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RESEARCH ARTICLE

HUMANIST LAW: LAW ENFORCEMENT STRATEGY AGAINST CHILD PERSONS OF CRIME IN INDONESIA

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Abstract

This article examines and analyzes law enforcement in criminal acts committed by children. Law enforcement has always been preoccupied with general and conventional crimes committed by adults. In fact, along with the development of society and technology, several criminal cases have been committed by children. Considering that children need protection to grow and develop optimally, children who commit crimes must be given special treatment in terms of procedural law, criminal threats, and fulfillment of children's rights, which are different from adults. This research is normative and empirical juridical research with a socio-legal approach. Primary data collection was carried out by interviewing sources determined through the snowball technique, while secondary data collection was carried out by library research. The collected data is then processed through the stages of checking, tagging, compiling, and systematizing. The data that has been processed is then analyzed interactively, which consists of description activities and data reflection. Challenges to law enforcement against perpetrators of criminal acts in Indonesia include the high tendency to detain and imprison children, violations of children's right to a fair trial, and the demands of prosecutors and judges' decisions are still dominated by prison sentences. The strategy for law enforcement against child perpetrators of mass crimes is based on a humanist legal approach through issuing sentencing guidelines and adopting the concept of children hearing system, optimizing the role of the police in implementing diversion, and optimizing community participation in child protection.

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Introduction:-

Juvenile criminal justice, as a part of law enforcement, is an attempt to deal with crime rationally, fulfill a sense of justice and be efficient in tackling crimes committed by children (Arief, 2002). Law enforcement has always been preoccupied with general and conventional crimes committed by adults. However, these crimes develop along with the development of society and technology. Crime does not stop and stagnate but continues to metamorphose with the times. Some crimes previously thought impossible for children to commit now being committed by children. According to data from the Indonesian Child Protection Commission (KPAI), from 2016 to 2020, 12 children were recorded as perpetrators of criminal acts of terrorism. In addition, according to KPAI data, 82.4%

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were caught in narcotics cases as users, 47.1% as dealers, 31.4% as couriers and 17.8% of residents of the Special Child Development Institute (LPKA) were children of drug offenders(KPAI, 2022).

In connection with the process of law enforcement against children who have committed crimes in Indonesia, when there is a tendency for settlement through the criminal justice system, it includes the stages of the investigation, prosecution, trial, and sentencing. Settlement steps through the courts followed by detention often frustrate children(Kelly & Ramsey, 2009). For example, a child detained by the police then commits suicide. In addition, these steps can give stigma to children. The stigma and frustration will negatively affect the child's future(Baskoro, 2019).Based on the 2021 juvenile justice system report, there is still a tendency to detain children who commit crimes. Among them, in Lampung Province, out of a total of 310 child perpetrators of criminal acts, 259 children were arrested. Most places of detention are in LPKA, and the rest are in adult prisons/detention centers and LPKS.

Furthermore, even though the weakness of imprisonment, among others, can lead to "labeling" and "prisonization" for children, the number of prison sentences in Indonesia is still huge(Sasmita et al., 2021). The results of research conducted by the Center for the Study of Child Protection (Pusakapa) at the University of Indonesia, UNICEF, and the Ministry of National Development Planning/Bappenas in 2020, show that although the SPPA Law offers various alternative sanctions for children, detention and imprisonment are still common. 90% of children who are processed in court are sentenced to prison. Arrest and imprisonment are also carried out against those under 14(Tieken, 2020).Punishment and legal processes for criminal acts committed by children are different from adults(Richards, 2011). Children are recognized as individuals who are not entirely responsible for their actions. For this reason, in the legal process and the imposition of punishment, children who commit particular crimes must also receive special treatment and differentiate them from adults(Purnomo & Gunarto, 2018).

Children need protection to ensure the fulfillment of children's rights so that they can live, grow, develop and participate optimally with human dignity and receive protection from violence and discrimination for the realization of quality Indonesian children with noble character(Jumriani et al., 2022). The humanist approach in this article is a dimension that has become part of the criminal law enforcement system since the application and execution stages. Children who commit crimes are victims of the wrong upbringing and environment, so they are included in the vulnerable group. With the consideration that human development is of a more significant benefit than imposing criminal penalties, a humanist approach can exist as a strategy for law enforcement against children who commit criminal acts in the future.

The humanist values include freedom, security, creativity, self-actualization, cooperation, self-confidence, ethics and morals, truth, self-control, and accountability in this world and the hereafter. The humanist legal approach is not a new dimension of consideration placed outside the criminal justice system by questioning the legitimacy and becoming the checks and balances of the judge's conscience. Humanist law considers human development to be of a more significant benefit than sentencing so a humanist legal approach can be present from the perspective of criminal law.

Research Methods:-

This research is normative and empirical juridical research with a socio-legal approach(Ishaq, 2017). Primary data collection was carried out by interviewing sources determined through the snowball technique, while secondary data collection was carried out by library research(Alwasilah, 2002). The collected data is then processed through the stages of checking, tagging, compiling, and systematizing. The data that has been processed is then analyzed interactively, which consists of description activities and data reflection(Huberman, 1992).

Discussion:-

Challenges of law enforcement against child offenders

The juvenile justice system in Indonesia is implemented based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law)(Yuliawati, 2021). This regulation is expected to fill the judicial space because the concept of restorative justice is a fundamental substance in the SPPA Law so that children's physical and spiritual existence remains dignified as their human rights. Settlement of criminal acts of children in conflict with the law by using the concept of diversion through a dignified justice-based restorative justice approach(Rudiana & Setiabudhi, 2021).However, not all crimes committed by children who conflict with the law can be done using diversion. Only crimes that carry a penalty of fewer than seven years and not repetition can be diverted.Because

diversion cannot be applied to every child case, this has resulted in a high tendency for children to be detained and imprisoned.

The next challenge for law enforcement against child offenders in Indonesia is that the application of the fair trial provisions of the SPPA Law is still fragile. Several essential components of children's rights that will be discussed in this article include

1. the right to be accompanied by legal counsel and obtain practical legal assistance;
2. the right to obtain assistance other than legal counsel; and
3. the right to a competent, independent, and impartial judiciary.

The child's right to obtain practical legal advice and assistance is emphasized in Article 3 letter c and Article 23 of the SPPA Law. In this study, it was found that the majority of children's assistance by attorneys was found to be carried out at the trial stage. According to SamsiThalib, assistance to children dealing with the law is provided by the Legal Aid Post (POSBAKUM) at the Tanjungkarang District Court only at the time of the decision hearing, in other words not from the start of the criminal justice process.

The low level of assistance at the investigation stage indicates that most new children are assisted when they enter the trial examination stage. In fact, in the provisions of Article 23 Paragraph (1) of the SPPA Law, it has been emphasized that children have the right to receive legal assistance at every level of examination. The examination stage in the investigation is crucial because if a child has been detained at the police level, the tendency to be detained at the next level will be very high. Legal assistance provided to children is limited to defending and ensuring that other children's rights are fulfilled as regulated by statutory provisions.

Furthermore, this study found facts about the appointment of attorneys accompanying children. In the decision of the Tanjungkarang District Court Number: 57/Pid.Sus-Anak/2021/PN Tjk regarding the child who committed the crime of intercourse with a child, a letter of determination for the appointment of a legal adviser was issued on October 13, 2021, while investigators have detained the child since September 20, 2021, to October 4, 2021 then continued detention by the public prosecutor from October 4 to October 8, 2021. So that it can be ascertained that during the initial examination process at the investigation level, the child has not received assistance from a legal adviser because a new legal adviser was appointed on October 13, 2021, while the child has been detained since September 20, 2021.

Then the right to obtain assistance other than legal counsel is guaranteed in the SPPA Law and is emphasized in several articles, including Article 3 of the SPPA Law, which states that children have the right to receive assistance from parents/guardians and people trusted by the child. Then Article 23 of the SPPA Law states that children have the right to be accompanied by Community Guidance or companions at every level of examination. Article 55 of the SPPA Law stipulates that judges must order parents/guardians or companions, advocates or other legal aid providers, and Community Counselors to accompany children. Furthermore, Article 55, paragraph (2) of the SPPA Law states that "if parents/guardians and/or companions are not present, the trial will continue accompanied by an advocate or other legal aid provider and/or Community Advisor." The decision will be null and void if the judge continues the trial without the assistance of an advocate or other legal aid provider and/or Community Advisor (Juvenile Criminal Justice System, 2012).

Assistance for children who have committed specific crimes is dominated by advocates and community counselors, while assistance by parents/guardians and social workers is scarce. Even though the description of legal assistance to children has been implemented on several occasions, it is still possible for children to go through the criminal justice process without being accompanied by anyone. According to the decision of the Tanjungkarang District Court Number: 57/Pid.Sus-Anak/2021/PN Tjk, during the initial examination process at the investigation level, the child has yet to receive assistance from a legal adviser because the new legal adviser was appointed on 13 October 2021 while the child has been detained since 20 September 2021. The absence of this assistance is very vulnerable to causing violations of the right to a fair trial or children's rights in general.

Several indicators guide us regarding children's rights to a competent, independent, and impartial judiciary. First, the existence of social research must be considered by the judge before making a decision. Second, the existence and quality of judges' consideration of social research. Community research in child cases is an obligation under the

provisions of the SPPA Law. The consequence of not having community research is that the decision is null and void. The results of community research include the following:

- 1) Child's data, education, and social life;
- 2) The background of the crime;
- 3) The condition of the victim if there is a victim in a crime against body or life;
- 4) Other matters deemed necessary;
- 5) Minutes of diversion; and
- 6) Conclusions and recommendations from Community Advisors.

Most of the cases of juvenile offenders tried explicitly by 11 (eleven) District Courts in Lampung Province are accompanied by the results of social research. However, based on the research results, it is still found that case decisions for children who have committed certain crimes have not been found by social research in court decisions. For example, in the Decision of the Menggala District Court Number: 11. Pid.Sus.A/2019/PN.Mgl. In addition, the judge should have followed the Litmas PK recommendations regarding the law that should be imposed on children. The judge's considerations in rejecting the Litmas PK recommendation also varied, for example, in Decision Number: 15. Pid.Sus.A/2020/PN.Mgl, the PK in Litmas recommended that the child who committed the crime of child abuse be given job training, but the judge did not follow. Even though in his consideration, the judge in the case thought that "if in material law a penalty is imposed in the form of imprisonment and a fine, then the fine is replaced by a job training sentence so that the job training penalty will also be applied in the quo case." Unfortunately, the judge's considerations were not reflected in the verdict. Next in Decision Number: 19. Pid.Sus.A/2018/PN.Mgl, PK in Litmas recommends that children who commit crimes of narcotics abuse be returned to their parents for the child's best interests. However, in his decision, the judge did not consider the results of the Litmas PK and sentenced him to imprisonment for 1 (one) year and 2 (two) months.

Based on the description above, it is known that there is a tendency for law enforcement to enforce repressive laws against children who have committed specific crimes. So far, imprisonment has dominated law enforcement against children who have committed particular crimes. In addition, the child's right to be accompanied by legal counsel and to obtain practical legal assistance has yet to be fulfilled, as the right to receive assistance other than legal counsel has the right to a competent, independent, and impartial judiciary.

The background is that imprisonment for children is often imposed because even though imprisonment has an unfavorable impact on children, the imposition of this sentence is still considered better. After all, there are no other better types of sanctions. Actions in the form of submission to parents are considered less effective because there is an assumption that child delinquency is caused by the failure of parents to educate children so that it is feared that children will repeat their misbehavior.

Imprisonment of imprisonment for children can be detrimental to children because society will give a stamp (stigma) to children, which can damage the child's career and future (Mignon & Ransford, 2012). Some people will reject the presence of former child convicts resulting in children being isolated from society and children becoming more skilled in carrying out crimes for learning to commit crimes while in prison. The next challenge for law enforcement against children who commit crimes in Indonesia is that prosecutors' demands and judges' decisions are still dominated by imprisonment. Although the SPPA Law offers various alternative sanctions for children, detention and imprisonment are still common. 90% of children who are processed in court are sentenced to prison. Arrest and imprisonment are also carried out against those under 14 (Tieken, 2020). Although the SPPA Law has introduced various alternatives to non-imprisonment sentences to reduce the number of imprisoned children, in practice, these efforts have not been carried out effectively. The absence of comprehensive implementing regulations relating to non-imprisonment punishment has made law enforcement officials reluctant to prosecute or impose these forms of non-prison punishment (Maya, 2019).

Judges imposing criminal penalties in the form of imprisonment for children hinted that law enforcers in the criminal justice system and juveniles still emphasize the formal juridical aspect rather than aiming to protect the child's interests. Many cases of children being sentenced to imprisonment at this time indicate that judges have not been able to make effective and understand the sanctions and actions against child offenders (Pranawati, 2016). Given the adverse effects of imprisonment on children, criminal sanctions must be commensurate with the need to protect and defend social interests. A criminal is only justified if a condition is helpful for society. Unnecessary punishment is unjustifiable and harmful to society. In addition, the limits of criminal sanctions are also determined based on

social interests and the values that embody them. Based on the above thoughts, the idea arose that criminal law should be used carefully and operationalized as the last medicine and not as the primary medicine.

Law Enforcement Strategy Against Child Offenders Based on Humanist Law

The humanist legal approach pivots on humans as subjects and objects of law, which shows a high place for human dignity (Kusumawati, 2020). This means the law must view children as human beings, namely living creatures created by God with noble nature. Children have the right to establish, maintain and develop their lives as living beings. In other words, a Pancasila-based humanist legal approach is a law enforcement practice that upholds human and deliberative values as mandated by Pancasila (Suparman, 2015).

So far, restorative justice has manifested in the form of diversion. However, as explained above, diversion cannot be accessed by all children of criminal offenders (Susilowati et al., 2022). Therefore, restorative justice in resolving child cases must still be integrated with a humanist approach based on Pancasila as the nation's soul. The Pancasila-based humanist policy referred to here is the settlement of claims of children of criminal offenders that prioritizes humanity. It pays more attention to aspects of the potential of children as divine beings and human beings and individuals who are allowed to develop their prospects. Law enforcement strategies with a humanist approach to child perpetrators of specific crimes include:

1) Issuing sentencing guidelines and adopting the concept of children hearing system

About the types of crimes and actions, as well as the severity of the crimes or activities, the drafting of laws and regulations that regulate the provisions of criminal acts (penalization) needs to refer to the pattern of sentencing. Guidelines for sentencing are guidelines for judges to impose or apply sentences (Pujiyono, 2012). In imposing a sentence, the judge needs to consider several factors, both originating from within the defendant, the ability of law enforcers, the type of crime, and the seriousness of the crime. Some of these considerations include age, nationality, characteristics, gender, education, health conditions, living conditions, position in the family and society, the level of seriousness of the type of crime, participation in committing a crime, the ability of law enforcers to carry out punishment and the characteristics type of crime.

Guidelines on the criminal prosecution of children are drawn up by a council consisting of legal academics, legal practitioners, volunteers, and experts in the fields of educational psychology, sociology, penology, criminology, community members, community organizations, religious leaders, and other parties with the aim that the guidelines are genuinely based on the results of in-depth research and studies so that the sentences imposed are genuinely efficient and effective. These guidelines are not only compiled based on the type of crime committed by children but advice on the implementation of the crime because even though the type of action is the same (for example, it is handed over to parents), the way of handling children cannot be uniform. For this reason, before designing sentencing guidelines, it is necessary to conduct a detailed study of the steps to be taken by the council (among others consisting of elements from Juvenile Judges, Advocates, Child Attorneys, Correctional Officers, Community Researchers, Education Experts, Psychologists, Sociologists, Criminologists, Penologists, Legal Experts, Non-Governmental Organizations) both in terms of the substance of the guidelines, budget, time or other influential factors. Operationally, in addition to having sentencing guidelines, at one time, the Juvenile Court in Indonesia may also seek advice from a board (panel) specially formed by the Supreme Court to provide responses to a case that is considered complicated that is being faced by that court. This step is a continuation of the operationalization of sentencing guidelines. This means that the panel will convey its advice to the court and provide sentencing guidelines whenever a good court case arises. The advice given by the board influences the court's approach to a topic. Sentence guidelines can support judges in decision-making, which usually requires complex considerations. This guide can also help with consistency in sentencing.

Guidelines for criminal prosecution of children in Indonesia should be prepared by the Supreme Court based on the authority of the Chief Justice of the Supreme Court because these guidelines are still included in the scope of judicial duties, and formally, judicial power in Indonesia is guaranteed to be independent. Suppose the guideline is prepared by a particular institution authorized by the parliament (DPR). In that case, the product is likely to be heavily contaminated by political elements that dominate the making of the guideline, and juridically the Indonesian DPR only has legislative and budgetary functions and supervision (control). The sentencing guide is not a statutory regulation but only a guideline for Juvenile Judges who will impose a sentence on a child who has committed a crime, so it is a regulation. The contents of the Guidelines for Punishment and Enforcement of Child Offenders in Indonesia contain at least the following provisions:

- a) The philosophy of punishing children who commit crimes in Indonesia

- b) The results of research and studies on the implementation of crimes and actions against children who commit crimes
- c) Types of crimes and actions, as well as the mechanism of their application;
- d) Basic considerations of judges in imposing crimes and actions against children who commit crimes (mitigating factors, aggravating factors that exist in delinquent children and their environment), both obtained from BAPAS, parents of delinquent children, friends of children naughty children, the opinion of behavioral science experts (for example psychologists, education experts), as well as from other competent informants, for example, those who will carry out the punishment and prosecution of naughty children.
- e) Imposition of criminal deprivation of liberty (short term and long term), in which it describes the application of the type of punishment and its requirements, the old sentence stratification, and its needs.
- f) Imposition of action against naughty children outside the penitentiary (non-custodial), in which it describes the application of the types of activity and its requirements, the old stratification of the action and its needs.
- g) Type of Criminal (strafsourt), length of sentence (strafmaat), and actions (maatregel) that can be imposed by a judge based on the forms of criminal acts committed by the defendant. These forms of crime are based on the results of research on the conditions of crime that are achieved mainly by children. The guidelines per this form of action are by the sentencing guidelines in England.
- h) Possibility of changes (modifications) of crime and action, both type and duration.
- i) Supervisors, mechanisms for monitoring and observing the implementation of crimes and actions against children who commit crimes.
- j) Qualifications of personnel and institutions implementing juvenile judge decisions.

Furthermore, Indonesia needs to adopt the concept of children hearing system. Currently, there is a system that is far better, flexible, and not as rigid as a diversion, namely the "children hearing system" in Scotland. Therefore, in the context of enforcing criminal law against child perpetrators of criminal acts with a Pancasila-based humanist legal approach, it would be better if Indonesia looked at the juvenile criminal justice system in Scotland, especially the children's hearing system. The children's hearing system aims to ensure the safety and well-being of vulnerable children and youth through tribunal decision-making called the "Children's Panel." Children who are facing severe problems in their lives are asked to go to meetings called "children hearings." The Children's Panel makes decisions in a session about the assistance and guidance needed to support a child or young person. Decisions are made in the child's or youth's best interests to help and protect them. One of the basic principles of the children's hearing system is that children and youth who commit violations and children and youth who need care and protection are dealt with in the same system. This children's hearing system policy is beneficial in terms of resolving child cases and handling child cases so that it can be used to optimize the juvenile criminal justice system in Indonesia. This children's hearing system can be implemented as an idea of reform in the juvenile justice system in Indonesia because the scope of reform of the criminal law system in Indonesia consists of legal substance, legal culture, and legal structure, all of which must not contradict the basic idea of the criminal law system. National, namely the balance of the basic concepts of Pancasila (the values of Pancasila as the foundation of the national legal system) and the balance of national development goals.

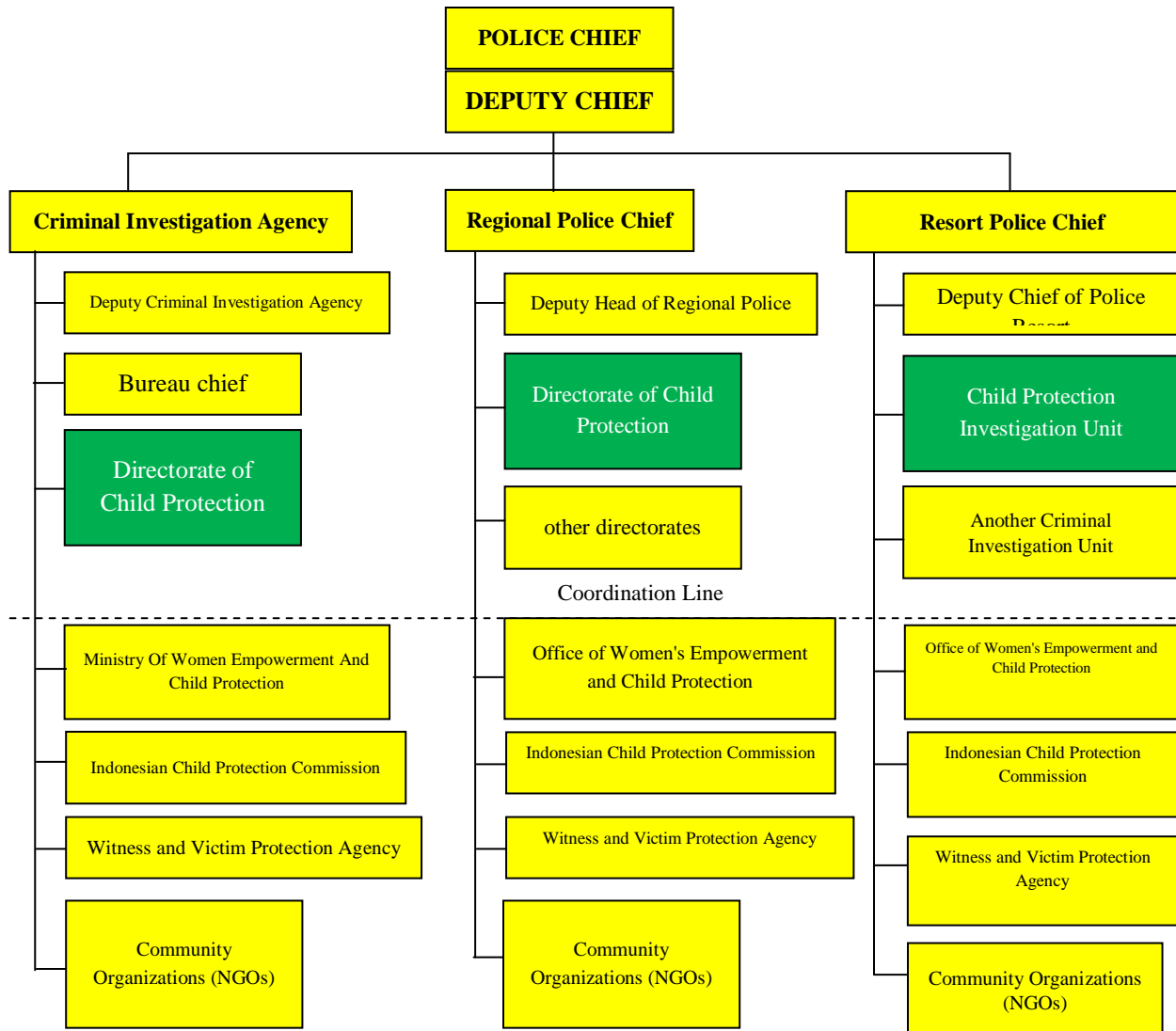
The children's hearing system has 3 (three) basic ideas, namely divinity, humanity, and society. The three basic concepts of the children's hearing system are reforming the juvenile justice system in Indonesia, especially reform in legal culture. Renewal in legal culture embodies legal and cultural values (legal philosophy, legal principles, legal theory, legal knowledge, and awareness or attitude towards legal behavior)(Moho, 2019). Because the renewal of the juvenile criminal justice system in the aspect of legal culture is also an embodiment of the science of criminal law, especially the science of national criminal law, which is based on Pancasila, so that it has an idea of balance in religious/divine values, human/humanistic values, societal values (nationalistic/democratic- democracy/social justice).

2) Optimizing the role of the police in implementing diversion

As part of the criminal justice sub-system, the police is a legal institution with such broad authority that initiates the operation of the criminal justice system so that the performance of the police dramatically determines the direction of criminal law enforcement. Thus, a suspect's first experience in the criminal justice process is in contact with the police(Baskoro, 2019).Without intending to provide an excuse for the various weaknesses and shortcomings of the police institution as a sub-system of criminal justice, according to Darmawan BM. Seri, diversion in resolving cases of children of criminal offenders is more appropriate at the police level (Police Diversion). Such a view is based on the following arguments.

First, as a law enforcement agency that first and directly interacts with the community, the police have great potential to change society's culture. The authority and authority of the police, if packed dynamically, will become a means for the police to build community. Second, that children should be kept from the judicial process as far as possible. Children must still be prioritized to be held from contact with criminal law enforcement officials, but that does not mean they must be released from their responsibilities. Within the limits of tolerance that still guarantee the protection of the rights and interests of children, processes outside criminal law are still possible. Therefore, in their role and function as investigators, police officers can also be given the authority to divert the investigation from a judicial to a non-judicial process. Third, by slowing the process at the police level, the police can still carry out their investigative duties, of course with a different face and substance of the examination from the usual investigators, so that efforts to prevent children from the judicial process can still be realized. The need for investigation by the police is limited only to how far the child is involved in specific crimes so that the rehabilitation process can be carried out immediately without going through the criminal justice process. Based on the description above, transferring from a judicial process to a non-judicial approach in dealing with crimes committed by children is more effective at the police level (Police Diversion). Given the unique characteristics of children, to support optimizing the handling of cases of child perpetrators of criminal acts within the police, it is necessary to develop a child protection unit into a separate directorate at Bareskrim, Polda, and Polres/Polresta. To minimize negative stigma, the directorate will be filled by a majority of female personnel and personnel with particular expertise in handling child cases. Schematically the position structure of the directorate of child protection is illustrated in the chart below:

Chart 1:- Draft Position Structure of the Directorate of Child Protection.



3) **Optimizing community participation in protecting child perpetrators of criminal acts from avoiding the stigma of criminal justice**

Law enforcement officials should not monopolize the settlement of criminal cases. In solving that, the community is involved in achieving a balanced situation. The settlement was carried out by deliberation involving the families of the perpetrators, victims, and the community where the incident occurred. Law enforcement officials should facilitate the deliberations and carry out what has been agreed upon. The results of the deliberations indicated that this matter was settled amicably. Thus the reconstruction of its value is the concept of diversion, which provides space for community participation to be given the same legal protection regardless of the type of crime, the threat of punishment for their actions, and the repetition of criminal acts.

The formulation of Article 93 of the SPPA Law before being reconstructed stipulates, "Society can participate in child protection starting from prevention to the social reintegration of children and so on." Article 93 of the SPPA Law is reconstructed to become "The community is obliged to participate in child protection starting from prevention to the social reintegration of children in a manner and so on." Then it is necessary to add provisions regarding the consequences when the community is not involved in resolving child cases. Then the handling of child cases is null and void.

Conclusion:-

The challenges of law enforcement against perpetrators of criminal acts in Indonesia include the following: First, there is still a high tendency for children to be detained and imprisoned. This increased trend implies the unpreparedness of the technical regulations of the SPPA Law itself. Second, there are still violations of children's right to a fair trial in applying the SPPA Law, indicating that the application of the provisions of the SPPA Law is still fragile. Problems in fulfilling a child's right to a fair trial include the right to be accompanied by legal counsel and obtain practical legal assistance, the right to have a companion other than legal counsel, and the right to a competent, independent, and impartial trial. Third, prosecutors' demands and judges' decisions are still dominated by prison sentences. The strategy for law enforcement against child perpetrators of criminal acts is based on a humanist legal approach which includes firstly, issuing sentencing guidelines and adopting the concept of children hearing system so that the application of diversion to child perpetrators of criminal acts is not excluded based on the length of the sentence and the type of crime. Second, as a law enforcement institution that first comes into contact with the community, the role of the police in implementing diversion needs to be optimized. Third, optimizing community participation in the protection of children who commit particular crimes to avoid the stigma of criminal justice so that the development of children will be better if they are placed in the family and community environment.

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