

Implementation Of Diversion In Resolution Of Criminal Cases For Children Through A Restorative Justice Approach

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Abstract. *This study aims to fulfill the essence of diversion in resolving juvenile criminal cases and examine its implementation mechanism at the Palangkaraya Police. The enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) emphasizes the importance of the diversion approach as a form of legal protection for children. The research method used is a normative juridical approach by examining laws and regulations, legal literature, and supported by empirical research in the field. The results of the study indicate that diversion is essentially a manifestation of restorative justice oriented towards restoring relationships between perpetrators, victims, and the community, while also preventing children from the negative stigma of the judicial process. The diversion mechanism at the Palangkaraya Police has been implemented in accordance with the provisions of the UU SPPA, through the stages of investigation, community research, diversion deliberation, and determination of the diversion results. However, in practice, obstacles are still found such as limited human resources, minimal community understanding, and social dynamics that influence the peace process. Therefore, stronger synergy is needed between law enforcement officers, the government, and the community to optimize the implementation of diversion as an instrument for protecting children in conflict with the law.*

Keywords: *Child Crime; Diversion; Palangkaraya Police; Restorative Justice.*

1. Introduction

Criminal law enforcement in the current era of globalization is heavily influenced by technological advances and digitalization. It is undeniable that crime rates can occur across all age groups. These problems arise when law enforcement officers apply criminal law in a manner that appears "selective," with court decisions inconsistent with the public's sense of justice. Rigid, convoluted, and time-consuming judicial processes are also considered a problem in themselves, posing a threat to the continuity of just law enforcement.

The Indonesian criminal justice system is entering a new phase in its development. One form of reform within Indonesian criminal law is the regulation of criminal law from the perspective of achieving justice, focusing on improving and restoring conditions after an event and the criminal justice process. This is known as restorative justice, which differs from retributive justice (which emphasizes justice over retribution) and restitutive justice (which emphasizes justice over compensation).

When viewed from the development of criminal law and the nature of modern criminalization, it has introduced and developed what is called the perpetrator-victim relationship approach or "doer victims". A new approach that has replaced the action or perpetrator approach or "daadader straftecht". Legal experts have introduced a formula for justice, especially in the enforcement of human rights, that there are 3 (three) aspects of the approach to building a legal system in the context of modernization and legal renewal, namely the structure, substance and legal culture aspects, all of which are worthy of running integrally, simultaneously and parallel.¹

Children are part of the citizens who must be protected because they are the generation of the nation who in the future will continue the leadership of the Indonesian nation. Every child, in addition to being obliged to receive formal education such as school, is also obliged to receive moral education so that they can grow into a useful figure for the nation and state. 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 and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, all of which put forward the general principles of child protection, namely non-discrimination, the best interests of the child, survival and growth and respect for child participation.²

2. Research Methods

The benefits of this research are expected to be achieved if the research objectives as mentioned above are achieved. This research is expected to be useful both theoretically and practically, as follows:

1. Theoretically

It is hoped that this research will be able to contribute ideas to the academic community of Sultan Agung Semarang University in the field of criminal law, especially regarding the implementation of diversion in resolving criminal cases for children through a restorative justice approach carried out by the police at the Palangka Raya Police.

2. In Practical Terms

To increase and sharpen the level of criminal law knowledge so that in the future it is hoped that it can provide input for all law enforcement agencies, especially the police, regarding the implementation of diversion in resolving criminal cases for children through a restorative justice approach.

3. Results and Discussion

3.1. The Nature of Diversion in Resolving Child Criminal Cases

Diversion in resolving juvenile criminal cases is an important concept born from the idea that children cannot be treated the same as adults in the criminal justice system. Children are still in the physical, mental, and social development stages, so their actions are often the result of a lack of self-control, a limited social environment, or a limited understanding of the consequences of their actions. Therefore, juvenile criminal law is built on the principle of protection, not simply punishment.

The essence of diversion can be understood as an effort to divert the resolution of juvenile criminal cases from formal to informal channels, with an emphasis on the best interests of the child. This philosophy emphasizes that children are the nation's future generation with a long future, so every legal policy implemented must be directed at improvement and rehabilitation, not simply the imposition of criminal sanctions.³ Diversion is also a manifestation of restorative justice, which

³Louisa Yesami Krisnalita, "Diversion in Crimes Committed by Children," *Binamulia Hukum* 8, no. 1 (2019): 93–106.

views criminal acts not only as violations against the state, but also violations against individuals and society.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) was an important milestone in the birth of the diversion policy in Indonesia. Article 7 paragraph (1) states that diversion must be attempted at every level of examination, from investigation to trial.⁴This demonstrates that diversion is not merely an alternative, but a legal obligation that must be implemented by law enforcement officials. The goal is not only to reduce the burden on court cases, but also to prevent stigmatization of children, restore relationships between perpetrators and victims, and maintain social harmony in the community.

Research conducted by Krisnalita shows that diversion plays a strategic role in mitigating the psychological impact on children in conflict with the law. Lengthy, formal, and stressful judicial processes can traumatize children, lead to loss of self-confidence, and even lead to recidivism.⁵Diversion provides space for children to realize their mistakes without having to lose their future due to being labeled as a convict.

Furthermore, diversion also reflects the customary legal values that exist within Indonesian society. In many indigenous communities, criminal cases are often resolved through deliberation, peace, and compensation to victims. Thus, diversion can be viewed as a form of modernization of local values integrated into the national legal system.

The essence of diversion becomes clearer when linked to its child protection function. Children are legal subjects with the right to grow and develop naturally. Therefore, any legal action taken against a child must consider their best interests. Diversion is a tool that allows the law to operate humanely, protecting children from the harmful effects of criminal punishment while still providing a sense of justice to victims.

3.2. Mechanism for Settling Criminal Cases for Children at the Palangka Raya Police

The juvenile criminal case resolution mechanism at the Palangka Raya Police operates within the framework of the Juvenile Justice and Child Protection Law and is supported by technical regulations such as Supreme Court Regulation No. 4 of 2014 and National Police Regulation No. 8 of 2021 concerning the Handling of Criminal Offenses Based on Restorative Justice. This mechanism has quite complex

⁴Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, Article 7 paragraph (1).

⁵Krisnalita, "Diversion in Criminal Acts...", p. 95.

stages, involving the police as the first point of contact in the legal process, the Palangka Raya Class II Correctional Center (Bapas), prosecutors, and the courts.

The first stage begins when a report of alleged child abuse is received by the Palangka Raya Police. Investigators then conduct an initial investigation and inquiry to determine whether the case can be diverted. Requirements for diversion, as stipulated in the Child Protection and Juvenile Justice Law, include: the crime committed is punishable by imprisonment of less than seven years, it is not a repeat offense, and the victim is willing to reconcile.⁶

If these requirements are met, investigators are required to involve community counselors from the Palangka Raya Class II Bapas (Coroner's Office) to conduct a community research (Litmas). Litmas contains comprehensive information regarding the child's condition, family background, social environment, and potential for improvement. Research by Rozi (2019) found that Litmas plays a crucial role in assessing the eligibility of diversion, as without accurate social data, legal decisions will be based solely on normative aspects.⁷

Once the community information is available, investigators will invite the relevant parties, namely the child as the perpetrator, their parents or guardians, the victim, the victim's family, and community representatives. The diversion deliberation process is guided by investigators with the goal of reaching a fair agreement. The resulting agreement is recorded in a diversion report, which is then signed by all parties. If an agreement is reached, the investigation is stopped and the child does not need to go to trial. However, if an agreement cannot be reached, the case proceeds to the prosecution stage.⁸

1. Reporting and Case Acceptance Stage

The initial stage begins when a public report is received regarding an alleged crime committed by a child. At this stage, investigators at the Palangka Raya Police are required to receive the report, record the chronology of events, and undertake initial investigations. This process is crucial to ensure that the reported case actually occurred and meets the elements of a crime. The Child Protection Act emphasizes that from this stage, authorities must consider a specific approach to children, such as avoiding violence, protecting the child's psychological well-being, and involving the child's parents or guardians.

⁶SPPA Law, Article 7 paragraph (2).

⁷AF Rozi, "Implementation of Diversion of Juvenile Criminal Cases at Bapas Class II Palangka Raya," Thesis, IAIN Palangka Raya, 2019.

⁸Ayu Witasari, "Implementation of Diversion to Realize Restorative Justice in Resolving Juvenile Criminal Cases," *UNISSULA Law Journal* 35, no. 2 (2019): 124.

2. Initial Investigation and Probe Stage

After the report is received, investigators conduct an initial investigation to collect evidence and witness statements. At this stage, investigators also begin to assess whether the reported case meets the requirements for diversion. Based on Article 7 paragraph (2) of the SPPA Law, the requirements for diversion include: the crime committed is punishable by imprisonment of less than seven years, is not a repeat of the crime, and the willingness of the victim and/or the victim's family to reconcile. This initial assessment is very important, because it determines the direction of the child's case resolution, whether it can be pursued through diversion or must be continued through formal court channels.

3. Community Research Stage (Litmas)

If a case meets the diversion requirements, investigators are required to coordinate with the Palangka Raya Class II Correctional Center (Bapas) to compile a Community Research (Litmas). The Litmas contains comprehensive information regarding the child's personal circumstances, family background, social environment, economic situation, educational history, and potential for improvement. This Litmas document serves as an important consideration in diversion deliberations, as it provides a comprehensive picture of the child's character and the likelihood of successful rehabilitation. Without adequate Litmas, diversion decisions can lose their social footing and be based solely on normative considerations.

4. Diversion Deliberation Stage

After the community information system (litmas) is developed, investigators then invite interested parties to participate in a diversion meeting. These parties include: the child as the perpetrator, their parents or guardians, the victim and their family, community counselors, community leaders, and may involve social workers or child psychologists if necessary. The diversion meeting is led by the investigator, but its purpose is not to hand down a verdict, but rather to facilitate a healthy dialogue between the perpetrator and victim.

During deliberation, the child is given the opportunity to admit their mistake, apologize, and offer a form of accountability. The victim, on the other hand, can express the suffering or loss they have experienced, as well as their hopes for a resolution of the case. The outcome of the deliberation can be a peace agreement, material or non-material compensation, beneficial community service, or other forms of reparation. All agreements are outlined in the Diversion Report, which is signed by all parties.

5. Diversion Results Determination Stage

The results of the diversion deliberation are then submitted to the investigator's superior and then to the district court for a legal ruling. If the diversion agreement is approved, the investigation is terminated and the case is declared closed without proceeding to trial. However, if an agreement is not reached or is rejected, the case will proceed to prosecution and formal trial.

6. Implementation and Supervision Stage

The final stage is the implementation of the diversion agreement. Supervision of the agreement's implementation is carried out by community counselors from the Palangka Raya Class II Bapas, with support from the police and the community. This oversight is crucial to ensure that the child truly fulfills the agreed-upon obligations, so that the diversion's goals of recovery and rehabilitation can be effectively achieved.

With these stages, the juvenile case resolution mechanism at the Palangka Raya Police Department demonstrates that diversion is not merely a formality, but rather a legal process that emphasizes dialogue, participation, and responsibility. Although obstacles remain in practice, the diversion mechanism is operating quite actively. Hotman and Ali (2022) noted that one of the main obstacles is the public's limited understanding of the concept of restorative justice. Victims often prefer formal justice, believing that imprisonment is the most tangible form of justice.⁹ Another obstacle is the limited human resources in the police and Bapas, so the diversion process is sometimes not optimal.

However, other research indicates that the Palangka Raya Police have strong institutional capacity to support innovation in legal services. For example, the availability of technology-based public services like the issuance of Police Certificates (SKCK) at the Public Service Mall demonstrates the potential of the Palangka Raya Police to develop a more transparent and accessible diversion administration system.¹⁰ Thus, the diversion mechanism at the Palangka Raya Police can continue to be improved through a combination of officer professionalism, technological support, and legal education for the community.

3.3. Implementation of Diversion in Resolving Child Criminal Cases Through Restorative Justice at the Palangka Raya Police

The implementation of diversion at the Palangka Raya Police Department is not merely procedural but also reflects the restorative justice paradigm in juvenile

⁹H. Hotman and M. Ali, "Implementation of Diversion and Implementation of Determination of Diversion Results for Child Clients at Class I Bapas Palangka Raya," *Justitia*, 2022.

¹⁰F. Fitriani, "SKCK Delivery Service Innovation at the Palangkaraya City Public Service Mall," *Anterior Jurnal* 21, no. 3 (2022).

criminal law. Diversion involves all stakeholders: the child perpetrator, the victim, their families, community counselors, and community leaders. The ultimate goal is to find a resolution that restores relationships, not simply imposes punishment.

Restorative justice views criminal acts as violations of social relations, so their resolution must restore the damaged harmony. During the diversion consultation at the Palangka Raya Police Department, the child perpetrator is given the opportunity to apologize to the victim, provide agreed-upon compensation, or engage in beneficial social action. The victim, on the other hand, is given space to express her feelings, needs, and hopes, ensuring that the legal process truly respects her rights.¹¹

Research by Hotman and Ali (2022) confirms that the implementation of diversion in Palangka Raya reflects the spirit of restorative justice, although oversight still needs to be strengthened. One frequently encountered issue is weak monitoring of the implementation of agreements after diversion is implemented.¹² Without strict supervision, there is a possibility that the results of the agreement will not be implemented consistently.

Another obstacle is the lack of understanding among some law enforcement officials regarding the philosophy of restorative justice. Utomo and Widyawati (2021) note that some officers still view diversion solely as a way to reduce the caseload, rather than as an instrument of recovery.¹³ As a result, the implementation of diversion has the potential to lose its essence as a form of substantial justice.

Nevertheless, the implementation of diversion through restorative justice at the Palangka Raya Police Station continues to have a significant positive impact. Child perpetrators are not trapped in the harsh formal justice system, victims are given the opportunity to recover, and the community gains a sense of security through the restoration of social harmony. Furthermore, this diversion practice demonstrates that the law can operate in harmony with humanitarian values and local wisdom that uphold peace.

4. Conclusion

The discussion on the nature of diversion in resolving juvenile criminal cases demonstrates that diversion is not merely a formal legal mechanism, but rather a form of protection for children in conflict with the law. Diversion emphasizes a

¹¹Witasari, "Implementation of Diversion...", p. 130.

¹²Hotman and Ali, "Implementation of Diversion...", p. 15.

¹³B. Utomo and Widyawati, "Diversion in Child Narcotics Crime Cases," *Journal of Legal Studies* (2021).

more humane principle of justice by prioritizing the best interests of children, preventing them from the potential for negative stigmatizing judicial processes, and prioritizing efforts to restore relationships between perpetrators, victims, and the community. The essence of diversion thus lies in its preventive and rehabilitative objectives, providing space for children to improve themselves and distancing them from the conventional criminal justice system, which emphasizes retaliation. The mechanism for resolving juvenile criminal cases at the Palangka Raya Police has been implemented in accordance with the provisions of the Juvenile Criminal Justice System Law (UU SPPA). This process begins with the investigation stage, where police officers identify juvenile cases that meet the requirements for diversion. A diversion deliberation is then conducted involving the perpetrator, victim, family, community counselor, and other relevant parties. This mechanism emphasizes reaching a fair and acceptable agreement for all parties. In practice, the Palangka Raya Police also faces a number of challenges, such as limited resources, public understanding, and social dynamics, but continues to strive to maintain a balance between legal certainty, justice, and benefit in resolving juvenile criminal cases.

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