

Optimization of Diversion in Juvenile Crimes at Gunung Kijang Police Section

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Abstract. *Child crime is a legal phenomenon that has its own complexity in its handling. This is because the legal handling of children cannot be equated with adults. In its development, children are vulnerable to violations of their interests and are individuals who are not yet able to protect themselves and fight for their rights so that the law must strictly regulate the protection of children. In terms of victimology, children as perpetrators of crimes are actually also victims because a child may not be able to commit a crime if there are no external factors that encourage the child to commit a crime.*

Keywords: *Child; Crime; Diversion; Optimization.*

1. Introduction

Child protection is an important aspect in law enforcement related to child criminal acts. In addition, law enforcement against child criminal acts also has its own characteristics and nature, such as law enforcement that must be carried out through a juvenile court and handling of perpetrators since being arrested, detained, and tried must be carried out by special officials who are competent in the field of child criminal acts. It should be noted that the implementation of juvenile justice is not only oriented towards giving sanctions to children, but is more directed towards imposing sanctions that can encourage the realization of child welfare. Based on Law No. 11 of 2012 concerning the Child Criminal Justice System (UU SPPA), children in conflict with the law are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime.

Legally, the PPA Law contains various provisions for criminal sanctions for children, such as returning to parents, community service, and imprisonment. However, sanctions for child criminals do not contain provisions regarding life imprisonment or the death penalty considering that after serving their sentence, children still have a role as the next generation of the nation. In other words, law enforcement against child crimes contains a treatment theory, namely a theory of punishment

that is oriented towards treatment and rehabilitation for perpetrators of crimes. Special handling of child crimes is also based on the understanding that children are considered not yet able to fully account for their behavior, because children are still under the supervision of their parents, and do not yet know the consequences of what they do compared to actions clearly carried out by adults. Therefore, the PPA Law contains a formulation of efforts to prevent children from punishments that are too severe and threaten their future, which is called Diversion.

The international terminology used to refer to children who commit violations of the law is "Children in Conflict with the Law". Since it was realized that children also commit violations of the law, the debate about the best way 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 very broad and varied, but most emphasize detention and punishment, regardless of how minor the violation is or how young the child is. Research has shown that around 80% of children known to the Police to have committed violations of the law will only do so once, so the use of 'scary' justice system resources to deal with these children is actually very unfounded, unless absolutely necessary.

Children who violate the law or commit crimes are greatly influenced by several other factors outside the child's self, such as social circles, education, playmates, and so on. To protect children from the influence of the formal process of the criminal justice system, human thought or legal and humanitarian experts have emerged to create formal rules for the action 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. The implementation of diversion is motivated by the desire to avoid negative effects on the child's soul and development due to their involvement with the criminal justice system. The implementation of diversion by law enforcement officers is based on the authority of law enforcement officers called discretion or 'discretion'.

2. Research Methods

According to the concept of diversion and restorative justice in handling cases of children in the Police who are in conflict with the law, issued by the Head of Criminal Investigation Unit of the Indonesian National Police, it is stated that because of the adventurous nature of children, punishment for children is not merely to punish but to re-educate and improve them. Avoiding children from exploitation and violence, it would be better if diversion and if punished it would be ineffective.

The concept of diversion is also based on the fact that the criminal justice process for children who commit crimes through the criminal justice system causes more harm than good. The basic reason is that the court will stigmatize children for their actions, so it is better to avoid them from leaving the criminal justice system.

3. Results and Discussion

Rights are the power granted by law to a person (or legal entity) due to a legal relationship with another person (another legal entity).¹⁰⁰ Children's rights are one of the most important things that should not be forgotten, because it is a form of approach to protect children from legal problems. Children's rights have the same status as other humans or other legal subjects.

Children's rights are a will owned by a child that is equipped with the power (macht) given by the legal system/legal order to the child concerned. In Law No. 39 of 1999 concerning Human Rights (HAM) Article 52 paragraph (1) it is stated that every child has the right to protection by parents, family, society and the state. While in Article 52 paragraph (2) it states that children's rights are human rights and for their interests the child's rights are recognized and protected by law even from the time they are in the womb.

Children's rights in the criminal justice process are the result of interactions that are interrelated and influence each other. Mental, physical, social, and economic aspects are factors that must be considered in developing children's rights. To obtain justice, a balance between rights and obligations is needed. Likewise, the implementation of rights and obligations for children who commit crimes needs to get legal assistance and protection in order to achieve the expected justice. However, it should be underlined that treating children must look at the situation, physical and mental conditions, social conditions and age where at each age level children have different abilities.

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System provides special treatment for children in conflict with the law from the investigation process. The special attention and treatment aims to prevent children from becoming victims of the application of rigid and formal legal procedures which are feared can cause mental, physical and social suffering for children.

Therefore, in relation to children who are reported to have committed a crime, investigators are required to keep the child's identity confidential from both print and electronic media reports.¹⁰⁸ This is related to the principle of the presumption of innocence and also to avoid the impact of the process of stigmatization of children by society.

The importance of the diversion process is recognized by the lawmakers, in Article 6 of the Child Criminal Justice System 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 Child Criminal Justice System 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.

Investigators must also consider the category of criminal acts, namely criminal acts that are subject to imprisonment of less than seven years, the age of the child, where the younger the child's age, the more diversion efforts must be encouraged, the results of community research from Bapas and support from the family and community environment.

In addition, this diversion process can only be carried out by investigators for criminal acts that are threatened with imprisonment of less than 7 years such as murder, rape, narcotics, terrorism and other crimes and are not a repetition of the crime. The interests of the victim must also be considered in the diversion process, if the victim refuses, then the diversion agreement

Except for criminal acts in the form of violations; minor crimes; crimes without victims; or the value of the victim's losses is not more than the local provincial minimum wage, the diversion process does not need to consider the interests of the victim. Investigators only need to carry out diversion by involving the perpetrator and/or his/her family, Community Guidance, and can involve community leaders. The forms of diversion decisions that can be decided by investigators include; restitution of losses if there are victims; medical and psychosocial rehabilitation; return to parents/guardians; participation in education or training at educational institutions or LPKS for a maximum of 3 (three) months; or community service for a maximum of 3 (three) months.

4. Conclusion

The obligation to diversion in criminal acts involving child perpetrators according to the legislation at the Gunung Kijang Police is to implement the provisions of Law No. 11 of 2012 concerning the Child Criminal Justice System, especially regarding the concept of diversion and restorative justice, so that every case involving a child perpetrator of a crime does not have to be resolved through a judicial mechanism that will stigmatize the child for the actions he/she has committed as a child who has problems with the law. The problems faced by investigators in implementing diversion at the Gunung Kijang Police Sector have not been maximized until now because the investigator's ability to offer a form of diversion is only in the form of peace and return to parents/guardians and community services for a maximum of 3 (three) months, where in this case training will be carried out at the Aisyah Bintan Foundation and supervision will be carried out by Community Guidance every 1-2 times a week.

5. References

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