

## **Implementation of Diversion in the Juvenile Criminal Justice System in Realizing Restorative Justice**

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**Abstract.** *The aim of this research is to determine and analyze the implementation of diversion in the juvenile criminal justice system in realizing restorative justice. To find out and analyze the obstacles to implementing diversion in the juvenile criminal justice system in realizing restorative justice and its solutions. The method used by researchers is a normative legal approach and the specifications in this research are descriptive. The source and type of data in this research is secondary data obtained from literature study. Based on the results of the research, the implementation of diversion in the juvenile criminal justice system in realizing restorative justice is a form of legal protection for children in conflict with the law (ABH). Implementation of the Juvenile Criminal Justice System using a diversion approach is the transfer of resolution of juvenile criminal cases from formal criminal justice to outside formal criminal justice or resolved through non-formal justice mechanisms. The obstacle is that the implementation of diversion is carried out simultaneously with child examination (BAP) and the creation of litmas. This makes it quite difficult to provide recommendations because you don't know the child's condition. The application of articles that are sometimes inconsistent, should be articles that can be converted, but the articles that are applied are articles that cannot be converted, and vice versa, without considering the causal factors, even changes to the articles do not notify the Father . Sometimes only the determination of the diversion results is sent to the Father without the children and their parents being involved. The solution is to get around the procedures, usually the peak date for diversion is postponed after the litmas date. Remind investigators to apply the appropriate articles. Bapas coordinates with investigators to hand over the decision to the child and their parents.*

**Keywords:** *Criminal; Diversion; Justice; Juvenile; Restorative.*

## 1. Introduction

Every citizen has the right to receive protection of their rights, including children in conflict with the law, as regulated in the Opening of the 1945 Constitution of the Republic of Indonesia, article 28D paragraph (1) "Everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law."

Law is a guide to life (commands or prohibitions) that regulates order in a society that should be obeyed by members of society and if violated can result in legal action from the government for the members of the society that violate it.<sup>1</sup>

As a gift from God Almighty, it is only right that children receive guaranteed protection for their dignity and honor. Children cannot be separated from the survival of a nation children are the next generation of the nation whose human rights must be guaranteed. Today, children are often in the spotlight in the eyes of society because of their behavior that is contrary to legal norms. Such child behavior is called juvenile delinquency. In Indonesia itself, juvenile delinquency is still a social problem in itself that causes concern in society, especially parents.<sup>2</sup>

The development of law in Indonesia itself is very dynamic and always changing following the development of society, the development of law especially in the development of criminal (material) and criminal procedure law (formal) outside the territory of Indonesia KUHP (Criminal Code Book) and the Criminal Procedure Code (Indonesian Language Book of Criminal Procedure Law) which are currently in effect. This is because the basic rules of the Criminal Code of Criminal Procedure (material) of the Criminal Code and the Criminal Procedure Code (formal) of the Criminal Procedure Code which are old legal products that have not been updated or revised, only revisions / material tests of the Articles in both laws and regulations do not replace / revise the entire Criminal Code or Criminal Procedure Code.<sup>3</sup>

One of the efforts to prevent and overcome juvenile delinquency (criminal politics of children) is currently through the implementation of a juvenile justice system (Juvenile Justice). The purpose of implementing a juvenile justice system is not solely aimed at imposing criminal sanctions on children who have committed crimes, but is more focused on the basic idea that the imposition of

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<sup>1</sup>Chainur Arrasjiid, 2014, Basics of Legal Science, Sinar Grafika, Jakarta, p.21

<sup>2</sup>Hasbi Hasan, 2013, Implementation of Restorative Justice in the Juvenile Criminal Justice System in Indonesia, Journal of Law and Justice, 2 (2), p. 247

<sup>3</sup>Moch. 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

these sanctions is a means of supporting the realization of the welfare of children who commit crimes. Children who violate the law or commit crimes are greatly influenced by several other factors outside the child such as socializing, education, playmates and so on, because criminal acts committed by children are generally a process of imitating or being influenced by negative actions from adults or people around them.<sup>4</sup>

Criminal acts today have very diverse motives such as physical violence or abuse, and there are still many other criminal motives. Criminal acts can be said to be a form of someone's behavior that violates the provisions of the law and legal norms that apply in society. Lately, criminal acts can occur to all groups, both adults and children, even regardless of whether it is a state apparatus, ordinary people, or others.

This Restorative Justice approach must be carried out first in the Juvenile Criminal Justice System (SPPA) for the process of resolving every case of a child who commits an unlawful act. The concept of Restorative Justice and Diversion is stated in Article 5 Paragraph (1), Paragraph (2), and Paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). The concept of restorative justice in question is Diversion. Diversion is all parties involved in a particular criminal act together to resolve the problem and find the best solution for the child without any element of retaliation by involving the victim, perpetrator, parents/guardians of the victim, perpetrator, community and related parties.<sup>5</sup>

Based on the formulation of the problem above, the purpose of this study is to determine and analyze the implementation of diversion in the juvenile criminal justice system in realizing restorative justice. To determine and analyze KeninImplementation of diversion in the juvenile criminal justice system in realizing restorative justice and its solutions.

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<sup>4</sup>Marlina. 2010. Introduction to the Concept of Diversion and Restorative Justice in Criminal Law. USU. Press. Medan, p. 1

<sup>5</sup>Dheny Wahyudi, 2015, "Protection of Children in Conflict with the Law Through a Diversion Approach", Jambi Journal of Legal Studies, Vol. 6, Number 1, 1 Feb., p. 151. <https://media.neliti.com/media/publications/43318-IDperlindungan-terhadap-anak-yangberhadapan-dengan-hukum-melalui-pendekatanresto.pdf>

## 2. Research methods

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

## 3. Results and Discussion

### 3.1. Implementation of Diversion in the Juvenile Criminal Justice System in Realizing Restorative Justice

Relationship restorative justice and diversion, Dahlan Sinaga said, diversion is a criminal law institution (formal) and can also be seen as a form of restorative justice whose origins cannot be separated from the purpose of implementing diversion in the juvenile criminal justice system. According to Dr. Mansyur, the Indonesian Criminal Law System is entering a new phase in its development. One form of renewal in Indonesian criminal law is the regulation of criminal law in the perspective and achievement of justice for the improvement or restoration of conditions after the event and the criminal justice process known as restorative justice. Restorative justice is different from retributive justice (emphasizing retribution) and restitutive justice (emphasizing compensation).<sup>6</sup>

In 2020, the Prosecutor's Office stipulated the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice with the principle of opportunities owned by the Prosecutor's Office. This regulation is based on considerations of resolving criminal cases that prioritize restorative justice that emphasizes restoration to the original state and a balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards revenge is a legal need for society and a mechanism that must be built in the implementation of prosecutorial authority and reform of the criminal justice system.<sup>7</sup>

Criminal acts committed by child perpetrators are still processed with legal procedures. However, what is different is that the prosecution process uses the juvenile justice system. In the PrincipleLaw Number 11 of 2012 concerning the Juvenile Criminal Justice Systemhas used a restorative justice model that focuses on the diversion process as an effort to resolve criminal acts committed by children. As stated in Article 5 number 3Law Number 11 of 2012 concerning the Juvenile Criminal Justice Systemexplains that a juvenile justice system based on the principles of protection and justice must be attempted so that the diversion process. As stated in Article 5 number 3Law Number 11 of 2012 concerning the Juvenile Criminal Justice Systemexplains that a juvenile justice system based on

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<sup>6</sup>Sinaga, Dahlan, 2017, Law Enforcement with a Diversion Approach: The Perspective of the Theory of Dignified Justice, Nusa Media, Yogyakarta, p. 45

<sup>7</sup> Admiral Bagas Dewandaru, Jawade Hafidz, and Lathifah Hanim, 2022, The Policy of the Prosecutor's Authority in Termination of Prosecutions based on Restorative Justice in Criminal Justice System In Indonesia, *Law Development Journal*, Volume 4 Issue 3, <http://jurnal.unissula.ac.id/index.php/ldj/article/view/23339/7302#>

the principles of protection and justice must be pursued so that the diversion process. In Article 7 paragraph 2 Law Number 11 of 2012 concerning the Juvenile Criminal Justice System also regulates the implementation of diversion provisions, that the crime committed: (1) is punishable by imprisonment of less than 7 (seven) years; and (2) is not a repetition of the criminal act.<sup>8</sup>

PeJuvenile criminal justice aims to provide the best for children and as part of efforts and efforts to protect children, with the intention of educating in order to improve attitudes and actions that are contrary to legal norms. Juvenile criminal justice should provide protection, guidance, education through the best decisions given by law enforcement officers. The aspect of child protection in juvenile criminal justice is reviewed from a psychological perspective with the aim of preventing children from violence, neglect, abuse, stress, unfair treatment, anxiety and so on. In realizing the above, there needs to be a legal regulation that is the basis, becomes a legal umbrella and at the same time as a means of realizing welfare, legal certainty and justice, in order to take appropriate action against children.

Another problematic area is where the victim or reporter wants the goods or losses suffered by the violator to be returned or reported to have occurred, making the victim or reporter consider the case closed. This is different from the process or stages in the investigation where the police do not remove compensation for the crime. Therefore, the application of Restorative Justice in the investigation process is very necessary in accelerating the resolution of problems / disputes and the most important thing is to achieve justice for the plaintiff / dispute.<sup>9</sup>

There are three basic principles that form restorative justice, namely:

1. Restitution for those who suffer loss due to crime;
2. The perpetrators have the opportunity to be involved in the recovery of the country; and
3. The courts act to maintain public order and society acts to maintain that peace is just.

From the three basic principles it is known that restorative justice will provide feedback for the perpetrator, victim and the people involved in it. In restorative justice also allows imprisonment if the sanction is the demand of the victims and

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<sup>8</sup>Erwin Chan and Jawade Hafidz, 2020, Policy for Crime Murder Investigation by Children in Polrestabes Semarang, Jurnal Daulat Hukum Volume 3 Issue 1, pp. 27-28, <http://jurnal.unissula.ac.id/index.php/RH/article/download/8454/3929>

<sup>9</sup>Ragil Tri Wibowo and Akhmad Khisni, 2018, Restorative Justice in Application for Crime Investigation on Property, Jurnal Daulat Hukum Volume 1 No. 2 ISSN: 2614-560X [10.30659/jdh.1.2.565 - 570](http://10.30659/jdh.1.2.565-570)

it is true that by carrying out the sanction the perpetrator is considered accountable for their actions.<sup>10</sup>

Implementation of Diversion in the Juvenile Criminal Justice System in Realizing Restorative Justice is a form of legal protection for Children in Conflict with the Law (ABH). Implementation of the Juvenile Criminal Justice System with a diversion approach is the transfer of the settlement of juvenile criminal cases from formal criminal justice to outside formal criminal justice or resolved through non-formal justice mechanisms.

Diversion is implemented by bringing together the perpetrator, victim, and community. Diversion can be interpreted as an effort to distance a case with certain criteria, from the formal criminal justice process towards community support to avoid negative impacts caused by the criminal justice process. The juvenile criminal justice system in Indonesia must prioritize the best interests of the child and strive to reduce the settlement of juvenile cases in criminal courts. If forced to be sentenced to prison, then the sentence is only carried out as a last resort and for a short time.

### **3.2. Obstacles to Implementing Diversion in the Juvenile Criminal Justice System in Realizing Restorative Justice and Its Solutions**

The international terminology used to refer to children who violate the law is "Children in Conflict with the Law" or ABH. Since it was realized that children also violate the law, the debate about how best to deal with them has continued. Diversion is a process that has been internationally recognized as the best and most effective way to deal with children in conflict with the law. Interventions for children in conflict with the law are broad and varied, but most emphasize detention and punishment, regardless of how minor the violation is or how young the child is. Children who violate the law or commit criminal acts are influenced by several other factors outside the child such as social circles, education, playmates and so on. To protect children from the influence of formal processes. The criminal justice system then gave rise to human thought or legal and humanitarian experts to create formal rules. The act of removing a child who violates the law or commits a crime from the criminal justice process by providing other alternatives that are considered better for the child. Based on this thought. The concept of diversion was born, which in Indonesian is called diversion or diversion of criminal law from the criminal justice process by providing other alternatives that are considered better for the child.

Tinda the crimes that occur today in society are not only adults, but there is a tendency for the perpetrators to still be classified as children. Therefore, various efforts to prevent and overcome juvenile delinquency need to be carried out immediately. One of the government's efforts in preventing and overcoming

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<sup>10</sup>Yudi Hendaro and Umar Ma'ruf, 2018, Diversion In Children Criminal Justice System Through Restorative Justice, Journal of Daulat Hukum Volume 1 Issue 2, ISSN: 2614-560X

delinquency is by organizing a juvenile criminal justice system through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which replaces Law Number 3 of 1997 concerning Juvenile Courts which is carried out with the aim of realizing a justice system that truly guarantees protection for the interests of children who are in conflict with the law as the successors of the nation.

Diversi in juvenile criminal justice is intended to avoid the negative effects of conventional criminal justice examinations on children, both the negative effects of the judicial process and the negative effects of the stigma (evil label) of the judicial process, so conventional examinations are diverted, and the child is subject to diversion programs. Diversion actions can be carried out by the Police, Prosecutor's Office, Courts, or Correctional Institution Supervisors. The implementation of diversion at all levels in the juvenile criminal justice system is expected to reduce the negative effects of children's involvement in the judicial process. The Juvenile Criminal Justice System is all elements of the criminal justice system related to handling cases of juvenile delinquency. First, the police as a formal institution when juvenile delinquency first comes into contact with the justice system, which will also determine whether the child will be released or processed further. Second, prosecutors and parole institutions will also determine whether the child will be released or processed to juvenile court. Third, the Juvenile Court, the stage when the child will be placed in choices, from being released to being included in a punishment institution.

According to the law, a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate, optimally in accordance with human dignity and honor, and receive protection from violence and discrimination. However, in its long journey until now, what is mandated in the law has been hampered by the facilities and infrastructure provided by the Government, for example, special prisons for children which only exist in big cities.

This of course causes the non-fulfillment of children's rights as mandated by the law and the Convention on the Rights of the Child. In addition, the lack of integrated and comprehensive socialization carried out to law enforcement officers including the police down to the lowest ranks causes the ineffectiveness of providing legal protection for children.<sup>11</sup>

Besides that, children are the hope of their parents, the hope of the nation and the state. who will continue the baton of development and have a strategic role, have special characteristics or traits that will guarantee the continuity of the existence of the nation and state in the future. Therefore, every child must receive guidance from an early age, children need to get the widest possible

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<sup>11</sup> Achmad, Ruben, 2005, "Efforts to Resolve Problems of Children in Conflict with the Law in the City of Palembang, in the Simbur Cahaya Journal, Number 27,

opportunity to be able to grow and develop optimally, both physically, mentally and socially. Moreover, childhood is a period of sowing seeds, erecting piles, making foundations, which can also be called a period of forming character, personality and character of a human being, so that they will later have strength and ability and stand firm in living life.<sup>12</sup>

Various efforts to prevent and overcome child delinquency need to be implemented immediately. carried out. One of the efforts to prevent and overcome juvenile delinquency (juvenile criminal policy) is currently through the implementation of a juvenile justice system (Juvenile Justice).<sup>13</sup>

Dalam mechanism for resolving criminal cases with a Restorative justice approach, then the position of the community is not only as a participant in the perpetrator or victim. The community can participate and can be given a broader role to become a monitor of the implementation of an agreement as part of the settlement of criminal cases through this approach. The implementation of this activity can be done in various ways, for example monitoring victim rehabilitation efforts, Monitoring the implementation of the perpetrator's accountability, which can be in various forms such as repairing damaged facilities, returning goods, fulfilling customary fines and so on (in accordance with the results of the agreement).<sup>14</sup>

Obstacles to the Implementation of Diversion in the Juvenile Criminal Justice System in Realizing Restorative Justice are as follows:

1. The implementation of diversion is carried out simultaneously with the examination of the child (BAP), and the creation of litmas. This is quite difficult in providing recommendations because the child's condition is not yet known.
2. The application of the Article is sometimes inappropriate, it should be an Article that can be diverted, but the Article that is imposed is an Article that cannot be diverted, and vice versa, without considering the causal factors, even changes to the Article are not notified to Bapas.
3. Sometimes only the determination of the diversion results is sent to Bapas without the child and his parents being included.

The solution to overcome the obstacles to implementing diversion in the juvenile criminal justice system in realizing restorative justice is:

1. To get around the procedure, usually the diversion implementation date is moved back after the mass litam date.

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<sup>12</sup> Gultom, Maidin, 2008, Legal Protection of Children in the Juvenile Criminal Justice System in Indonesia, Refika Aditama, Bandung

<sup>13</sup> SAmbas, Nandang, 2010, Reform of the Child Criminalization System in Indonesia, Graha Ilmu, Yogyakarta

<sup>14</sup> Muhammadiyah Sholikul Arif, Aryani Witasari, 2019, Implementation of Diversion to Realize Restorative Justice in the Juvenile Criminal Justice System. Unissula Law Journal, VOL.35 NO.2



2. Remind Investigators to apply the appropriate Article.
3. Bapas coordinates with investigators to ensure that the determination is submitted together with the child and his parents.

Efforts to resolve problems outside the court carried out by perpetrators of criminal acts (their families) and victims of criminal acts (their families) are expected to be the basis for consideration in the process of examining perpetrators of criminal acts in court in imposing criminal sanctions by the judge/panel of judges. Justice is a consideration in the criminal law enforcement system and is included in the new Criminal Code (KUHP), especially for criminal complaints (Klacht delict) so that it focuses on the conditions for creating justice and balance in 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 resolution. Because the deterrent effect as the ultimate goal of punishment (imprisonment) for perpetrators of criminal acts is now no longer achieving its target as expected. There needs to be a breakthrough in the implementation of the criminal system in Indonesia, not only through imprisonment alone but also through the application of Restorative justice.<sup>15</sup>

#### **4. Conclusion**

Based on the results of the research and discussion described by the author above, it can be concluded that: Implementation of Diversion in the Juvenile Criminal Justice System in Realizing Restorative Justice is a form of legal protection for Children in Conflict with the Law (ABH). Implementation of the Juvenile Criminal Justice System with a diversion approach is the transfer of the settlement of juvenile criminal cases from formal criminal justice to outside formal criminal justice or resolved through non-formal justice mechanisms. The obstacles are pThe implementation of diversion is carried out simultaneously with the examination of the child (BAP), and the preparation of litmas. This is quite difficult in providing recommendations because the child's condition is not yet known. The application of the Article is sometimes inappropriate, it should be an Article that can be diverted, but the Article that is imposed is an Article that cannot be diverted, and vice versa, without considering the causal factors, even changes to the Article do not notify Bapas. Sometimes only the determination of the diversion results is sent to Bapas without the child and his parents being included. The solution is to work around the procedure, usually the date for implementing the diversion is made to be postponed after the litmas date. Remind Investigators to apply the appropriate Article. Bapas coordinates with the investigators so that the submission of the determination is with the child and his parents.

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<sup>15</sup>Annis Nurwianti, Gunarto, Sri Endah Wahyuningsih, 2017, Implementation of Restorative Justice in the Settlement of Traffic Accident Crimes Committed by Children at the Rembang Police Department Khaira Ummah Law Journal Vol. 12. No. 4

Based on the above conclusions, the following are suggested: It is hoped that there will be more diversion processes that successfully realize agreements between the parties to the case so that the concept of restorative justice that is intended to be achieved from the diversion process can be implemented. For police agencies, internal improvements should be made, especially in creating standard operating procedures for handling children in conflict with the law with a restorative justice or diversion approach.

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