

The Implementation of Diversion in Handling of Criminal Actions Performed by Child

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Abstract.

The purpose of this study was to obtain and find out information data about the implementation of diversion in handling criminal acts committed by children. The method used by the researcher was legal approach normative juridical and the specifications in this study were descriptive. The sources and types of data in this study are secondary data obtained from literature studies which were analyzed qualitatively. Based on the results of the study that implementation of diversion in handling criminal acts committed by children carried out by investigators, especially at the investigation stage, namely investigators have carried out law enforcement properly by receiving and serving every report or complaint given by the community and perpetrators by always fulfilling the rights of victims and suspects in order to provide a sense of justice for both the suspect and the victim. The obstacles include legal regulations and their handling procedures that do not support criminal acts committed by children with mental disorders. Law enforcers, in this case child investigators, are still lacking both in terms of the number of investigators and the level of knowledge of investigators in handling child crimes. There is no Temporary Child Placement Institution (LPAS) as mandated in Act No. 11 of 2012. The effort is to carry out the stages of the investigation in accordance with the SOP accompanied by asking for advice and input from prosecutors and experts. Request an increase in the number of personnel and carry out training and vocational education for personnel as well as carry out sharing and brainstorming with the Prosecutor's Office. Coordinate with the Social Service to facilitate child offenders who do not have parents or a place to live.

Keywords: Children; Crime; Diversion; Implementation.

1. Introduction

Children are part of the younger generation, one of the human resources who are the potential and successors of the ideals of the nation's struggle, which have a strategic role and have special characteristics and characteristics, requiring guidance and protection in the context of complete physical, mental and social growth and development harmonious and balanced.¹ Children's human rights, if developed, by providing free opportunities for children and youth to express their opinions, can actually provide great benefits to the older generation.²

Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia explains that every child has the right to survive, grow and develop and has the right to protection from violence and discrimination. With the provisions in Article 28B paragraph (2), more attention is paid to children in order to avoid all kinds of negative behavior that will interfere with their future. Both negative

¹Gatot Supramono, (2007), *Hukum Acara Pengadilan Anak, Djambatan*, Jakarta, p. 11

²Sri Widoyati Wiratmo Soekito, (1983), *Anak dan Wanita dalam Hukum*, LP3ES, Jakarta, p. xi

behavior that comes from the development of globalization, lifestyle and all forms of advances in communication and information technology. The behavior of children in their lives is definitely influenced by the conditions that exist within themselves and those around their environment.

The family environment is the initial basis of life for every human being and is the first and foremost place for children to obtain the right to survive, the right to grow and develop properly, the right to get protection, and the right to participate.³

When examined carefully, affection is the most basic psychological need in the life and life of a child, which actually rests on the conscience of the parents. In reality, many parents are not aware of this, which affects the development of children's lives. The fragility that exists in the family is the main factor that will shape the behavior of children. So when the condition of the family is fragile, deviant behavior will be created in the child. For example, children who are in an incomplete family environment or are often called broken homes, children who are on the streets, children who are abandoned by their parents are more often faced with the law.

Children who are raised in an atmosphere of conflict, tend to experience mental anxiety, which can encourage children to take negative actions, which are categorized as child delinquency. Children do mischief, can be influenced by the background of his life. Child delinquency is not only a disturbance to public security and order, but also threatens the future of the nation and state. On this basis, children need to be protected from harmful actions, so that children as the nation's next generation are preserved for the future of the nation and state.⁴

Protection of children in a nation's society is a benchmark for the nation's civilization, therefore it must be endeavored in accordance with the capabilities of the homeland and nation. Child protection intends to seek right and fair treatment, to achieve the welfare of the child.⁵

The complexity of the problems that threaten the development of children at this time, both in the family environment and in the community, has resulted in many children being dragged and faced with legal processes. With the various criminal acts they have committed, the public's hope for justice in cases of children dealing with the law itself does not guarantee justice and goodness for children. The formal legal process they go through has a negative impact on their physical and mental health, making it difficult for them to return to the midst of society and even their respective families. Where the family should be the focus of a child, with the negative conditions and stigma that they get after dealing with the law as if there is no place for children to return.

Starting from the bad impact of the judicial system process that is passed for the future of children, human thoughts or legal and humanitarian experts arise to

³ Davit Setyawan, *Potret Kesenjangan Perlindungan Anak dari Regulasi hingga Implementasi*, <http://www.kpai.go.id/artikel/potret-kesenjangan-perlindungan-anak-dariregulasi-hingga-implementasi/>, accessed on October 30, 2021 at 21:37 wib

⁴ Maidin Gultom, (2013), *Perlindungan Hukum terhadap Anak dalam Sistem Peradilan Pidana Anak di Indonesia*, Refika Aditama, Bandung, p. 2.

⁵ Nashriana, (2011), *Perlindungan Hukum Pidana bagi Anak di Indonesia*, Rajawali Pers, Jakarta, p. 3

make formal rules so that children are released and avoid these impacts when children are in conflict with the law, to protect children from the influence of the system process. criminal justice, so that children's problems facing the law can be resolved without taking the criminal justice system but taking non-formal channels by involving the community, perpetrators, families of perpetrators, victims, families of victims and also parties who are felt to have a connection, an alternative known as the approach was born. (restorative justice) which is carried out by diverting (Diversion) the settlement process by prioritizing the good for children and removing negative stigma, criminal children, potential criminals, immoral children and other impacts that affect the development of children, especially the psychological development of children, which in Indonesian terms is called Diversion.⁶

Diversion for child offenders is to provide a better alternative to the formal procedure in court. The aim is to prevent the child from legal procedures in court and reduce the possibility of future forms of recidivism.⁷

2. Research Methods

The method used by the researcher is legal approach normative juridical and the specifications in this study are descriptive. The sources and types of data in this study are secondary data obtained from literature studies which were analyzed qualitatively.

3. Results and Discussion

3.1. Implementation of Diversion in Handling Crimes Perpetrated by Children

The application of special juvenile justice has provided room for widespread diversion. Changes in the general court towards a court that prioritizes child protection. With the application of the concept of diversion, the existing form of formal justice has prioritized efforts to provide protection for children from imprisonment. In addition, it can be seen that child protection with a diversion policy can be carried out at all levels of justice, starting from the community before the occurrence of a crime by taking preventive measures. After that, if a child commits a violation, there is no need to proceed to the police. Furthermore, if the child who committed the violation has already been arrested by the police, the police can diversion without forwarding it to the prosecutor.

Criminal acts with minors who cause unlawful acts must always be equipped with enforcement organs which depend on factors including: Community expectations, namely whether or not law enforcement is in accordance with community values. The motivation of the community members to report the

⁶ Marlina, (2008), *Penerapan Konsep Diversi Terhadap Anak Pelaku Tindak Pidana Dalam Sistem Peradilan Pidana Anak*. Jurnal Equality, Vol. 13. No 1 February 2008. p. 96.

⁷ Setya Wahyudi, (2011), *Implementasi Ide Diversi dalam Pembangunan Sistem Peradilan Pidana Anak di Indonesia*, Genta Publishing, Yogyakarta, p. 53

occurrence of unlawful acts to the law enforcement organs. The ability and authority of law enforcement organizations.

The concept of a restorative justice approach is an approach that focuses more on the conditions for creating justice and balance for the perpetrators of crimes and the victims themselves.⁸ Procedures and criminal justice mechanisms that focus on punishment are transformed into a process of dialogue and mediation to create an agreement on a more just and balanced settlement of criminal cases for the victims and perpetrators. Restoration includes restoring the relationship between the victim and the perpetrator. Restoration of this relationship can be based on a mutual agreement between the victim and the perpetrator.⁹ The victim can convey about the loss suffered and the perpetrator is also given the opportunity to make up for it, through compensation mechanisms, peace, social work, or other agreements.¹⁰ Efforts to solve problems outside the court carried out by criminals (his family) and victims of criminal acts (his family) are later expected to be the basis for consideration in the process of examining criminals in court in imposing criminal sanctions by judges/assessments of judges. Justice is a consideration in the criminal law implementation system and is included in the new Criminal Law Legislation (KUHP), especially for complaint criminal offenses (Klacht delict) so that it focuses on the conditions for creating justice and balancing legal treatment for perpetrators of criminal acts and victims of criminal acts can be achieved properly, without having to always use criminal sanctions (imprisonment) in the final settlement. Due to the deterrent effect as the ultimate goal of sentencing (imprisonment) the perpetrators of criminal acts are now no longer achieving their targets as expected. There needs to be a breakthrough in the implementation of the criminal system in Indonesia, not only through imprisonment but also through the application of restorative justice.¹¹

The implementation of diversion in the handling of criminal acts committed by children starts from the level of investigation, prosecution, trial, to the implementation of handling crimes committed by children by the Correctional Institution.

Whereas another area of concern is where the victim or the complainant wants the goods or the loss suffered by the violator to be returned or reported to have occurred, making the victim or the complainant consider the case to be over. It is different from the process or stages in the investigation where the police do not remove the compensation for the crime. Therefore, the application of Restorative justice in the investigation process is very necessary in accelerating

⁸Kristin Reimer. (2011), *An Exploration Of The Implementation Of Restorative Justice In An Ontario Public School*. *Canadian Journal of Educational Administration and Policy*, Issue #119, March 11, by CJEAP and the author(s), p. 4

⁹UNODC, (2006), *Handbook on Restorative Justice Programmes*. *Criminal Justice Handbook Series*, Vienna: UN New York, p. 5

¹⁰Kristin Reimer, Op.cit, p. 6

¹¹Annis Nurwianti, Gunarto, Sri Endah Wahyuningsih, *Implementasi Restoratif / Restorative Justice Dalam Penyelesaian Tindak Pidana Kecelakaan Lalu Lintas Yang Dilakukan Oleh Anak Di Polres Rembang* Jurnal Hukum Khaira Ummah Vol. 12. No. 4 Desember 2017

the resolution of problems / disputes and the most important thing is achieving justice for the plaintiffs / disputes.¹²

There are three basic principles that make up restorative justice, namely: Recovery for those who have suffered harm due to crime; Perpetrators have the opportunity to be involved in the restoration of the state; and the Court acts to maintain public order and society acts to keep the peace fair.

From these three basic principles, it is known that restorative justice will provide feedback for perpetrators, victims and the people involved in it. In restorative justice also allows imprisonment if the sanctions are the demands of the victims and it is true that by carrying out these sanctions the perpetrators are considered to be accountable for their actions.¹³

3.2. Obstacles encountered by investigators in implementing diversion in handling criminal acts committed by children

Restorative justice and Diversion are alternatives for handling children in conflict with the law, in practice there are still many obstacles faced by the juvenile criminal justice system. According to Soerjono Soekanto, the factors that influence it in the implementation of diversion and law enforcement include:

- The legal factor itself;
- Law enforcement factors, namely the factors that form and apply the law;
- Factors of facilities or facilities that support law enforcement;

Based on the provisions of Act No. 11 of 2012 which encourages the birth of 4 (four) institutions, namely the Special Child Development Institution (LPKA), the Temporary Child Placement Institution (LPAS), the Social Welfare Organization (LPKS) and the Child Special Service Room (RPKA) as a substitute place for detention, fostering and child prisons, as mandated by Act No. 11 of 2012.

- Community factors, namely the environment in which the law applies or is applied;
- Cultural factors, namely as a result of creative works and feelings based on human initiative, in social life.

The ultimate goal of this restorative justice concept is to eliminate stigma and return criminals to normal human beings, criminals can realize their mistakes, so they don't repeat their actions, do not cause revenge because the perpetrator has been forgiven by the victim, victims get compensation quickly, empower the community in overcoming crime and, reintegration of criminals into society.¹⁴

Obstacles encountered by investigators in implementing diversion in handling

¹²Ragil Tri Wibowo and Akhmad Khisni, *Restorative Justice in Application for Crime Investigation on Property*, *Jurnal Daulat Hukum* Volume 1 No. 2 June 2018 ISSN: 2614-560X [10.30659/jdh.1.2.565 - 570](https://doi.org/10.30659/jdh.1.2.565-570)

¹³Yudi Hendaro and Umar Ma'ruf, *Diversion In Children Criminal Justice System Through Restorative Justice*, *Jurnal Daulat Hukum* Volume 1 Issue 2, June 2018 ISSN: 2614-560X

¹⁴Ibnu Suka, Gunarto, Umar Ma'ruf, 2018, *Peran Dan Tanggung Jawab Polri Sebagai Penegak Hukum Dalam Melaksanakan Restorative Justice Untuk Keadilan Dan Kemanfaatan Masyarakat*, *Jurnal Hukum Khaira Ummah* Vol. 13. No. 1

crimes committed by children are: Legal regulations and their handling procedures that do not support criminal acts committed by children with mental disorders. Law enforcers, in this case child investigators, are still lacking both in terms of the number of investigators and the level of knowledge of investigators in handling child crimes. There is no Temporary Child Placement Institution (LPAS) as mandated in Act No. 11 of 2012.

3.3. Efforts made by investigators to overcome obstacles in the implementation of diversion in handling criminal acts committed by children in conflict with the law

The development of law in Indonesia itself is very dynamic and always changes following the development of society, legal developments, especially in the development of criminal (material) and criminal procedural law (formal) outside the territory of the Indonesian Criminal Code (Criminal Law Book) and the Criminal Procedure Code. This is because the basic rules of the Criminal Procedure Code (material) of the Criminal Code and the Criminal Procedure Code (formal) from the Criminal Procedure Code which are old legal products that have not been updated or revised, only the revision / review of the articles in the two laws and regulations does not replace / revise the entire Criminal Code or KUHAP.¹⁵

Based on the obstacles faced by investigators in implementing special diversion in handling criminal acts committed by children, investigators have carried out several efforts in their application, including: Carrying out the stages of the investigation in accordance with SOPs accompanied by asking for advice and input from prosecutors and experts. Request an increase in the number of personnel and carry out training and vocational education for personnel as well as carry out sharing and brainstorming with the Prosecutor's Office. Coordinate with the Social Service to facilitate child offenders who do not have parents or a place to live.

4. Conclusion

Implementation of diversion in handling criminal acts committed by children carried out by investigators, especially at the investigation stage, namely investigators have carried out law enforcement properly by receiving and serving every report or complaint given by the public. In addition, in the process of enforcing the law, it continues to provide legal protection for victims and perpetrators by always fulfilling the rights of victims and suspects in order to provide a sense of justice for both the suspect and the victim. The obstacles include legal regulations and their handling procedures that do not support criminal acts committed by children with mental disorders. Law enforcers, in this case child investigators, are still lacking both in terms of the number of investigators and the level of knowledge of investigators in handling child crimes. There is no

¹⁵Moch. Isa Nazarudin, Umar Ma'ruf, *Comparison Of The Implementation Of Pre-Court Process Before And After The Constitutional Court Decision Number: 21 / PUU-XII / 2014 In The Batang*, Jurnal Daulat Hukum Volume 3 Issue 1, March 2020 ISSN: 2614-560X State Court

Temporary Child Placement Institution (LPAS) as mandated in Act No. 11 of 2012. The effort is to carry out the stages of the investigation in accordance with the SOP accompanied by asking for advice and input from prosecutors and experts. Request an increase in the number of personnel and carry out training and vocational education for personnel as well as carry out sharing and brainstorming with the Prosecutor's Office. Coordinate with the Social Service to facilitate child offenders who do not have parents or a place to live.

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