

IDEAL FORMULATION OF DIVERSION IN LAW ENFORCEMENT OF CHILDREN IN THE FUTURE

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Abstract

The purpose of this writing is to find out and analyze the formulation of law enforcement for children in the future so that the punishment of children is more useful, the approach method uses a normative juridical approach, the results of the study state that the implementation of diversion in article 7 paragraph (2) letter a SPPA Law carries a prison sentence under 7 years to get diversion so that the limitation on the implementation of diversion in Article 7 paragraph (2) letter a will have an impact on the child's right to get diversion when the child commits a crime above the threat of imprisonment for 7 years and above which should be the problem can be resolved peacefully based on the purpose of diversion but there is restrictions on the threat of imprisonment under 7 years in the implementation of diversion. The general principles contained in the Convention on the Rights of the Child should be taken into consideration to amend or remove conditional restrictions on diversion for imprisonment under 7 years because they have deviated from the essence of children's rights and the general principles contained in the Convention on the Rights of the Child.

Keywords: *Children; Diversion; Formulation.*

A. INTRODUCTION

Article 28B Paragraph (2) of the 1945 Constitution can be interpreted that a child is included in the subject and color of the state who has the right to protection of constitutional rights from other people's attacks. However, in reality there are still many violations of human rights in the field of child protection. There are many kinds of violations of human rights in the field of child protection. These include early marriage, lack of education, child trafficking, abuse and the employment of underage children.¹

Indonesia has ratified the CRC through Presidential Decree Number 36 of 1990. Through this ratification, Indonesia has an obligation to carry out every fulfillment of children's rights in Indonesia and provide protection for children who need special protection.² The Vienna Declaration held in 1993, which was produced by the World Conference on Human Rights (HAM), re-emphasized the principle of First Call for Children, which stressed

1 Singgih D Gunarsa, *Dasar dan Teori Perkembangan Anak*, Libri, Jakarta, 2012, page. 13

2 Silvia Fatmah Nurushshobah, *Konvensi Hak Anak dan Implementasinya di Indonesia*, *BIYAN: Jurnal Ilmiah Kebijakan dan Pelayanan Pekerjaan Sosial*, Vol. 1, No. 2, December, 2019, page.118-140

the importance of national and international efforts to advance children's rights survival protection, development and participation.³

To provide security to every citizen, it is necessary to have law enforcement officers act to carry out legal proceedings against anyone who commits a violation or a criminal act. The implementation of law enforcement against perpetrators of criminal acts must be in a system consisting of subsystems that are related to each other which is called the criminal justice system or in English it is called the Criminal Justice System.⁴

The Experiences of Children in conflict with the Law at Different Stages of the Juvenile Justice System.⁵ naughty children are called children in conflict with the law Article 1 (number 3) of Act No. 11 of 2012 concerning on the Juvenile Criminal Justice System (here in after abbreviated as UU SPPA): "Children who are in conflict with the law are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a criminal act."⁶ For actions committed by children in conflict with the law, penalties or sanctions can be imposed in the form of actions or crimes if proven to have violated criminal law legislation, legal aid to child prisoners is clearly stated in the Child Protection Act No. 23 of 2002 and the Juvenile Justice Act No. 11 of 2012. Article 23 of the SPPPA Law (Juvenile Justice System, hereinafter as SPPA Law) states that "Children have the right to get legal assistance at any time examination both in the investigation, investigation, prosecution and examination stages in court."⁷

The approach to crime prevention efforts must be carried out integrally because the problem of crime is a humanitarian and social problem. Contemporary crime prevention has generally embraced the value of partnerships and collaborative policy development and program delivery.⁸ The approach taken only through the application of criminal law solely is not appropriate, because the application of criminal law has limitations.⁹ According to Mardjono Reksodiputro, the criminal justice system is a system in a society to deal with crime problems, which aims to control crime so that

3 Harkristuti Harkrisnowo, *Tantangan dan Agenda Hak-Hak Anak*, Newsletter Komisi Hukum Nasional, Jakarta, 2002, page. 4.

4 Marlina, *Peradilan Pidana Anak di Indonesia: Pengembangan Konsep Diversi dan Restorative Justice*, PT. Refika Aditama, Bandung, 2009, page. 5.

5 Perla P. Palomares, Children in Conflict with The Law in The Bureau of Jail Management and Penology and Pag-Asa (Hope) Youth Center in Iligan City, *Journal of Governance and Public Policy*, Vol. 5, No. 2, June 2018, page.137-164

6 Martha Eri Safira, Dewi Iriani, Neneng Uswatun Hasanah, The Criminal Cases of Children in Conflict with The Law: Litigation and Non-Litigation Resolutions, *Justicia Islamica: Jurnal Kajian Hukum dan Sosial*, Vol. 17, No. 2, December 2020, page.281-298

7 Olif Sekar Prabasini, Legal Protection for Children in Conflict with The Law: Process and Problems, *The Indonesian Journal of International Clinical Legal Education*, Vol. 3, No. 3, 2021, page.381-398

8 Melese Teferi Adugna, Tesfaye Zeleke Italemahu, Crime Prevention Through Community Policing Interventions: Evidence from Harar City, Eastern Ethiopia, *Humaniora*, Vol. 31, No. 3, October 2019, page.326-337

9 Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, Citra Aditya Bakti, Bandung, 1988, page.44-45.

it is within tolerance limits and resolves most reports or complaints from people who are victims of crime by submitting criminals to court to impose sanctions/punishment for the perpetrator. Then prevent the occurrence of victims of crime and prevent perpetrators from repeating their crimes.¹⁰

Criminal Justice System, according to Davies describes the word system converts an impression of a complex to end, this understanding is clear that the purpose of the Criminal Justice system is realized if the four relevant agencies, namely the police, prosecutors, courts and correctional institutions work together in an integrated manner.¹¹ The concept and philosophy of criminal law and the criminal justice system that provides balanced protection of the rights and interests of perpetrators and victims of criminal acts, society and the state is currently known as restorative justice as a judicial concept that produces restorative justice. Restorative justice also can be known as relative justice, one of the theories of punishment within the crook justice device.¹²

Another fundamental thing, the juvenile justice system requires different recognition and responsibility, not only for children as perpetrators, but also for children who are victims and children who are witnesses when viewed in terms of the philosophy that supports it, children who commit delinquency must be based on a philosophy of determinism, although not in an extreme way because of the inability of children to be responsible for what they have done.¹³

One of the important issues in the area of criminal justice policy is providing a legal mechanism that reflects the transition from childhood who is considered innocent to maturity and can be fully responsible according to criminal law.¹⁴ Seeing the condition of handling cases of children who are in conflict with the law in Indonesia so far, Restorative justice approach is assumed to be the latest shifting of the various models and mechanisms that work in the criminal justice system in handling criminal cases at this time.¹⁵

The purpose of writing this research is to find out and describe the ideal formulation of child case resolution within the framework of diversion so that it is beneficial for the child's future.

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- 10 MardjonoReksodiputro, *Sistem Peradilan Pidana Indonesia (MelihatKejahatandan Penegakan Hukum dalam Batas-Batas Toleransi)*, Pusat Keadilan dan Pengabdian Hukum UI, Jakarta, 1994, page. 84
 - 11 Davies et.al, *Criminal Justice and Introduction to the Criminal Justice System in England and Wales*, Logman Group Limited, London 1995, page. 4.
 - 12 Josephin Marcha., Application of Restorative Justice through the Fulfillment of Restitution on Victims of child crimes, *Indonesian Legislative Journal*, Vol 15, no. 4 (2018), page.309–319.
 - 13 Rafika Nur, Handar Subhandi Bakhtiar, Nurul Miqat, Darmawati, Mustawa, Model of Punishment: Juvenile Justice Systems, *Jambura Law Review*, Vol. 3, Special Issue, 2021, page.35-56
 - 14 Adam Graycar, *The Age of Criminal Responsibility*, Australian Institute of Criminology, Canberra, 2000, page. 112.
 - 15 Dyah Listyarini, Juvenile Justice System Through Diversion and Restorative Justice Policy, *Diponegoro Law Review*, Vol. 2, No. 1, April 2017, page.168-184

B. RESEARCH METHODS

This study uses the normative juridical approach. This approach is an approach in which law is conceptualized as what is written in laws and regulations (law in books) or law is conceptualized as rules or norms which are standards for human behavior that are considered appropriate.¹⁶

C. RESULTS AND DISCUSSION

1. Application of Diversion to Children in Conflict with the Law in the Criminal Justice System

The quality of protection for children should have a degree or level that is at least the same as protection for adults, because everyone has the same position (equality before the law).¹⁷ According to Arif Gosita, child protection is an effort that supports the implementation of the rights and obligations of the child himself. Therefore, a child who obtains and maintains the right to grow and develop in life in a balanced and positive manner means that he is treated fairly and is protected from harmful threats. Efforts to protect children can be a legal action that has legal consequences, thereby preventing children from arbitrary parental actions.¹⁸

The judicial process against children often loses its essential meaning, namely as a mechanism that must end with efforts to protect the best interests of the child. Juvenile criminal justice is often a process that is only oriented to formal law enforcement and is not oriented to the interests of the child.¹⁹

Restorative Justice aims to restore the harm caused by crime and rebuild the relationship between all the parties concerned. When it emerged, Restorative Justice met suspicion as to whether it could truly live up to what it promised because of its high aspiration.²⁰ The process of resolving unlawful acts that occurred was carried out by bringing the victim and perpetrator (suspect) together to sit in a meeting to talk together. During the meeting, the mediator provides an opportunity for the perpetrator to provide a clear picture of the actions he has taken.²¹ Restorative justice is a process in which all parties involved in a particular

16 Amiruddin & Zainal asikin, pengantar Metode Penelitian Hukum, Raja Grafindo Persada Jakarta, 2012, page.118

17 Syamsu Haling, Paisal Halim, Syamsiah Badruddin, & Hardianto Djanggih, Perlindungan Hak Asasi Anak Jalanan Dalam Bidang Pendidikan Menurut Hukum Nasional Dan Konvensi Internasional. *Jurnal Hukum & Pembangunan*, Vol. 48, No. 2, April/June 2018, page.362-363

18 Nevey Varida Ariani, Implementasi Undangundang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak Dalam Upaya Melindungi Kepentingan Anak, *Jurnal Media Hukum*, Vol. 21, No. 2, June 2014, page.111

19 Achmad Ratomi, Konsep Prosedur Pelaksanaan Diversi Pada Tahap Penyidikan Dalam Penyelesaian Tindak Pidana Yang Dilakukan Oleh Anak, *Jurnal Arena Hukum*, Vol. 6, No. 3, December 2013, page.395

20 Masahiro Suzuki, and Xiaoyu Yuan, How Does Restorative Justice Work? A Qualitative Metasynthesis, *Criminal Justice and Behavior*, Vol. 48, Issue. 10, October 2021, page.1347-1365

21 Arfan Kaimuddin, Perlindungan Hukum Korban Tindak Pidana Pencurian Ringan Pada Proses Diversi Tingkat Penyidikan, *Jurnal Arena Hukum*, Vol. 8, No. 2, August 2015, page.268

crime jointly solve the problem of how to deal with future consequences.²²

In the development of criminal law, there has been a paradigm shift in the philosophy of juvenile justice, which initially was retributive justice, then changed to rehabilitation, then finally to restorative justice.²³ The diversion of settlement of child cases outside the formal channels of justice through diversion stipulated in international children's instruments has juridical implications for Indonesia to accommodate diversion provisions in children's laws and regulations in Indonesia.²⁴ In realizing the concept of Diversion as an instrument in Restorative Justice in the Juvenile Criminal Justice System based on Act No. 11 of 2012, namely the settlement of criminal cases involving perpetrators, victims, families of perpetrators/families of victims and other related parties to jointly seek a fair solution by emphasizing restoration to the original state and not retaliation.

The handling of cases of children in conflict with the law that prioritizes the best interests of children is still far from what was expected. Diversion system for children concerned with legal crimes, at least it will ease the psychological burden and psychological burden for those who have been caught in the circle of crime cases.²⁵ Act No. 11 of 2012 concerning the Juvenile Criminal Justice System which became effective on July 31 2014 aims to maintain the dignity of children with a restorative justice approach, a child has the right to special protection, especially legal protection in the criminal justice system. In particular to signal the status of children and children's rights within society, and to confirm children as rightsholders.²⁶

Restorative practices in the criminal justice system have been adopted in nearly all countries around the world it contains the principles of restorative justice.²⁷ Article 1 point (6) of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System states, restorative justice is the settlement of criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek

22 Novi Edyanto, Restorative Justice Untuk Menyelesaikan Kasus Anak yang Berhadapan dengan Hukum, *Jurnal Ilmu Kepolisian*, Vol. 11, No. 3, December 2017, page.41.

23 Pancar Chandra Purnama & Johny Krisnan, Pelaksanaan Diversi Ditingkat Pengadilan Berdasarkan Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak, *Jurnal Varia Justicia*, Vol. 12, No. 1, October 2016, page.229.

24 Nurini Aprilianda, Implikasi Yuridis Dari Ketentuan Diversi Dalam Instrumen Internasional Anak Dalam Hukum Anak di Indonesia, *Jurnal Arena Hukum*, Vol. 6, No. 1, April 2012, page.40

25 Yuli Indarsih, Application of Diversion for Children in conflict with the Law: How is the Criminal Justice system, *Journal of Law Science*, Vol. 2, No. 1, Issue 2020, page.1-8

26 Simon Hoffman, Rebecca Thorburn Stern, Incorporation of the UN Convention on the Rights of the Child in National Law, *International Journal of Children's Rights*, Vol. 28, 2020, page.133-156

27 Faiz Rahman, Contextualizing Restorative Justice Through Diversion Mechanism: A Study of Indonesia Juvenile Justice System, *Indonesia Law Review*, Vol. 9, No. 3, 2019, page.241-259

a satisfactory solution of justice by emphasizing restoration to its original state, and not retaliation.

Diversion is a process that has been recognized internationally as the best and most effective way of dealing with children in conflict with the law.²⁸ The diversion approach in restorative justice regulated in Act No. 11 of 2012 concerning the Juvenile Criminal Justice System is a new breakthrough that is not known in the conventional Criminal Justice System.

The existence of several problems in the implementation of the juvenile justice system in Indonesia, according to the importance of the development of the concept of diversion and restorative justice in the implementation of the juvenile justice system in Indonesia. The theory used in analyzing the problem of developing consensus diversion and restorative justice in the juvenile criminal justice system in Indonesia is the theory of crime prevention policies.²⁹ The concept of diversion which aims to provide protection for children in conflict with the law, children who are victims of crime, and society in general as a form of diverting the settlement of child cases from the judicial process to processes outside of criminal justice in order to realize restorative justice.

The implementation of diversion is motivated by the desire to avoid negative effects, especially on the soul and development of children which have the potential to occur if the completion of the criminal process is carried out through the criminal justice system.³⁰ According to Levine, the concept of diversion began with the establishment of juvenile justice in the 19th century which aimed to remove children from the adult justice process so that children were no longer treated the same as adults.³¹

The underlying principle is that justice is best served, when all parties receive fair and balanced attention, are actively involved in the judicial process and obtain adequate benefits from their interactions with the juvenile justice system. The solution offered is the settlement of criminal cases in the context of restorative justice. The concept of the Restorative Justice approach is an approach that focuses more on conditions for creating justice and balance for victims and perpetrators.³²

A child is at very high risk of having his human rights violated when he has to be included in the criminal justice system. So, it would

28 Rodliyah, Diversion as an Alternative Criminal Case Settlement, *International Journal of Multicultural and Multireligious Understanding*, Vol. 6, Issue. 4, September, 2019, page.439-445

29 Safari Dwi Chandra, How Juvenile Criminal Justice System in Indonesia Works? A Book Review Peradilan Pidana Anak di Indonesia, *Indonesian Journal of Advocacy and Legal Services*, Vol. 3 No. 1, 2021, page.113-116

30 Rr. Putri A. Priamsari, Mencari Hukum Yang Berkeadilan Bagi Anak Melalui Diversi, *Jurnal Law Reform*, Vol. 14, No. 2, 2018, page.228

31 Marlina, *Pengantar Konsep Diversi dan Restorative Justice dalam Hukum Pidana*, USU Press, Medan, 2010, page. 61.

32 Afthonul Afif, *Pemaafan, Rekonsiliasi dan Restorative Justice*, Pustaka Pelajar, Yogyakarta, 2015, page. 341-350

be better if diversion was applied in handling the problems of children in conflict with the law. The children require twofold sided support. At the one hand, they ought to be given with the basic necessities to their general progression making them physically strong, judiciously prepared, educationally marvelous by bearing them, paying little respect to their sex, family environment for honest to goodness creating and planning of the child.³³

The purpose of the implementation of diversion for children, among others:³⁴

- a. To prevent children from being detained;
- b. To avoid labeling children as criminals;
- c. To prevent the repetition of criminal acts committed by children, so that children are responsible for their actions;
- d. To carry out necessary interventions for victims and children without having to go through a formal process, and keep children away from the negative influences and implications of the judicial process.

The diversion program can be a form of restorative justice if:³⁵

- a. Encouraging children to be responsible for their actions;
- b. Provide opportunities for children to compensate for mistakes made by doing good for the victim;
- c. Provide an opportunity for the victim to participate in the process;
- d. Provide opportunities for children to be able to maintain relationships with families;
- e. Providing opportunities for reconciliation and healing in communities that have been harmed by criminal acts.

According to Peter C. Kratcoski in Azwad Rachmat Hambali there are three types of implementation concepts for implementing diversion programs, namely:³⁶

- a. Implementation of social control (social control orientation), in which law enforcement officers hand over the perpetrators to the responsibility of supervising or observing the community, with obedience to the approval or warning given.
- b. Social services by the community towards actors (social service orientation), namely carrying out functions to supervise, interfere, improve and provide services to actors and their families.
- c. Towards a process of restorative justice or negotiation (restorative justice orientation), namely protecting the community, giving the opportunity for the perpetrator to be directly responsible to the victim

33 Venudhar Routiya, *An Analytical Study of Children's Rights and Juvenile Justice System*, *International Journal of Advanced Research and Review*, Vol. 1, No. 8, 2016, page.30-42

34 Setya Wahyudi, *Implementasi Ide Diversi dalam Pembaruan Sistem Peradilan Anak di Indonesia*, Genta Publishing, Yogyakarta, 2011, page. 67

35 Fetri A. R. Tarigan, *Upaya Diversi Bagi Anak Dalam Proses*, *Jurnal Lex Crimen* Vol. 4, No. 5, July 2015, page.110.

36 Azwad Rachmat Hambali, *Diversions for Children in Conflict with the Laws in the Criminal Justice System*, *Jurnal Kebijakan Hukum*, Vol. 13, No. 1, March 2019, page.15-30

and the community by making a mutual agreement between the victim, the perpetrator and the community.

The diversion concept with the restorative justice paradigm can be seen based on the similarity of the diversion program with the form of sanctions in the restorative justice paradigm,³⁷ by diverting the settlement of cases of children in conflict with the law from the criminal justice process to processes outside the judiciary by involving the perpetrator, the victim, the perpetrator's family and the victim's family and other related parties to jointly seek a fair solution by emphasizing restoration to its original state and not revenge. This law implements the concept of restorative justice where this concept is essential to save children's future. As a manifestation of its implementation, a diversion program is formed. This is very important for children who commit criminal acts to avoid the destructive powers of imprisonment, which will neglect children's rights as regulated by law.³⁸

In essence, diversion requires the settlement of children's cases outside the criminal justice system, the aim is none other than to achieve peace between victims and perpetrators and avoid the bad stigma of criminal justice.³⁹ Thus, it can also be said that basically diversion has relevance to the purpose of punishment for children. In general, the purpose of punishment consists of efforts to protect society on the one hand and protect (the perpetrator) on the other.

2. Ideal Formulation of Diversion in Law Enforcement of Children in the Future

The juveniles who commit serious crimes weigh the pleasure they imagine they will receive against potentially being arrested, prosecuted, convicted, and sent to prison.⁴⁰ While the punishment of children is the determination of criminal penalties against children who commit offenses. Children must be involved because the policy-making has an impact on children and article 6 of the SPPA explains the purpose of diversion to achieve peace between victims, resolve child cases outside the judicial process, prevent children from being deprived of independence, encourage the community to participate and instill a sense of responsibility towards children. If you look at article 6, the aim of diversion is to achieve peace between the victim and the child, this is not in line with the limitation of the diversion requirements because the

37 Sarwadi and Bambang Tri Bawono, Restorative Justice Approach in Diversion System for Settlement of Criminal Cases for Children in Indonesia, *Jurnal Daulat Hukum*, Vol. 3, Issue. 4, December 2020, page.396-402

38 Arman Sukma Negara, Diversion as a Crime Solution Towards Child Crime Prepertrator, *Ius Poenale*, Vol. 2, Issue. 1, Januari-June 2021, page.21-30

39 Aristian Akbar, The Ideal Formulation of Diversion in The Juvenile Criminal Justice System, *International Journal of Business, Economics and Law*, Vol. 24, Issue. 6, August 2021, page.96-101

40 Smriti Raturi, Sachin Rastogi, Juvenile delinquency and legal aspects: Indian scenario, *International Journal of Health Sciences*, Vol. 6, S. 1, 2022, page.12297-12304

perpetrator and the victim cannot reach peace through diversion if the threat of imprisonment is only valid for under 7 years.

The application of diversion in Article 7 paragraph (2) letter a of the Juvenile Criminal Justice System Law must be reformulated immediately by applying the principle of non-discrimination and the principle of the best interests of the child in the Convention on the Rights of the Child and taking into account the purpose of diversion contained in article 6 of the Law. The juvenile criminal justice system prioritizes a restorative approach, if the victim and perpetrator have reached an agreement, the ongoing legal process can be stopped, and the settlement can be pursued based on a non-penal route.⁴¹

Reformulating Article 7 paragraph (2) letter a in the ideal SPPA Law must pay attention:

- a. The general principles contained in the Convention on the Rights of the Child (CRC), every child without differences in race, color, gender, religion, as well as discrimination or punishment based on position, activity, opinion, etc. and the best principle for children explains every policy-making related to children, children must be involved because This policy has an impact on children. So that by paying attention to children's rights on the principle of non-discrimination and the principle that is best for children, it will have a good impact on children and can be used as material for good consideration in formulating a policy related to children.
- b. Purpose of sentencing According to Barda Nawawi Arief, by including the objective variable in sentencing requirements, then according to the basic concept, the basis for justification or justification for a crime is not only "crime" (objective requirements) and "mistakes" (subjective requirements), but also on "purposes and sentencing guidelines". So seen from the thoughts of Barda Nawawi Arief, the application of diversion should not only look at the criminal acts and mistakes committed by children but look at the basic meaning and purpose of implementing diversion to solve problems together and restore the situation to normal so that children realize their mistakes and are responsible for them.
- c. Article 6 of the Law on the Juvenile Criminal Justice System Article 6 of the Juvenile Criminal Justice System explains the purpose of diversion to achieve peace between victims, resolve child cases outside the judicial process, prevent children from being deprived of liberty, encourage society to participate and instill a sense of responsibility to children. The goal of diversion of the Juvenile Criminal Justice System is in line with the principles of non-discrimination and the principle of the best interests of the child as well as the theory of restorative justice. However, the implementation of diversion in Article 7 paragraph (2) letter a of the Juvenile Criminal Justice System Law is not in accordance with the purpose of the

41 Sinta Priscillia, Siti Mahmudah, Jeremy Silaban, Analysis of Legal Policy Enforcement Against Child Bullying Perpetrators, *Journal of Creativity Student*, Vol. 7, No. 1, 2022, page.67-86

diversion itself because the article provides diversion for children who are threatened with imprisonment under 7 years so that children who are threatened with imprisonment for more than 7 years no diversion.

Reforming article 7 paragraph (2) letter a in the Law on the Juvenile Criminal Justice System which is ideal based on the general principles contained in the Convention on the Rights of the Child, the theory of restorative justice, the purpose of punishment and the purpose of diversion in article 6 of the Law on the Juvenile Criminal Justice System. Then article 7 paragraph (2) letter a explains "threatened with imprisonment under 7 (seven) years". Reformulated to "Diversion as referred to in paragraph (1) is carried out for all non-criminals". So from the formulation of the article, diversion can be carried out against all criminal acts committed by children without exception for certain types of criminal acts as well as the equal rights that children get to get the opportunity to carry out diversion. If an agreement is not reached between the victim and the perpetrator during the diversion process, then according to the provisions of Article 13 of the Law on the Juvenile Criminal Justice System the juvenile justice process will continue if the diversion process does not result in an agreement or the diversion agreement is not implemented.

Article 112 of the newly ratified Criminal Code states: (1) Children who commit criminal acts that are punishable by imprisonment under 7 (seven) years and are not a repetition of a crime must be sought for diversion. (2) The procedures for diversion as referred to in paragraph (1) are regulated in the Law. This Article of the Criminal Code still contains the same meaning as Article 7 paragraph (2) of the Law on the Juvenile Criminal Justice System. According to the author's opinion, the limitation of diversion can be carried out with the condition that a sentence under 7 years is contrary to philosophy for the best interests of the child.

Article 23 Act No. 12 of 2022 concerning Crimes of Sexual Violence: Sexual violence cases cannot be resolved outside the judicial process, except for child perpetrators as regulated in the law. This article is in accordance with the concept of Diversion, namely with a settlement outside the judicial process if the perpetrator is a child.

The state gives attention and protection to children as befits parents to their children. On the basis of this philosophy the handling of children in conflict with the law is carried out through efforts for the best interests of the child. This means that every child is considered to have the capacity to learn and especially learn to change his behavior. So that children are seen more as victims of circumstances and the environment than as perpetrators. Diversion is not a peaceful effort between children in conflict with the law and victims or their families, but a form of punishment against children in conflict with the law in an informal way. The implementation of diversion that the implementation of diversion in restorative justice in the Juvenile Criminal Justice System is the transfer

of settlement of child cases from the criminal justice process to processes outside of fair criminal justice with an emphasis on restoration to its original state, and not retaliation. In addition, diversion is a form of punishment with an educational aspect against children.

D. CONCLUSION

The implementation of diversion in Article 7 paragraph (2) letter a of the SPPA Law carries a penalty of imprisonment under 7 years to get diversion so that the limitation on the implementation of diversion in Article 7 paragraph (2) letter a will have an impact on the child's right to get diversion when the child commits a crime under threat of imprisonment 7 years and over, the problem should be resolved peacefully based on the purpose of diversion, but there is a limitation on the threat of imprisonment under 7 years in the implementation of diversion, so the child loses his right to get diversion and is at risk of going to jail. So that it is necessary to reconstruct the Elimination of the conditions for imprisonment under 7 (seven) years in Article 7 paragraph (2) letter (a) of the SPPA Law. The general principles contained in the Convention on the Rights of the Child should be taken into consideration to amend or remove conditional restrictions on diversion for imprisonment under 7 years because they have deviated from the essence of children's rights and the general principles contained in the Convention on the Rights of the Child.

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