

## **Special Diversion Policy in the Process of Investigating Child Crime Case Study at Grobogan Police Praise be to Allah, the Most Gracious, the Most Merciful**

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**Abstract.** *The research objective in this study is to find out and analyze the diversion policy in investigating criminal acts committed by children today, to find out and analyze the obstacles to implementing the diversion policy in investigating criminal acts committed by children today and what the solution is. This research uses a sociological juridical approach, with analytical descriptive research methods. The data used is primary and secondary data which will be analyzed qualitatively. The research problem was analyzed using the theory of legal objectives and the theory of legal certainty. The results of the research conclude that the diversion policy in investigating criminal acts committed by children is currently at the Grobogan Police through a family deliberation process where family deliberation is chosen in resolving cases of criminal acts committed by children, intended to resolve children's cases through deliberation involving the perpetrator's family and the victim's family was facilitated by a facilitator from a neutral party to obtain agreement from both parties, in this case the Grobogan Police acted as a neutral party and also from the Correctional Center (Bapas). The obstacles to implementing the diversion policy in investigating criminal acts committed by children at the Grobogan Police are: 1) The threat of criminal acts with sanctions of 7 years or more. 2) Problems arise if the parents are public figures 3). Intervention on the part of the victim. 4). Less Optimal Ability of Investigators in Implementing Diversion Policy. 5). There is no common ground and agreement between the victim and the perpetrator. The solutions to the obstacles faced are: 1) The threat of imprisonment is reviewed. 2). If parents are community leaders, they must be cooperative. 3). Intervention from any party needs to be eliminated. 4). Optimizing investigator capabilities. 5). Mediation efforts between victims and perpetrators. The implementation of diversion policy in the future is that diversion must be consistently carried out in juvenile crimes.*

**Keywords:** *Child; Diversion; Offenders; Policy.*

## 1. Introduction

Indonesia is a country of law that adheres to the principle of legality in its criminal justice system. The principle of legality is explained in Article 1 paragraph 1 of the Criminal Code which states that "An act cannot be punished, except based on the strength of existing criminal law provisions." Before a comparison is made from the wording of the article, it is clear that the principle of legality applies to the criminal justice system in Indonesia, meaning that an act can only be punished if there are already regulations that regulate the act in advance. The police institution in Indonesia is regulated in Law of the Republic of Indonesia Number 2 of 2002 concerning the National Police of the Republic of Indonesia. The National Police of the Republic of Indonesia as a law enforcement agency is primarily tasked with maintaining domestic security, in carrying out its duties always upholding the basic rights of the people and state law.

The legal basis for the formation of diversion refers to Article 28 paragraph 2 of the 1945 Constitution, Law Number 3 of 1999 concerning Human Rights, and Law Number 23 of 2002 concerning Child Protection, which in its provisions continue to consider aspects of special protection for children in conflict with the law (ABH). Guarantees of forms of protection for children's Human Rights and child protection can also be said to be important factors driving diversion so that they are accommodated in a Law. Children are a mandate from God Almighty, in whom inherent dignity and status as whole human beings. Every child has dignity and status that should be upheld and every child who is born must receive their rights without the child asking for it. This is in accordance with the provisions of the Convention on the Rights of the Child which was ratified by the Indonesian government through Presidential Decree Number 36 of 1990, then also stated in Law Number 4 of 1979 concerning Child Welfare and Law Number 23 of 2002 concerning Child Protection, all of which state the general principles of child protection, namely non-discrimination, the best interests of the child, survival and development, and respect for child participation.

As from the National Commission for Child Protection, from January 2023 to August 2023, almost 2,000 (two thousand) Indonesian children were in conflict with the law. As many as 1,467 (one thousand four hundred and sixty seven) of them were children with detainee status and were still in the trial process, 526 (five hundred and twenty six) as convicts. This condition is very concerning because many children have to deal with the justice system. Seeing the principles of child protection, especially the principle of prioritizing the best interests of children, a process of resolving children's cases outside the criminal mechanism or commonly called diversion is needed, because correctional institutions are not a way to solve children's problems and in fact, correctional institutions are prone to violations of children's rights. That is why diversion is a very important consideration in resolving criminal cases committed by children.

Actions taken by Law Enforcement Officers in handling cases committed by

children include diversion, namely the idea of giving authority to law enforcement officers to take discretionary actions in handling or resolving criminal acts committed by children without taking formal routes, including stopping or not continuing through the criminal justice process or returning/handing over to parents, the community and other forms of social service activities. The diversion formulation policy can be carried out at all levels of examination, namely from investigation, prosecution, examination at court hearings to the stage of implementing the verdict. This formulation policy is intended to reduce the negative impact of children's involvement in the judicial process.<sup>1</sup>

The diversion program benefits the community in early and rapid handling of children who behave deviantly. This early handling also saves costs at the initial diversion level carried out by the Police, thereby saving costs incurred by the government. Children as perpetrators of the crime will be given instructions by police officers, and also from officers of the Department of Law and Human Rights, and from the school. Then the child voluntarily follows appropriate consultations and/or education and social activities.<sup>2</sup>

So far, child perpetrators who commit crimes can be subject to criminal penalties. Although in principle it is based on criminal liability based on fault (Liability Based on Fault), in certain cases the concept also provides the possibility of very strict liability (Strict Liability). However, in practice, child perpetrators who commit crimes are more likely to be diverted, in Law Number 11 of 2012 concerning the Criminal Justice System Article 1 paragraph 6 which reads: "Restorative Justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a fair resolution by emphasizing restoration to the original state, and not retaliation." If the perpetrator is a child under 18 years old.

The diversion process is supported by the Circular Letter of the Chief of Police Number 7/VII/2018 concerning Termination of Investigation and the Circular Letter of the Chief of Police Number 8/VII/2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases. The circular letter states that the process of investigating and investigating criminal acts is the entry point for criminal law enforcement through the criminal justice system in Indonesia. Therefore, the process of investigating and investigating a criminal act is the main key to determining whether or not a criminal case can be continued to the prosecution and criminal justice process in order to realize the objectives of the law, namely justice, legal certainty and benefit while still prioritizing the principles of simple, fast and low-cost justice.

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<sup>1</sup> Purniati, Mamik Sri Supatmi, and Ni Made Martini Tinduk, n.d., Situation Analysis of the Juvenile Justice System in Indonesia, Department of Criminology, University of Indonesia & UNICEF, p. 4.

<sup>2</sup> Dwi Hapsari Retnaningrum, 2008, Protection of Children Who Commit Crimes (Study on Non-Litigation Settlement in Criminal Cases of Children in Banyumas, Purbalingga, Banjarnegara, Kebumen, and Cilacap Regencies), Research Report, FH UNSOED, Purwokerto, p. 59.

Grobogan Police during 2023 also implemented a special diversion policy in the process of investigating child crimes. For example, Gubug Police in 2023 received 8 police reports or public complaints where the perpetrators were still children, and based on the reports or public complaints, Gubug Police have resolved the reports by implementing restorative justice with diversion, the cases that have been diverted at Gubug Police include theft and assault cases. Thus, Grobogan Police have carried out the process of investigating and investigating a crime which is the main key to determining whether or not a criminal case can be continued to the prosecution and criminal justice process in order to realize the objectives of the law, namely justice, legal certainty and benefits while still prioritizing the principles of simple, fast and low-cost justice. Although it is not yet optimal and still needs to be improved.

Based on the description above, the author is interested in conducting research with the title "Special Diversion Policy in the Process of Investigating Child Criminal Acts: Case Study at the Grobogan Police".

This study aims to determine and analyze the diversion policy in the investigation of criminal acts committed by children at this time, to determine and analyze the obstacles to the implementation of the diversion policy in the investigation of criminal acts committed by children at this time and how to solve them.

## **2. Research Methods**

This study uses a normative legal approach. The type of research used in completing this thesis is a qualitative descriptive research method. The data used are primary and secondary data which will be analyzed qualitatively. Research problems are analyzed using the theory of legal objectives, the theory of legal certainty.

## **3. Results and Discussion**

### **3.1. Current Diversion Policy in Investigation of Criminal Acts Committed by Children**

Article 1 number 7 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System explains that diversion is the transfer of the settlement of a child's case from the criminal justice process to a process outside the criminal justice system. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System has regulated Diversion which functions so that children in conflict with the law are not stigmatized due to the judicial process they must undergo. The authority to use the diversion mechanism is given to law enforcers (police, prosecutors, judges) in handling lawbreakers involving children without going through the stages of the criminal justice system. The application of diversion is intended to reduce the negative impact of children's involvement in a judicial process.

The conditions for implementing diversion are determined in Article 7 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, namely:

a. Diversion can only be carried out on children who are threatened with

imprisonment for less than 7 (seven) years;

b. Not a repeat of a criminal act (recidive).

Provisions regarding the definition, purpose and conditions for implementing diversion need to be considered to minimize the potential for coercion and intimidation at all stages of the diversion process. A child should not feel pressured or forced to agree to the things stated in the contents of the diversion agreement. The diversion agreement must obtain the consent of the victim and/or his/her family, except for criminal violations, minor crimes, crimes without victims, or the value of the victim's loss is not more than the local provincial minimum wage.

In order to carry out the mandate of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, it is mandatory to strive for diversion at the level of examining juvenile cases in court by prioritizing the Restorative Justice approach. This Restorative Justice approach is implemented by considering the matters as regulated in Article 3 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System as follows:

- a. Treated humanely by paying attention to needs according to age;
- b. Separated from adults;
- c. Obtain legal and other assistance effectively;
- d. Carrying out recreational activities;
- e. Free from torture, punishment or other cruel, inhumane or degrading treatment;
- f. Not sentenced to death or life imprisonment;
- g. Not be arrested, detained or imprisoned, except as a last resort and for the shortest possible time;
- h. Obtain justice before a juvenile court that is objective, impartial, and in a hearing that is closed to the public;
- i. His identity is not published;
- j. Obtain support from parents/guardians and people trusted by the child;
- k. Obtain social advocacy;
- l. Gaining a personal life;
- m. Obtaining accessibility, especially for children with disabilities;
- n. Obtaining education;
- o. Obtain health services;
- p. Obtain other rights in accordance with the provisions of laws and regulations.

Police action is any action or deed of the police based on their authority in order to carry out government functions in the field of maintaining public security and order, providing protection, shelter and service to the community and law

enforcement. Police action positions the police as a legal subject, meaning as a drager van de rechten en plichten or supporter of rights and obligations where the police (as an institution or function) carry out various actions that are legal actions (rechtelijkhandelingen) or actions based on facts/real (feitelijkhandelingen). The action taken by the Grobogan Police in handling criminal acts committed by children, namely in the crime of theft committed by children, is through diversion, namely the idea of giving authority to law enforcement officers to take policy actions in handling or resolving problems of child violations without taking formal paths, including stopping or not continuing/releasing from the criminal justice process or returning/handing over to the community and other forms of social service activities.

The application of diversion itself can actually be carried out at all levels of examination, namely from investigation, prosecution, examination at court hearings to the stage of implementing the verdict. This application is intended to reduce the negative impact of children's involvement in the judicial process. While a crime is actually an act that is prohibited by a rule of law, where the prohibition is accompanied by sanctions in the form of certain criminal penalties for anyone who violates the prohibition and a criminal act or criminal act is an act that is prohibited by a rule of law where the prohibition is accompanied by a threat (sanction) in the form of certain criminal penalties, for anyone who violates the prohibition. It is further stated that a criminal act is an act that is prohibited by a rule of law and is threatened with a criminal penalty, as long as it is remembered that the prohibition is directed at the act (namely a condition or incident caused by a person's behavior), while the threat of a criminal penalty is directed at the person who caused the incident. However, the Grobogan Police have adopted a diversion policy in criminal acts committed by children considering the interests of the child himself. The importance of the diversion process is recognized by the law makers, in Article 6 of the SPPA Law it is stated that the purpose of Diversion is to achieve peace between victims and children, resolve children's cases outside the judicial process, prevent children from being deprived of liberty, encourage the community to participate and instill a sense of responsibility in children. Thus, it can be seen that the SPPA Law contains a clause that encourages children not to have to undergo criminal proceedings without eliminating the instillation of a sense of responsibility in children in the diversion process.

Polres Grobogan in handling criminal acts committed by children considers the benefits of diversion in the community in early and fast handling of deviant behavior committed by children. This early handling also saves costs incurred by the police. Children as perpetrators of the crime will be given instructions by the police, criminal counselors, officers of the justice department, and schools. Then the child voluntarily follows appropriate consultations and/or education and social activities. If the person concerned is successful in this program, the prosecutor will not prosecute the case and will not record it in the case file for

the act.<sup>3</sup>.

The benefits of implementing a diversion program in handling criminal acts committed by children at the Grobogan Police include helping children who commit crimes to learn from their mistakes through intervention as soon as possible, repairing wounds from the incident, to families, victims and the community, cooperation with parents, caregivers and given advice on daily life, equipping and encouraging children to make responsible decisions, giving children responsibility for their actions and providing lessons on the opportunity to observe the consequences and effects of the case, providing options for perpetrators to have the opportunity to keep a clean criminal record, controlling child/adolescent crime.

According to the Head of Criminal Investigation Unit of Grobogan Police, giving an example in handling child theft perpetrators at Grobogan Police, the factors that are taken into consideration in implementing diversion in criminal cases of theft committed by children at Grobogan Police are:

a. The nature and conditions of the act;

The nature of the violation, namely theft committed by a child in the crime of theft, is considered minor because what is stolen is goods that are not too expensive and which the child only wants to own but the child is unable to afford to buy.

b. Previously committed violations;

Based on the results of the investigation, it was discovered that the perpetrators of the theft admitted that they had never committed a crime.

c. Degree of child involvement in the case;

The perpetrators are still in the process of maturing so they do not understand and know the legal consequences of what they have done so that the Grobogan Police are of the opinion that the perpetrators were not too involved in the criminal acts they committed.

d. The child's attitude towards the action;

During the investigation process at the Grobogan Police, the perpetrators' children behaved politely and without hesitation and admitted and regretted the actions they had committed.

e. The reaction of the child's parents and/or family to the act;

After the parents of the perpetrators found out that their children had committed the theft, they said that they did not expect their children to commit theft. Then the parents of the perpetrators have tried to accompany their children who were involved in the crime until the investigation process, and the parents are willing to supervise and guide the perpetrators in their daily lives.

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<sup>3</sup> Dwi Hapsari Retnaningrum, *ibid*, p. 59.

f. The impact of the act on the victim;

The impact caused by the actions of perpetrators of criminal acts of theft committed by children is relatively small, especially if the victim has accepted it and agreed not to continue the problem to be processed in accordance with applicable laws.

In the Regulation of the Minister of State for the Empowerment of Women and Child Protection of the Republic of Indonesia Number 15 of 2010 concerning General Guidelines for Handling Children in Conflict with the Law, the handling of restorative justice approaches for children who commit criminal acts with the following types is regulated:

a. Mediation between victim and perpetrator

The purpose of mediation is to resolve disputes through a negotiation process to obtain an agreement between the parties assisted by a mediator. As a mediator is a neutral party who helps the parties find various possible solutions without using the method of deciding or forcing a solution. For example, in the crime of theft committed by a child in the Grobogan Police Resort, it was not done through this mediation.

b. Family Council

Family deliberation was chosen by the Grobogan Police in resolving the criminal case of theft committed by children. Settlement through family deliberation itself is intended to resolve the child's case through deliberation involving the perpetrator's family and the victim's family facilitated by a facilitator from a neutral party in order to obtain an agreement from both parties, in this case the Grobogan Police acted as a neutral party.

Children are not miniature adults who are mentally and intellectually mature. They are not yet able to make decisions for themselves, be responsible, are not yet aware of their roles, and control their minds, hearts and emotions in a balanced way. It is too heavy for a child to bear the responsibility of an accident that kills, while adults think first before acting, then feel.<sup>4</sup>

A child by nature still has a reasoning ability that is not good enough to distinguish between good and bad things. Criminal acts committed by children are generally a process of imitating or being influenced by the persuasion of adults. The formal criminal justice system that ultimately places children in the status of prisoners certainly has quite large consequences in terms of child development. The punishment process given to children through the formal criminal justice system by putting children in prison has not succeeded in making children deterred and become better individuals to support their growth and development process. Prison often makes children more professional in

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<sup>4</sup>Interview with Ipda M Yusuf SH, Head of PPA Unit, Grobogan Police, on December 11, 2023 at 11.00 WIB.



committing crimes.<sup>5</sup>

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is expected to bring progress to the protection of children. As stated in Article 1 of Law Number 11 of 2012, the Juvenile Criminal Justice System is the entire process of resolving cases of children in conflict with the law, from the investigation stage to the guidance stage after serving a sentence. The Juvenile Criminal Justice System (Article 2) is implemented based on the following systems: protection, justice, non-discrimination, respect for children's opinions, survival and development of children, guidance and guidance of children, proportionality, deprivation of liberty and punishment as a last resort, avoidance of retaliation.

The diversion approach as the spirit of Law Number 11 of 2012 to resolve child legal cases humanely. The approach is the settlement of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just settlement emphasizing restoration to the original state, and not retaliation. Diversion is the transfer of the settlement of child cases from the criminal justice process to a process outside the criminal justice system. Or it can be said that the principle of diversion emphasizes settlement outside the court, with a family approach and guidance, no longer with imprisonment or punishment. As the purpose of the diversion principle regulated in Article 6 of Law Number 11 of 2012 is to achieve peace between victims and children, resolve child cases outside the court, prevent children from deprivation of liberty, encourage community participation, instill a sense of responsibility in children.

In discussing the concept of diversion in depth, according to Anajar Nawan, it is good to understand the juvenile criminal justice system from an international human rights perspective as a comparison.<sup>6</sup>The Juvenile 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 delinquents first come into contact with the justice system, which will also determine whether the child will be released or processed further. Second, the prosecutor and parole institution which will also determine whether the child will be released or processed to the juvenile court. Third, the Juvenile Court, the stage when the child will be placed in choices, from being released to being placed in a punishment institution. In relation to this, Muladi stated that the criminal justice system has the following objectives:<sup>7</sup>

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<sup>5</sup>M. Joni and Zulchan Z. Tanamas, 1995. *Legal Aspects of Child Protection in the Perspective of the Convention on the Rights of the Child*, Citra Aditya Bhakti, p. 67, Bandung

<sup>6</sup> <http://www.anjarnawanyep.wordpress.com/kompet-diversi-dan-restorative-justicem>, accessed July 5, 2021.

<sup>7</sup>Muladi, 2011. *The Objectives and Guidelines for Criminalization from the Perspective of Criminal Law Reform and Comparative Law*, Pustaka Magister, p. 78, Semarang

- 1) resocialization and rehabilitation of criminal offenders;
- 2) crime eradication;
- 3) and to achieve social welfare.

Based on this idea, the purpose of the integrated juvenile criminal justice system is more emphasized on the first effort (resocialization and rehabilitation) and the third (social welfare). However, other efforts outside the criminal or judicial mechanism can be carried out with several methods including the Diversion and Restorative Justice methods.

Diversion is an action by law enforcement officers to divert formal processes to informal ones with the aim of providing protection to child perpetrators of crimes from the negative implications and influences of the criminal justice system.

The diversion approach can be applied to resolve cases of children in conflict with the law. The objectives of diversion efforts are: to prevent children from being detained, to avoid being labeled as criminals, to prevent repeat crimes committed by children, so that children are responsible for their actions, to carry out necessary interventions for victims and children without having to go through a formal process, to prevent children from following the judicial system process, to keep children away from the negative influence and implications of the judicial process. As stated by Barda Nawawi Arief, diversion actions can be carried out by the police, prosecutors, courts and correctional institution administrators. The application of diversion at all levels is expected to reduce the negative effects of children's involvement in the judicial process. Basically, law enforcement will be successful and run optimally if it is inseparable from three pillars that influence each other, namely fulfilling the structure, substance, and legal culture.<sup>8</sup>

Grobogan Police during 2023 also implemented a special diversion policy in the process of investigating child crimes. For example, Gubug Police have received 8 police reports and public complaints where the perpetrators were still children, and based on the reports or public complaints, Gubug Police have resolved the reports by implementing restorative justice with diversion, the cases that have been diverted at Gubug Police include theft and assault cases. Thus, Grobogan Police have carried out the process of investigating and investigating a crime which is the main key to determining whether or not a criminal case can be continued to the prosecution and criminal justice process in order to realize the objectives of the law, namely justice, legal certainty and benefits while still prioritizing the principles of simple, fast and low-cost justice. Although it is not yet optimal and still needs to be improved.

The implementation of diversion policies for children as perpetrators of criminal acts should be able to provide legal certainty. Legal certainty is a question that

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<sup>8</sup>Achmad Ali, 2002, *The Decline of Law in Indonesia*, PT. Ghalia Indonesia, p. 97, Jakarta.

can only be answered normatively, not sociologically. Normative legal certainty is when a regulation is made and enacted with certainty because it regulates clearly and logically. Clear in the sense that it does not cause doubt (multi-interpretation) and logical in the sense that it becomes a system of norms with other norms so that it does not clash or cause norm conflicts. Norm conflicts arising from the uncertainty of the rules can be in the form of norm contestation, norm reduction or norm distortion. Legal certainty refers to the implementation of clear, permanent, consistent and consequent laws whose implementation cannot be influenced by subjective circumstances. Legal certainty will be achieved if the law is as much as possible in the law. In the law there are conflicting provisions (laws based on a logical and practical system). The law is made based on *rechtswerkelijkheid* (solemn legal conditions) and in the law there are no terms that can be interpreted differently.

### **3.2. Obstacles to Implementing Diversion Policy in Investigating Criminal Acts Committed by Children and Their Solutions**

Cases involving criminal acts of children require different handling than adults, considering that children as a mandate and gift from God Almighty have the dignity and honor of a whole human being, so they are entitled to special protection, especially special protection in the criminal justice system. Children are the shoots, potential and young generation who continue the ideals of the nation's struggle, have a strategic role and have special characteristics and traits that guarantee the continued existence of the nation and state in the future. In order for every child to be able to bear this responsibility, they need to be given the widest possible opportunity to grow and develop optimally, both physically, mentally and socially and have noble morals, it is necessary to make efforts to protect and realize the welfare of children by providing guarantees for the fulfillment of their rights and the existence of non-discriminatory treatment when undergoing the process of dealing with the law. For children who are in conflict with the law, whether they are perpetrators of criminal acts or victims, they will undergo a diversion process as the first stage in resolving the conflict.

This initial stage must be taken by stakeholders implementing the juvenile criminal justice system. In the diversion deliberation at the Investigation level, the parties will seek a solution to the crime committed by the child, if the parties agree, the investigator will submit a diversion determination to the Chief Justice, and the court will ratify the Determination of the diversion agreement, but if in the diversion deliberation the parties cannot reach a meeting point (consensus) then the settlement is continued to the next stage, namely the prosecution and trial of the child. The settlement of the child's case reaches the trial stage because the parties cannot reach an agreement in the diversion deliberation.

Diversion in handling children in conflict with the law will greatly reduce the negative impact of children's involvement in the judicial process. Child investigation is a starting point that affects the child's personality, he can be

good or otherwise, therefore, it is necessary to have a special police unit that is trained in serving and handling criminal acts committed by children. Factors that are considered in the application of diversion in cases of theft committed by children include the nature and conditions of the act, previous violations committed, the degree of the child's involvement in the case, the child's attitude towards the act, the reaction of the child's parents and/or family to the act and the impact of the act on the victim.

In carrying out the investigation process, child investigators must sympathetically create a family atmosphere so that the examination runs smoothly without any fear from the child being processed so that the child can easily express true and clear information. Meanwhile, in the process of detaining a child, Article 32 paragraph (1) of the SPPA Law stipulates that detention of a child may not be carried out if the child obtains a guarantee from the parent/guardian and/or institution that the child will not run away, will not remove or damage evidence and/or will not repeat the crime. Article 32 paragraph (2) of the SPPA Law states that detention of a child may only be carried out with conditions that must be stated explicitly in the detention order and the child being detained is 14 (fourteen) years of age or older; and suspected of committing a crime with a prison sentence of 7 (seven) years or more. The detention period for children is submitted by the authorized agency at each stage, both investigation, prosecution and examination in the courtroom as well as in the legal process stages starting from appeal to cassation, the flow of the detention period can be seen as follows: The SPPA Law also states that while the child is being detained, the child's physical, spiritual and social needs must be met To protect the safety of the child, so that if there is no Temporary Child Placement Institution in the area where the child is being detained, detention can be carried out at the local LPKS.

The obstacles faced in legal construction relating to peace as a legal umbrella in diversion policies at the level of investigating child crimes are:

1. Threat of criminal acts with sanctions of 7 years and above

This is burdensome for children, because on the one hand, even though the child and the perpetrator's parents are responsible for the crime they have committed, if the threat of punishment for the crime committed by the child is more than 7 years, then the investigator is not obliged to make diversion efforts.

2. Problems Arise When Parents Are Community Figures

In handling cases of children in conflict with the law, if the parents are community figures, sometimes they feel embarrassed if asked for a guarantee from the parents, so that the child will not run away, will not remove or damage evidence so that the process hinders the process of handling diversion for children.

3. There is Intervention on the Victim's Side

Companions will only make the law "biased". Sometimes if there is intervention from parties who do not understand the juvenile justice system, it will sometimes hinder the implementation of diversion to be carried out by APH.

#### 4. Suboptimal Ability of Investigators in Implementing Diversion Policy.

The lack of knowledge of investigators about diversion and the lack of child investigators at the police force has affected the implementation of diversion.

#### 5. There is no meeting point or agreement between the victim and the perpetrator

Like agreements in general, a diversion agreement can be sued for cancellation or null and void by law if the agreement violates the legal terms of the agreement (for example if the victim does not agree with the diversion process). If the Diversion process does not result in an agreement, then the process of investigating the crime committed by the child continues to the juvenile criminal justice process.<sup>9</sup>

Based on the description above, these obstacles are factors that influence the implementation of diversion in the Grobogan Police and its ranks. Diversion is often used by the Grobogan Police in handling criminal acts committed by children, in addition to diversion, the Grobogan Police also often uses Restorative Justice in resolving the problems handled, because the implementation of Restorative Justice is considered more effective, cheap and does not require a long time.

The reason for implementing diversion is that prisons are currently over capacity, the second reason is that imposing criminal sanctions does not necessarily have a deterrent effect on children, there is a lack of correctional institutions for children, and fourthly, it is in the best interests of children.

Basically, the law is inseparable from what humans and society do to it. This creates habits that are ultimately respected and obeyed by humans and society itself in particular. In addition, the law is full of touches and outpourings of values or constructions of ideas from the makers and users. Law contains ideas as a result of the minds of lawmakers, these ideas contain several aspects of certainty, justice, and social benefits. Because these ideas are still abstract, they must be realized into reality. The process of realizing abstract ideas into reality is what law enforcement means.

This is indeed very relevant to a legal system in Indonesia which only prioritizes aspects of legal certainty and does not prioritize other aspects, therefore in legal institutions which are mandated by law in enforcing the law in Indonesia is not very optimal, and sometimes other problems arise outside of the legal path which is only focused on the law because in enforcing the law it is only rigid without considering the values that live in society and its sociological aspects.

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<sup>9</sup>Interview with Iptu Untung Setiyahadi, SH, MH, Officer of the Criminal Investigation Unit of the Central Java Regional Police, on June 29, 2021 at 10.00 WIB.

In conveying an idea, it is also inseparable from what is expected and aspired to by society as a whole. This idea in creating a legal framework also cannot be in conflict with the foundations of the state. Indonesia as stated in the framework of the ideology of the State of Indonesia or the constitution of the State of Indonesia which is based on law (*Rechtsstaats*), and not on mere power (*Machtstaats*). This also applies to law enforcement in Indonesia which must be based on the values of legal certainty, justice and welfare.

The solution to several obstacles faced in legal construction related to peace as a legal umbrella in diversion policies at the level of investigating child crimes is:

1. The threat of imprisonment is reviewed.

The criminal threat needs to be reviewed, because a 7-year sentence feels burdensome for children, the right solution is to provide appropriate and targeted training and guidance to children, from there children can be educated and deterred from committing their actions again.

2. If the parents of community leaders must be cooperative.

Parents need to cooperate if their children are caught committing a crime, because legal efforts are indiscriminate in handling it. In fact, if parents are community figures, they must be good role models for the community around them.

3. Intervention from any party needs to be eliminated.

When handling diversion efforts for children who commit crimes, there must be no intervention from anywhere, so that investigators can be more objective in handling them.

4. Optimizing investigator capabilities.

The solution to optimizing investigators' abilities is to provide investigators with more just and beneficial laws, and a better understanding of child psychology by conducting further studies or training with professional staff. In addition, the police must add child investigators and improve the abilities of investigators in handling child crimes.

5. Mediation efforts between the victim and the perpetrator.

Mediation efforts are very necessary in handling diversion, here investigators can work together with community leaders, religious leaders, and local village heads so that the implementation of mediation can run as expected.

Based on the above obstacles, the law must be just. Justice will be felt when the relevant system in the basic structures of society is well organized, political, economic and social institutions are satisfactory in relation to the concept of stability and balance. A sense of public justice, apart from through the trial process and then getting a judge's decision, we can also get it outside of the judge's decision.

Justice is generally defined as an act or treatment that is fair. While fair is not

biased, not taking sides and siding with what is right. Justice according to philosophical studies is when two principles are fulfilled, namely: first, not harming someone and second, treating each human being what is their right. If these two can be fulfilled, then it is said to be fair. In justice there must be comparable certainty, where if combined from the combined results it will become justice.

In practice, the meaning of modern justice in handling legal problems is still debatable. Many parties feel and consider that the court institution has been unfair because it is too full of procedures, formalistic, rigid, and slow in giving decisions on a case. It seems that these factors cannot be separated from the judge's perspective on the law which is very rigid and normative-procedural in concretizing the law. Ideally, judges must be able to become living interpreters who are able to capture the spirit of justice in society and are not bound by the normative-procedural rigidity that exists in a statutory regulation, no longer just as *la bouche de la loi* (mouthpiece of the law).

Furthermore, in interpreting and realizing justice, Natural Law Theory from Socrates to Francois Geny continues to uphold justice as the crown of law. Natural Law Theory prioritizes "the search for justice".<sup>10</sup> There are various theories about justice and a just society. These theories concern rights and freedoms, opportunities for power, income and prosperity.

Efforts to overcome the inhibiting factors in the implementation of diversion in resolving juvenile criminal cases at the Court level originating from differences in NGO perceptions are to provide socialization, input and understanding to NGOs that are concerned with resolving criminal cases committed by children to prioritize the interests of children by setting aside the personal interests of their institutions, so that the mission of implementing diversion of the NGO concerned is not "ridden" by other interests so that they become not pro reaching a consensus in diversion deliberations. Meanwhile, efforts to overcome the inhibiting factors in the implementation of diversion in resolving juvenile criminal cases at the Court level originating from the failure to fulfill the requirements as stipulated in Article 7 paragraph (2) letter a of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System can only be done by revising the provisions on the threshold for criminal threats to no longer be 7 (seven) years. However, this is not an easy matter because the government has considered many things based on philosophical, psychological, pedagogical and sociological studies, so that if it is going to change the criminal threat to no longer be seven years, it is necessary to conduct a similar study first.

To overcome the obstacles in implementing the contents of Article 3 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System above, the government then issued Regulation of the Supreme Court of the Republic of Indonesia No. 4 of 2014 concerning Guidelines for the Implementation of

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<sup>10</sup>? Theo Huijbers. 1995. *Philosophy of Law in the Course of History*. Yogyakarta: Kanisius. p. 196.

Diversion in the Juvenile Criminal Justice System, which regulates the procedures and stages of the diversion process in the Court, regulated in Articles 4 to 9 as follows:

Article 4 of the Regulation of the Supreme Court of the Republic of Indonesia No. 4 of 2014 concerning Preparation for Diversion:

- 1) After receiving the Chief Justice's Decision to handle cases that require diversion, the Judge issues a Decision on the Diversion Deliberation Day.
- 2) The Judge's decision as referred to in paragraph (1) contains an order to the Public Prosecutor who has referred the case to present:
  - a. Children and/or parents/guardians or companions;
  - b. The victim and/or his/her parents/guardians;
  - c. Community Guidance;
  - d. Professional Social Worker;
  - e. Community representatives; and
  - f. Other related parties deemed necessary to be involved in the diversion deliberations.
- 3) The Judge's decision as referred to in paragraphs (1) and (2) shall include the day, date, time and place where the Diversion Deliberation will be held.

Article 5 of the Regulation of the Supreme Court of the Republic of Indonesia No. 4 of 2014 concerning the Stages of Diversion Deliberation is as follows:

- 1) The diversion deliberation is opened by the Diversion Facilitator by introducing the parties present, conveying the intent and purpose of the diversion deliberation, as well as the deliberation rules to be agreed upon by the parties present.
- 2) The Diversion Facilitator explains the duties of the Diversion Facilitator.
- 3) The Diversion Facilitator explains the summary of the charges and the Community Counselor provides information about the child's behavior and social circumstances and provides the means to obtain a resolution.
- 4) Diversion Facilitators are required to provide opportunities for:
  - a. The child must hear information regarding the charges.
  - b. Parents/Guardians to convey matters relating to the child's actions and the form of resolution expected.
  - c. Victims/Victims' Children/Parents/Guardians to provide responses and the form of resolution expected.
- 5) Professional Social Workers provide information about the social conditions of Child Victims and provide the means to obtain a resolution.
- 6) If deemed necessary, the Diversion Facilitator can call community representatives or other parties to provide information to support the



resolution.

- 7) If deemed necessary, the Diversion Facilitator can hold separate meetings (Caucuses) with the parties.
- 8) The Diversion Facilitator puts the results of the deliberation into a Diversion Agreement.
- 9) In drafting a diversion agreement, the Diversion Facilitator shall pay attention to and direct that the agreement does not conflict with the law, religion, local community propriety, morality; or contain things that cannot be carried out by the Child; or contain bad intentions.

#### **4. Conclusion**

The diversion policy in the investigation of criminal acts committed by children is currently at the Grobogan Police through a family deliberation process where this family deliberation is chosen in resolving criminal cases committed by children intended to resolve children's cases through deliberation involving the perpetrator's family and the victim's family facilitated by a facilitator from a neutral party in order to obtain an agreement from both parties, in this case the Grobogan Police acting as a neutral party and the Correctional Center (Bapas). Then the implementation of the victim's family deliberation with the families of the perpetrators' children is proven by the existence of a letter of request not to continue the case filed by the victim, a Letter of Request to withdraw the report by the Reporting Party submitted to the Grobogan Police Chief and a statement letter from the parties, namely the victim and the perpetrators' children regarding the settlement through mediation. However, there are still several cases of child crimes that are continued to the courts. The obstacles to implementing the diversion policy in investigating criminal acts committed by children at the Grobogan Police are: Threats of criminal acts with sanctions of 7 years and above, problems arise if parents are community leaders, there is intervention on the part of the victim, the investigator's ability to implement the diversion policy is less than optimal, there is no meeting point and agreement between the victim and the perpetrator. The solutions to the obstacles faced are: the threat of imprisonment is reviewed, if the parents are community leaders must be cooperative, intervention from any party needs to be eliminated, optimization of investigators' abilities, mediation efforts between the victim and the perpetrator.

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