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## COMPARISON OF JUVENILE JUSTICE SYSTEMS IN INDONESIA AND SOUTH KOREA

**Adelia Oktaviani<sup>1</sup>**

<sup>1</sup>University of Singaperbangsa Karawang  
Karawang, West Java  
[Adeliadelia62@gmail.com](mailto:Adeliadelia62@gmail.com)

**Satrio Fajar Romadhon<sup>2</sup>, Muhammad Rusli Arafat<sup>3</sup>**

<sup>3</sup>University of Singaperbangsa Karawang  
Karawang, West Java  
<sup>2</sup>[Satriofajarr21@gmail.com](mailto:Satriofajarr21@gmail.com)  
<sup>3</sup>[Rusli.arafat@fh.unsika.ac.id](mailto:Rusli.arafat@fh.unsika.ac.id)

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### ABSTRACT:

*Child growth is a period when children have a high level of curiosity, which sometimes leads them to commit crimes. According to the Indonesian Supreme Court Annual Report 2020, juvenile criminal cases reached 6,146. Meanwhile, as many as 38,590 cases of juvenile crimes were reported in the South Korean Judicial Yearbook 2020. There is a juvenile justice system to resolve juvenile criminal cases. This judicial system aims to educate and protect the rights of Children in Conflict with the Law for their future. The juvenile justice system in Indonesia is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), while there is the Juvenile Act of 2015 that regulated juvenile cases in South Korea. A comparison of the juvenile justice system in the two countries in fostering and protecting juveniles is an interesting matter to discuss. This article includes statistics on juvenile cases, the juvenile justice system, types of punishment, and the laws that apply in both countries. By using normative legal research methods, the result of this article is to give a comparison of how Indonesia and South Korea solve juvenile cases based on their juvenile justice systems and regulations.*

**Keywords;** Juvenile Justice Systems, Juvenile Crime, Indonesia, South Korea.

### A. Introduction

Child in conflict with the law has their own judicial system, which is different from the usual criminal justice system that applies to adults. In Indonesia, the child who commits crimes is called a child in conflict with the law, while in South Korea is called *Sonyeon*. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System or UU SPPA, aims to protect children in conflict with the law. Therefore, children can continue their life and prepare for a better future. In Indonesia, according to Article 5 Paragraph 1 of Law Number 11 of 2012, the juvenile justice system must prioritize the restorative justice approach (diversion) to achieve peace between the child and the victim. Also, it aims to avoid deprivation of the child's freedom. Meanwhile, in South Korea, there is a system called

Recommendation of Compromise (*Hwahaegwongo*) to reach an agreement with the victim. According to Seung-Hyun Lee, since the Juvenile Act applied in 1958, juvenile cases have been subject to disposition despite the "risk of committing a crime". It is not like action against an adult.<sup>1</sup>

According to Article 1 of the Conventions on the Rights of the Child, the definition of a child is any person under the age of 18 unless otherwise provided by the laws of a country. All children have all the rights mentioned in this convention. In Article 1 Paragraph 3 of Law Number 11 of 2012, a Child in Conflict with The Law means, are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing criminal acts. The Juvenile Act of South Korea used the term "Juvenile" as persons who are under the age of 19. Children play the role of the successor of the nation in the future. During the period of growth, the child needs more attention from parents to be able to control their character and behavior. In this phase, the child has a relatively high level of curiosity about many things. As a result, the child can do anything to satisfy his curiosity. Sometimes, it leads children to commit a crime because the child does not really understand to determine whether it is a good or bad thing. In addition, the child does not have a stable mentality to make a decision. The child is not a miniature of the adult who has a stable mentality.<sup>2</sup>

The Indonesian Supreme Court Annual Report 2020, has reported there were 6,018 juvenile criminal cases in 2018. It decreased to 5,131 cases in 2019. Then, there were 6,146 cases in 2020. Meanwhile, the Judicial Yearbook (*Sabeobyongam*) issued by a South Korean Court on 27 September 2021, the number of juvenile protection cases received in 2020 increased to 38,590 cases. There were 36,576 cases recorded in 2019. In 2018, there were 33,301 cases, the lowest number in the last 10 years. However, the number of juvenile cases in 2020 has decreased since 2011, which received 46,497 cases in 2011. Other than that, the juvenile protection cases received and resolved in 2020 were 38,293 cases.<sup>3</sup>

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<sup>1</sup> Lee Seung Hyun, "A Critical Study on the Juvenile Regulations in the [Juvenile Act]," *Juvenile Protection Research*, Vol. 34, No. 1, 2021, p. 283.

<sup>2</sup> Nur Hidayanti, "Juvenile Criminal Justice with a Restorative Justice Approach and the Best Interest for Children". *Ragam Jurnal Pengembangan Humaniora*, Vol. 13 No. 2, 2013, p. 3.

<sup>3</sup> Court Administration Office, *Judicial Yearbook 2021*, (Seoul, 2021), accessed from <https://www.scourt.go.kr/portal/news/NewsViewAction.work?pageIndex=1&searchWord=&searchOption=&seqnum=7&gubun=719> p. 757.

South Korea divided juvenile criminal cases into two types according to the punishment, there are the juvenile criminal cases as protective cases with protection dispositions and the juvenile criminal case with criminal penalties. Due to the goal of juvenile justice, which is character correction and environmental adjustment, South Korean juvenile justice resolved 25,579 juvenile criminal cases as protective cases with protection dispositions, while 364 juvenile criminal cases were resolved with criminal penalties in 2020. Furthermore, Indonesia resolved 6,146 cases of juvenile crimes in 2020. 132 cases were carried out through diversion, while other cases were given verdicts of action penalties and criminal penalties.

Based on the data included above, it can be seen there are a highly different number of juvenile criminal cases in Indonesia and South Korea. This article discusses on how is the comparison of the juvenile justice system in Indonesia and South Korea. In addition, it includes the types of punishment and the laws that apply in both countries. The comparison in resolving cases and the differences in giving punishment to the child who commits a crime is an interesting matter to discuss. By comparing the juvenile criminal justice system and the punishments given in Indonesia and South Korea, it can be seen the differences and similarities between the systems in the two countries and the purpose of forming rules to protect the future of juveniles.

## **B. Research Method**

The research method used in this study is a normative legal research method, which is a research method that examines legal concepts and rules obtained from legislation, legal theory, doctrine, and expert opinions. This method can also be referred to as the library research method. The source of this research data was obtained from primary, secondary, and tertiary legal materials in journals, books/literature, articles, official government documents, and laws in force in both countries, namely Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and the Juvenile Act of South Korea.<sup>4</sup>

## **C. Discussion**

### **1. Juvenile Justice System in Indonesia and South Korea**

#### **a. Juvenile Justice System in Indonesia**

According to SPPA Law, the child is divided into 3 categories, namely the Child in Conflict with the Law hereinafter referred to as the Child, Victim Child, and Witness Child.

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<sup>4</sup> Bachtiar, *Legal Research Methods*, Unpam Press, 2019.

A Child in Conflict with the Law is any person under 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing criminal acts. A Victim Child is any person under 18 years old who experiences physical, mental, and/or economic losses caused by criminal acts. A Witness Child is any person under the age of 18 who can give a statement about a crime that they heard, saw, or experienced.

According to Harahap, institutions that carry out juvenile investigations, juvenile prosecutions, juvenile courts, and juvenile corrections are part of the juvenile delinquency control system, hereinafter referred to as the juvenile criminal justice system.<sup>5</sup> The crime committed by the child is one of the consequences of the child's deviance. The purpose of SPPA Law is to foster the child's actions, so there will be no similar actions repeated for the second time in the future.

In addressing juvenile criminal cases, Indonesia enacted Law Number 11 of 2012 as a substitute for Law Number 3 of 1997 concerning Juvenile Justice under the decision of the Constitutional Court Number 1 / PUU-VIII / 2010.<sup>6</sup> Article 13 Paragraph 1 of Law Number 23 of 2002 concerning Child Protection states, every child during the care of parents, guardians or any party is responsible for the child's protection from discrimination, exploitation, neglect, cruelty, violence, persecution, injustice, and other infringing acts. Thus, the caregiver can be punished if negligent. Juvenile justice in Indonesia is intended to protect the child in conflict with the law with the purpose that the child can meet their long future and provide opportunities through coaching. Therefore, the child gains the identity to become worthwhile human beings for the nation.

Juvenile criminal justice begins with investigation, prosecution, and court hearings for decisions. In every step, the authorized official is obliged to do a diversion. Based on Article 6 of Law Number 11 of 2012 the purpose of diversion is:

- 1) Achieve peace between the victim and the child.
- 2) Resolve children's cases outside the judicial process.
- 3) Avoid children from deprivation of freedom.
- 4) Encourage the community to participate.
- 5) To put the child's responsibility.

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<sup>5</sup> Yessy Nidawati, "Criminal Justice System and Juvenile Criminal Justice System", 2019.

<sup>6</sup> BPK RI, <https://peraturan.bpk.go.id/Home/Details/45923/uu-no-3-tahun-1997>, accessed on 19 Juli 2022.

Diversion is carried out through discussion by involving the child and his/her parents/guardians, victims, and/or their parents/guardians, community guides, and professional social workers based on a restorative justice approach. The diversion process is an initial stage in the juvenile justice system to avoid judicial proceedings in the courts. Article 7 Paragraph 2, there are several requirements that must be met to do a diversion:

- a) shall be punished with imprisonment under 7 (seven) years and
- b) not repetition of a crime.

Therefore, a diversion can be done if the criminal act committed is a criminal act that has a punishment of imprisonment under seven years. Also, it is the first criminal act committed by a child. In other words, it is not a repetition (recidivism). If the diversion process is failed, the case will be handed over to the next step until the trial stage. The court has the right to determine the period and the type of punishment that will apply to the child. The lower the criminal threat, the higher the priority for diversion. Diversion is not intended for serious juvenile criminal cases. Serious juvenile criminal cases are resolved through the courts (litigation). However, the settlement of these cases still prioritizes the principle of the best interests of the child. The process of imposing criminal penalties on children is only the last step (*ultimum remedium*) without ignoring children's rights.<sup>7</sup> The age of the child also determines the priority of giving diversion, the younger the age of the child, the higher the priority of diversion.

In the trial process, the role of the juvenile judges is to examine and adjudicate the juvenile case assisted by a single judge. A judge in juvenile proceedings is appointed by a decree of the Supreme Court Head at the suggestion of the Head of the District Court concerned. In a difficult case, especially there is more than one perpetrator, and difficult to prove the guilt, the head of the district court appoints a panel judge to resolve the case. When the trial began, the judge, the prosecutor, and other authorized persons do not use the gown due to maintaining the child's psychology as a defendant. Further, the trial is a private trial, which can be attended by the authorized person, the child, the victim, and their parents. However, the verdict can be read and accessed by the public.

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<sup>7</sup> Nevey Varida Ariani, "Implementation of Law Number 11 of 2012 concerning the Criminal Justice System for Children in an Effort to Protect the Interests of Children", *Media Hukum Journal*, Vol. 21, No. 1, 2014, p. 16.

### **b. Juvenile Justice System in South Korea**

To resolve a case, each country has its law in addressing juvenile justice cases. The juvenile justice system in South Korea is regulated by the Juvenile Act (*Sonyeonbeob*) which has been in force since 1958. The child referred to in the Juvenile Act are persons under the age of 19 (Article 2). The Juvenile Act currently divides children who commit criminal acts into three categories, namely *Beomjoe Sonyeon* (14 - 18 years old), *Chokbok Seonyeon* (10 - 13 years old), and *Ubeom Sonyeon* (10 - 18 years old). It can be seen there is a different age between one another. In addition, there will be no punishment if a child under 10 years old commits a criminal act.

The juvenile justice system in South Korea distinguishes the types of juvenile criminal cases. First, there is a protective case, which is under the jurisdiction of the Children's Department within the scope of the Family Court or District Court. A protection case is determined on a child who is 10 years old but not yet 14 years old (*Chokbok Sonyeon*) that committed crimes. In this case, the child is not sentenced to a criminal sentence but is tried and given a protective disposition (Protective Detention of Juvenile) by a juvenile judge (single judge). A single judge will take over the trial stage. There is also a possibility for a panel judge to do the trial stage if it is also required in a more serious case. Second, a criminal case is determined on a child who is over 14 years old but under 19 (*Beomjoe Sonyeon*) that committed a criminal offense, further may be sent to a general criminal court or remain in juvenile court. Although the child is being sent to a general criminal court, the juvenile still acquires special treatment because of the minor status.<sup>8</sup> Although cases in juvenile justice in South Korea are divided into two types, the children in the two cases are both criminal offenses. Things that distinguish it are the age category and punishment.

Retrieved from Juvenile Act Article 4 Paragraph 2, if the police find a child who committed a crime, they can directly hand over the child to the juvenile department without going through prosecution. This method is called notification (*Tonggojedo*). “Notification is a procedure whereby a guardian or the head of a school, social welfare facility, or probation office, etc., directly file a case with the court without going through an investigative agency such as the police or prosecutorial agencies”. The notification method can be used in the case of *Chokbok Sonyeon* or *Ubeom Sonyeon*. This method is a process in which a guardian

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<sup>8</sup> Seoul Law Group, *Criminal Minors: Special Treatment for Children Who Committed Crime in Korea*, <https://seoulawgroup.com/juvenile-crime-in-korea-special-treatment/>, accessed 15 June 2022.

or principal, social welfare facility, or probationary office directly files a case in court without going through investigative agencies such as the police and prosecutors.<sup>9</sup>

However, if the juvenile department in carrying out investigations or the court finds criminal facts that must be punished with imprisonment and are deemed necessary, the juvenile department can submit the case to the public prosecutor through a decision. Afterward, the case is considered as a juvenile criminal case. In the *Beomjoe Sonyeon* case, it must be carried out through investigation and forwarded to the prosecutor's office. After the prosecutor examines the juvenile sent by the police or who is known directly, further considers there is a crime punishable by a fine (mulct) that is less than or equal to a fine, or there is a protective reason, the case should be transferred to the juvenile department as a protective case. Otherwise, the child will be prosecuted in a general criminal court and treated as a criminal case like adult crimes in general.<sup>10</sup>

Before a decision on the disposition of protection is taken, the juvenile judge may recommend Compromise (*Hwaehaegwongo*) to the child under Article 25-3 (1) of the Juvenile Act in the form of compensation for damages and others. There are several conditions to be subjected to in a case of the Recommendation of Compromise.

- 1) The perpetrator must be *Chokbok Sonyeon* or *Ubeom Sonyeon*;
- 2) The facts must be clear and the culprit must confess his crime;
- 3) With the consent of the victim,
- 4) All requirements that the culprit has no explicit objections must be met.

The stages of Compromise are Acceptance of cases; Selection of appropriate cases by the judge; Investigation by investigators; Reconciliation recommendation procedures (reconciliation counsel); Hearings and decisions (non-disposition, protection disposition).<sup>11</sup> The result of the compromise is to be used as a consideration for the juvenile judge to determine the protective disposition. If the compromise is successful, the judge should immediately determine a trial court date to decide whether the case completes in a non-

<sup>9</sup> Court Administration Office, *2018 Youth Notification Practice (Revised Version): Overview, Case Study, Q&A.*, (Seoul: 2018), p. 10.

<sup>10</sup> Lee Soon Rae, "Current State of Juvenile Justice Law and Response Strategies for Juvenile Crime, *Criminal Policy Research*, Vol. 71, No. 3, 2007, p. 1056

<sup>11</sup> Seoul Family Court, *Recommendation of Reconciliation Procedure for Juvenile Protection Cases*, (Seoul: 2017), p. 1.

disposition or a protective disposition. If the compromise is failed, the juvenile judge should immediately determine a trial court date for the case to decide with a protection disposition.

### c. Comparison of Juvenile Justice Systems in Indonesia and South Korea

Generally, the comparison of juvenile justice systems in Indonesia and South Korea has some differences. Start with the applicable law, the classification of juveniles as perpetrators, the types of cases, and others. However, in some ways such as the type of trial, there are similarities between Indonesia and South Korea. The comparison can be seen in the following table.

**Table 1. Comparison of Juvenile Justice Systems in Indonesia and South Korea**

Comparison of Juvenile Justice Systems in Indonesia and South Korea			
No	Comparison by	Indonesia	Korea Selatan
1.	The Applicable Law	Law Number 11 of 2012	Juvenile Act
2.	Child Definition	Child: Any person who is 12 years old and, under 18 years old	Juvenile: Person under 19 years old
3.	Child Classification	Child who commits a criminal act is called a Child in Conflict with the Law	Child who commits a criminal act is classified into three: <i>Chokbok Sonyeon</i> (10-13 Years Old), <i>Ubeom Sonyeon</i> (10-18 Years Old), <i>Beomjoe Sonyeon</i> (14-18Years Old)
4.	Purpose	The SPPA Law intends to protect a child, prepare the child for a better future and provide opportunities for the child through coaching, with the hope that the child will obtain their identity. Therefore, to become independent, responsible, and useful human beings for themselves, their families, communities, nations, and countries.	Ensuring the good coaching of the Juvenile by carrying out necessary actions, such as protective dispositions, etc. In addition, it helps the juvenile with the environment adjustment and the character correction of the Child who shows anti-social behavior, and by providing specific actions regarding criminal dispositions.
5.	Diversion Effort/	Diversion should offer/do at the level of investigation, prosecution, and examination	There is no diversion term, but there is a Recommendation of Compromise ( <i>Hwahaegwongo</i> )



		of Children's cases in the district court	recommended by the Juvenile Judge
6.	Judge	Child judge (single judge) and panel judge also required (if the criminal act sentenced with seven years imprisonment or the case is too complicated)	Single juvenile judge (a panel judge is required in more serious cases)
7.	Types of Trials	Closed trial	Closed trial
8.	Types of Case	Child criminal cases	Protection case and criminal case
9.	Punishment	Penalty of action and Criminal penalty (Primary and Supplementary)	Protective disposition (protective detention of a juvenile) and criminal penalty with special treatment

Juvenile criminal justice in Indonesia is regulated by Law Number 11 of 2012 or the SPPA Law, while juvenile justice in South Korea is regulated by the Juvenile Act with other laws. The purpose of juvenile justice in both countries is the same, which is to foster, protect and provide opportunities for children to be accepted back into society. The definition of a child is based on age. The SPPA Law states that a child is a person who is 12 years old, but not 18 years old. The Juvenile Act provides that a juvenile is a person under the age of 19. The juvenile criminal justice system in Indonesia uses the term Child in Conflict with the Law for a child who commits a criminal act. Basically, there are two other terms of a child based on the law, which are the Victim Child and Witness Child. However, in this article only discuss the child as the perpetrator. South Korea classified juvenile who commits a crime based on their age, there are three types, namely *Chokbok Sonyeon* (10-13 years), *Ubeom Sonyeon* (10 - 18 years), and *Beomjoe Sonyeon* (14 - 18 years).

Diversion efforts in juvenile criminal justice are implemented as a first step in juvenile justice cases to avoid trial, while in the South Korean juvenile justice system, there is a Recommendation of Compromise (*Hwahaegwongo*) suggested by juvenile judges. The results of this compromise were used as consideration in the trial to determine the protective disposition. Judges in juvenile trials in both countries is a single child/juvenile judges. However, it requires a panel judge if the case is more complicated or if the criminal punishment is seven years of imprisonment. While the panel of juvenile judges in South Korea is also required for complicated or more serious crimes. Child cases in both countries are closed trials, in which only the authorized parties, the child, and the victim who allowed to attend the trial process, and it should not be accessed by the public. The juvenile criminal

case in South Korea is classified into protection cases and criminal cases with each different type of punishment, while the child in conflict with the law in Indonesia is only included in criminal cases in juvenile criminal justice. The punishment system in the Indonesian juvenile justice system recognizes the Penalty of action and Criminal penalty (Primary and Supplementary) as stipulated in the SPPA Law. South Korea is famous for its protective disposition as punishment for the juvenile who commits a crime. but if serious criminal facts are found based on various factors, the child can be subject to criminal penalties that apply to adults with special treatment.

## **2. Types of Punishments Applied to Children of Offenders**

### **a. Types of Punishment for Child Offenders in Indonesia**

Even though the perpetrator is a minor or underage, a criminal act cannot be passed casually. A juvenile criminal case has its type of punishment that is different from the usual criminal penalties that apply to adults. Because one of the purposes of punishment for juvenile crimes is to foster and improve the character of the juvenile to be able to be accepted back into their environment. In accordance with the rights of children in The United Nations Convention on the Rights of the Child, children accused of violating the law are entitled to legal assistance and fair treatment. There should be many solutions to help them become a good person in the community. A punishment of imprisonment should only be a last resort.<sup>12</sup>

The SPPA Law stated that there are several types of punishments. Different from South Korea, which knows the level of punishment, Indonesia only recognizes the categories of act penalty and criminal penalties. Article 69 of Law Number 11 of 2012 states that children under 14 years old only get a penalty of action. Meanwhile, children over 14 years old to 18 can be subject to criminal penalties and penalties of actions. The penalty of action is a punishment aimed at educating and protecting (the child) from harm in the future. The form of the penalty of action, namely returns to his parents, treatment in a psychiatric hospital, and coaching at the LPKS (Social Welfare Organizing Institution). Child criminal penalties in the form of imprisonment are carried out at LPKA (Special Child Development Institute) only if the child's conditions and actions are considered to harm the community. Juvenile criminal punishment in the form of imprisonment is the last option. A child who is involved in a criminal act and experiences coaching at LPKA has an age limit of up to 18 years old. It means if the coaching period has not been completed, the child should continue

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<sup>12</sup> United Nations, *Convention on the Rights of the Child*, Treaty Series, 1577, 3, (1989).

the coaching at the advanced level of LPKA, namely the youth penitentiary, and applies subsequently. Article 71 paragraph 1 of the SPPA Law, it is stated the main criminal penalties:

- 1) Criminal warning, described in article 72 of SPPA Law
- 2) Criminal with the requirement:
  - a) Coaching outside the institution
  - b) Community service, aims to educate children by increasing their concern for positive community activities.
  - c) Surveillance. Surveillance is carried out by the public prosecutor and guided by community advisers.
- 3) Work training
- 4) Coaching in institutions
- 5) Prison

Then the additional crime in Article 71 Paragraph 2 of the SPPA Law is deprivation of profits obtained from criminal acts or fulfillment of customary obligations. Child imprisonment is the last option. The role of the judge in sentencing is necessary for the psychology of the child. The judge requires to understand the problems that the child experiences, both from the perspective of the victim and the perpetrator in determining the verdict. The diversion process is a good way to avoid the trial process because it will harm the future of the child and cause trauma. Meanwhile, the purpose of juvenile criminal justice is to educate and foster children from their unlawful treatment to become worthwhile people for themselves, their nation, and their country.

#### **b. Types of Punishment for Child Offenders in South Korea**

The juvenile criminal punishment system implemented in South Korea recognizes the term Protective Detention of Juveniles. Instead of punishing the child with criminal penalties, South Korea provides protection detention at various levels. Stated in Article 32 Paragraph 1 of the Juvenile Act of South Korea, if it is deemed necessary to order the detention of the protection of a child because of a court, the judge of the competent Juvenile Department shall, by way of a decision, make a disposition that falls within one of the following subparagraphs:

- 1) To consign a juvenile concerned of the care and custody of his/her guardian or any person who can provide protection for the juvenile in substitution for the guardian;
- 2) To issue an order to attend a lecture;
- 3) To issue a community service order;
- 4) To place a juvenile concerned under the short-term probation of a probation officer;

- 5) To place a juvenile concerned under the long-term probation of a probation officer;
- 6) To entrust a juvenile concerned for the care and custody to a child welfare institution under the Child Welfare Act or other juvenile protection institution;
- 7) To entrust a juvenile concerned to a hospital, a sanatorium or a juvenile medical care and protection institution under the Act on the Treatment of Protected Juveniles, Etc.;
- 8) To transfer a juvenile to the Juvenile Reformatory within one month;
- 9) To transfer a juvenile to the Juvenile Reformatory for a short-term; and
- 10) To transfer a juvenile to the Juvenile Reformatory for a long-term.

The period of protective detention is regulated in the Juvenile Act Article 33. If the child is sentenced to imprisonment, the child is placed in juvenile prison (*Sonyeon Gyodoso*). The punishment of the child offender who is more than 14 years old but under 19 years old is equated with a general criminal sentence but still obtains special treatment. The types of special treatment in the Juvenile Act are divided into three, the abolition of the death penalty and life imprisonment, the reduction of the term of punishment, and indeterminate sentences.

- 1) Abolition of the Death Penalty and Life Prison  
Article 59 of the Juvenile Act states, "The death penalty or life sentence for a child who was less than 18 years old at the time the crime was committed, was reduced to 15 years in prison." This special treatment applies to child defendants under the age of 18 who are sentenced to death or life imprisonment.
- 2) Reduction of Sentence  
This special treatment applies to child defendants under the age of 19 by considering various reasons. A reduced sentence is optional and not mandatory. As provided in the Juvenile Act Article 60 Paragraph 2, "The sentence may be reduced if, taking into account the special character of the child, the reduction is deemed reasonable."
- 3) Indefinite Sentence  
There is a minimum and maximum period if the child defendant is charged with a sentence of more than 2 years. If charged with a "maximum sentence of 6 years and a minimum of 3 years" then the child can be paroled if he has served the minimum sentence with good behavior. This is contained in the Juvenile Act Article 60 (Indeterminate Sentences) which states that "If a juvenile commits a crime punishable by imprisonment for a term limited to two years or more, the sentence must specify a maximum and minimum term within the scope of the term of the sentence. Provided that the maximum term cannot exceed ten years, and the minimum term cannot exceed five years."

#### **D. Conclusion**

According to the Child/Juvenile Criminal Cases data in Indonesia and South Korea, juvenile criminal cases in South Korea are much higher than in Indonesia. The juvenile justice systems in Indonesia and South Korea has some significant differences. The juvenile justice system in South Korea distinguishes child offenders into two different cases, namely

protection cases and criminal cases while Indonesia only has a juvenile criminal case. In Indonesia, there is an effort to address the case outside the court with Restorative Justice approach, which is a diversion. Even though South Korea does not have diversion, there is a Recommendation of Compromise (*Hwahaegwongo*) which is suggested by a judge of the juvenile department. Regardless of the age, Children in Conflict with the Law still get punishment for criminal acts committed even though the punishment is different from adult criminal penalties. Child criminal justice in Indonesia has two types of punishments, namely criminal penalty, and penalty of action. South Korea in prosecuting juvenile cases has protection sentences (Protective Detention of Juvenile) which consist of 10 levels according to the age of the juvenile offender and the level of the type of the case (more complicated case). In addition, children may be punished like adults by providing special treatment.

#### **E. Suggestion**

The author would like to provide a suggestion about the juvenile case transfer from the juvenile department to the public prosecution in South Korea. The case can be transferred if they find criminal facts that must be punished with imprisonment and are deemed necessary. If the juvenile is prosecuted in a general criminal court and treated as a criminal case like adult crimes in general, this is quite contrary to its purpose of fostering and protecting the rights of the child. The author suggests the juvenile justice institution in South Korea could consider to do not transferring the cases to a general criminal court because the perpetrator is a child/juvenile, which needs special treatment under the juvenile department. Furthermore, the enforcement of law in juvenile criminal cases through juvenile justice must be further maximized so that the goal to foster and prepare the future of a child, and to return to society can be achieved by not reducing the rights of the child.

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