

# FORMULATION TREATMENT AS THE PRIMARY SANCTION TOWARDS CERTAIN TYPES OF CRIME



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# Introduction

- The Legal Reform : The Act of Juvenile Justice System which promulgated in 2012 and applicable in June 2014.
- Indonesia has a special criminal justice system for juveniles, recognizing the special vulnerability of children and based on notions of education, reform and reintegration.



# National Plan and Challenges

## Significant Progress:

- The terminology → Children Conflict with the Law means children between 12 – below 18 who commit a crime and could be prosecuted in the criminal court
- Children Contact with the Law means children who become an offender, a victim or a witness.



- Restorative justice elements are present in our juvenile penal system known as Diversion (Article 6 until article 15)

- Article 1 verse 8 – 12 :

Penyidik Anak : Police with juvenile specialized

Penuntut Umum Anak : Prosecutor with juvenile specialized

Hakim Anak : Judge with juvenile specialized

→ The Problem is they are not certified in this specialization.



# The Principles:

- Non-Discrimination
- The best Interest of the Child
- Juvenile Correctional Institution / Prison (deprived their liberty) as the last resort
- Avoid Revenge



# Non-Discrimination

Question: Are there non national children under measures and sanctions in your country?

- There is no data regarding with this issue
- Open gate to Asean Economic Community
- The Principle of Non Discrimination will apply equally for national or non national children who have commit a crime



# The best Interest of the Child

- The weaknesses of Juvenile Justice System in Indonesia:
  1. The Identity of the Juvenile Offender is not really confidential.

The rights of the juvenile to be protected are not yet clearly implemented. Looking for a wise solution to treat those children who have long a future is not an easy task, especially country which is having economic problems such as Indonesia.









- Social Report

This social report existence is very important, because the background of the child due to the occurrence of the criminal offense must be arranged in detail, so that the social report is expected to serve as a guide for the consideration of the judges in deciding cases. But in reality, not all cases of the trial children have a social reports.



# Juvenile Correctional Institution / Prison (Deprived their liberty) as the last resort

- Penalizing the juvenile delinquent seems to be a difficult problem. From the sociological point of view, this action must be justifiable for its use and utility.
- According to KPAI report that at this moment there is 7300 juvenile delinquency in prison and spread in the child prison, adult prison and in police and prosecutor detention.
- Penalty is not only uncomfortable when it is being applied, but also the ex-prisoner will bear the bad label called “stigma” from the society. In other words, it can be said that stigma is an ever lasting penalty.



# The Principle of Avoid Revenge

- Other common examples is the treatment by legal authorities such as police, prosecutor and judge who tend to penalize the offender. In our society including the officer of the law enforcement , the retribution theory is strongly recommended and applicable. They want the perpetrator will pay back with the the same value of what they have done.



- Penalizing the juvenile must be educative and constructive. The reason is that the action of giving penalty often creates victims and sufferings related to mental, physic and social cost, especially if the penalty is intended to seek revenge.



# Special Treatment as a Primary Sanction

- Inspired by HALT Programme in the Netherlands

Halt is a Dutch organisation with a national network of offices which aims to prevent and combat juvenile crime.

The crime prevention activities of Halt consist of advisory services, educational programmes and the development and implementation of crime prevention projects. The activities are carried out at local and regional levels.

Halt is also responsible for the enforcement of alternative punishment given to young people up to the age of 18.



# The Shelter “Rumah Hati”

- Begin on March 2011
  - The Goals are:
    1. Alternative settlement is offered to young first offenders\* who have committed certain minor offences.
    2. The juvenile is not prosecuted and a criminal record is consequently avoided.
- This Alternative Settlement can be decided for the Diversion Program



- We have 37 juveniles registered in this shelter, but now only 7 juveniles (boys). Some of them find a good job but we loss contact with others
- The type of crimes of the members in this Rumah Hati Shelter: sexual violation, theft and vandalism
- Some problems:  
lack of qualified teaching staffs, less of books, and also the minimal educational costs.















# Recommendation

- The action of penalizing children conflict with the law must consider the Penalty Ethics, such as:
  1. Justice is the only basis for any penalty
  2. Any consideration relating to the criminal act and criminal responsibility should be analyzed and evaluated
  3. Penalty given to the juvenile should contains responsibility accordingly



4. Prae delinquent perception should not be solely based by its mens rea, but also the juvenile's ability to accomodate a penalty sanction. If they are not able to accept it, they deserve to be helped
5. There is compromise between the legal approach and the case work approach in a juvenile court. (legal approach justifies the giving of penalty by the court with the goal of protecting people from the danger caused by the delinquent. And the case work approach refers to the behaviour with the goal of therapy, and tries to find the background, social condition, personal difficulties and tries to eliminate or alleviate conflicts that can cause disturbance.



**TERIMAKASIH**  
**THANK YOU**