courts, state administrative courts and by a Constitutional Court. The Juvenile Criminal Justice Act here is only part of the general justice environment. Therefore, if a child under the age of 12 commits a murder or mistreatment that results in the death of the victim, the judge tends to take steps so that the case can be resolved outside the criminal justice system.

Philosophically, "punishment philosophy" is defined as having dimensions and orientation to the elements of "criminal", "criminal system" and "penalty theory" which regulates how the punishment of criminals by judges and

the judicial process in Indonesia. Meanwhile, according to M. Sholehuddin, the "philosophy of punishment" essentially has two functions, which are the fundamental function as a foundation and the function of normative principles or rules that provide guidelines, criteria or paradigms for criminal and sentencing issues. The philosophy of the juvenile criminal justice system prioritizes the protection and rehabilitation of child offenders (emphasized the rehabilitation of youth offenders) as people who still have a number of limitations compared to adults.

Children need protection from the state and society in the future. While children who have already become perpetrators of criminal acts, it is necessary to have a criminal justice system strategy that seeks to minimize the intervention of the criminal justice system. This means that for children under 12 years old, the justice system is strived to provide a minimum of criminal penalties where this is related to the child protection rights owned by the perpetrator.

Article 9 paragraph (1) of Act Number 11 of 2021 concerning the Juvenile Criminal Justice System (UU. SPPA) explains that investigators, public prosecutors and judges in conducting diversion must consider: a. category of crime, b. child's age, c. results of community research from the Fathers, and d. family and community support. If according to Piaget, 10 years old children have been able to reason logically about concrete events or objects and are able to think realistically, then it is necessary to add new criteria in the article, such as psychological criteria for children because each child will have different psychological conditions. according to the place of residence and conditions of the family.

Other forms of handling children in conflict with the law are regulated in Article 16 Paragraph (3) of Act Number 35 of 2014 concerning Child Protection which states that "arrest, detention, or criminal acts of imprisonment of children are only carried out if in accordance with applicable law and can only be done as a last resort." Article 16 paragraph (3) is in accordance with the Convention of The Right of the Child which has been ratified by the Indonesian government by Presidential Decree Number 36 of 1990 in article 37 letter (b) which states that:

"States Parties shall ensure that no child may be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child must be in accordance with the Act, and should be used only as a last resort and for the shortest appropriate period of time."

From these descriptions, a combination of criminal sanctions and action sanctions is simultaneously needed. Criminal sanctions on children who are under 12 years old will have an impact on the provision of suffering. Although, there are elements of education and coaching and mentoring in it. Then, action sanctions will further direct children as perpetrators to activities of protection, education, assistance and surrender of children to the state. Thus, the basic difference between criminal sanctions and action sanctions is the goal and both are forms of sanctions for violating the law, imposed by the state and causing suffering.

In the research concept of the researcher, when viewed from the determination of the age of children who have emotional and mental maturity in the theory of child psychology, the researcher defines children from the age of 10 to 12 years have been able and can be held accountable for legal actions they have done because the child has the ability to reason to think realistically and pragmatic (commonly called the fourth and final stage of cognitive development or the formal operational stage). In imposing a crime, the judge needs to remind that the considerations in making decisions regarding the future of children as perpetrators are not with the size of adults and are not centered on the interests of adults. As with the theory of imposing punishment on children under 12 years of age (to be exact, according to the researcher), the judge must pay attention to the severity of the crime or delinquency committed by the child concerned, the child's condition, the household condition of the parent/guardian and the child's guardian. For the criteria for the condition of the child, if the definition is more related to the physical condition of the child as a criminal, then it is necessary to add psychological criteria for the child in terms of helping to determine whether or not the severity of the punishment that must be received by the child is needed. The application/combination of these two sanctions is also carried out in addition to creating a deterrent effect in committing crimes, but also to change children as perpetrators so that they can improve themselves in preparation for returning to society.

Article 1 number (3) of Act Number 11 of 2021 concerning the Juvenile Criminal Justice System (UU. SPPA) so that children under 12 years old (10 years to be exact) can be classified as children in conflict with the law, it is

necessary to have additional rules or amendments regarding the minimum age limit of children who can be penalized with the following notes:

1. a child under the age of 12 years (minimum 10 years) with a record that the child is psychologically proven and in a conscious state and is followed by strong legal evidence and states that the child has committed an act against the criminal law;
2. pursuant to an additional rule in paragraph (a) the criminal law action referred to is a serious legal action such as murder, robbery, rape, injuring or killing a person.

Article 21 paragraph (1) of Act Number 11 of 2021 concerning the Juvenile Criminal Justice System (UU. SPPA), sanctions for actions already exist for children under 12 years old is handing them back to their parents/guardians or including them in educational programs, coaching and mentoring in government agencies or LPKS in agencies dealing with social welfare, both at the central and regional levels, for a maximum of 6 (six) months.

Criminal sanctions in Act Number 11 of 2021 concerning the Juvenile Criminal Justice System (UU. SPPA) are only set for children with a minimum age of 12 years and this is not in line with the conception stated by researchers based on Piaget's psychological theory where the child's age is at least 10 years. have the ability to reason logically, realistically and pragmatically. Therefore, there is a need for additional rules or amendments to the age limit of children not only being at least 12 years old, but also under the age of 12, which is 10. Criminal sanctions will be given to children at least 10 years old by considering the rights of children as perpetrators, children as victims and children as witnesses who are underage, without eliminating the implementation of applicable legal obligations.

In Article 71 of Act Number 11 of 2021 concerning the Juvenile Criminal Justice System (UU. SPPA) which consists of basic criminal sanctions, such as warnings, penalties with conditions such as coaching outside the institution, community service or supervision, job training, coaching in institutions to jail. Meanwhile, additional criminal sanctions consist of confiscation of profits derived from criminal acts or fulfillment of customary obligations. However, this article only applies to children who are at least 12 years old. Meanwhile, for children under 12 years old (minimum 10 years), there are no rules governing criminal sanctions. In fact, the object and subject of this criminology has expanded, not only among adults, but also many crimes committed by minors. Thus, it is necessary to have additional rules regarding this condition. In the conditions of the increasingly widespread crime committed by children under 12 years old, researchers suggest the existence of criminal sanctions on children (minimum 10 years), where the rules consist of basic criminal sanctions, such as community service or supervision, job training, coaching in institutions. Then, additional criminal sanctions consist of deprivation of profits obtained from criminal acts or fulfillment of customary obligations.

This double track system arrangement (a combination of criminal sanctions and action sanctions) for children under 12 years old (minimum 10 years) can be considered in reconstructing appropriate legal rules, both in terms of age limits and legal sanctions based on the development of criminology and Indonesian victimology. The researcher also agrees with Muladi, where the purpose of punishment is to repair individual and social damage caused by criminal acts. Therefore, in sentencing the perpetrators, especially children under 12 years old, it should be aimed at efforts to recover losses caused by the crime that occurred. The sentence imposed is a punishment aimed at improving children as perpetrators in the future and increasing social sanctions that have been fading in the life of modern society in Indonesia today.

Conclusion:-

Construction of arrangements for children under the age of 12 as children in conflict with the law in the Law of the Republic of Indonesia Number 11 of 2021 on the Juvenile Criminal Justice System. There is a need for additional rules or amendments to the provisions of criminal sanctions for children, where criminal sanctions will be given to children aged at least 10 years, where these rules consist of basic criminal sanctions, such as community service or supervision, job training, coaching in institutions. Then, additional criminal sanctions consist of deprivation of profits derived from criminal acts or fulfillment of customary obligations. This sanction is carried out by considering the rights of children as perpetrators, children as victims and children as witnesses who are underage, without eliminating the implementation of applicable legal obligations. The purpose of punishment is to repair individual and social damage caused by criminal acts, especially children under 12 years old should be aimed at efforts to recover losses caused by criminal acts that occurred and efforts to improve children as perpetrators in the future and increase social sanctions that have been faded in the modern society life in Indonesia today.

Bibliography:-

1. Anwar, Y. & Adang. (2011). Sistem Peradilan Pidana: Konsep, Komponen, & Pelaksanaannya dalam Penegakan Hukum di Indonesia. Widya Padjadjaran, Bandung.
2. Admin Padamu. 2012 Teori Kognitif dan Perkembangannya Menurut Jean Piaget, <https://www.padamu.net/teori-kognitif-dan-perkembangannya-menurut-jean-piaget>, [11 Agustus 2021]
3. Barda Nawawi Arief, 1996. Bunga Rampai Kebijakan Hukum Pidana, PT Citra Aditya Bakti, Bandung.
4. Bahder Joan Nasution 2008. Metode Penelitian Ilmu Hukum, Mandar Maju, Bandung.
5. Bambang Waluyo, 2011, Viktimologi Perlindungan Korban & Saksi, Sinar Grafika, Bandung.
6. Budiyanto, 2017, Kasus Siswa SD Tewas Karena Berkelahi Gunakan Peradilan Pidana Anak (Online)", website : <https://regional.kompas.com/read/2017/08/15/20584701/kasus-siswa-sd-tewas-karena-berkelahi-gunakan-uu-sistem-peradilan-pidana,15-8-2017>.
7. Chairul Huda, 2006. Dari tiada pidana tanpa kesalahan menuju kepada tiada pertanggungjawaban pidana tanpa kesalahan, kencana penerbit, Jakarta .
8. Gita Santika R., Barda Nawawi A., Purwoto, 2012. Sistem Pidana dan Tindakan "Double Track System" Dalam Hukum Pidana di Indonesia, DIPONEGORO LAW REVIEW, Volume 1, Nomor 4.
9. J.E. Jonkers, 1987. Buku Pedoman Hukum Pidana Hindia Belanda, Bina Aksara, Jakarta
10. Johnny Ibrahim, 2006. Teori dan Metodologi Penelitian Hukum Normatif Bayu media Publishing Jawa Timur
11. Kartini Kartono, 2007. Psikologi Anak (psikologi Perkembangan) Mandiri Maju, Bandung.
12. M. Sholehuddin. 2004. Sistem sanksi dalam hukum pidana (Ide Dasar Double Track Sistem dan Implementasinya). Penerbit PT Raja grafindo. Jakarta.
13. Lilik Mulyadi, 2007. Peradilan Bom Bali, Penerbit PT Djambatan, Jakarta,
14. Marlina. 2010. Pengantar Konsep Diversi Dan Restorative Justice Dalam Hukum Pidana, USU Press. Medan.
15. Matius Alfons, 2019, LPSK: Kasus Kekerasan Seksual Pada Anak Meningkatkan Setiap Tahun (Online), website : <https://news.detik.com/berita/d-4637744/lpsk-kasus-kekerasan-seksual-pada-anak-meningkat-tiap-tahun>, (tanggal 21 Januari 2019).
16. P.A.F. Lamintang. 1994. Hukum Penitensier Indonesia. Penerbit Cv Armico Bandung .
17. Roeslan Saleh, 1983. Stelsel Pidana Indonesia, Aksara Baru, Jakarta.
18. Riska Vidya Satriani, 2021. Keadilan Restoratif Sebagai Tujuan Pelaksanaan Diversi Pada Sistem Peradilan Pidana Anak, diakses dari mahkamah agung.go.id/id/artikel/2613/keadilan-restoratif-sebagai-pelaksanaan-diversi-pada-sistem-peradilan-pidana-anak, [11 September 2021]
19. Soerjono Soekanto, 1998. Penelitian Hukum Normatif, Rajawali Press, Jakarta.
20. Widodo, 2012. Prisonisasi Anak Nakal: Fenomena Dan Penanggulangannya, Aswaja Pressindo, Yogyakarta.