

The Effectiveness of Diversion in the Juvenile Criminal Justice System in Indonesia

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Abstract. *Diversion is an important instrument in the Juvenile Criminal Justice System aimed at diverting the settlement of juvenile cases from formal criminal proceedings to an alternative process outside the court through a restorative justice approach. The implementation of diversion in Indonesia is regulated under Law Number 11 of 2012 concerning the Juvenile Criminal Justice System as an effort to provide protection for children in conflict with the law and to prevent the negative impacts of criminal proceedings. However, in practice, the implementation of diversion still faces various obstacles affecting its effectiveness in achieving its intended objectives. This study aims to analyze the implementation of diversion in the Juvenile Criminal Justice System in Indonesia, examine the weaknesses in its application, and assess the effectiveness of diversion implementation by law enforcement officials. This research employs a normative legal research method using statutory, conceptual, and case approaches. The legal materials consist of primary, secondary, and tertiary legal sources analyzed qualitatively. The results indicate that the implementation of diversion in the Juvenile Criminal Justice System has generally complied with existing legal provisions and reflects the principles of restorative justice and the best interests of the child. Nevertheless, its effectiveness remains suboptimal due to several factors, including limited understanding and capacity of law enforcement officers, low participation of victims and the community, inadequate supporting facilities and infrastructure, and differing interpretations of diversion provisions. Furthermore, the lack of uniformity in diversion practices across regions has hindered the achievement of diversion objectives, including reconciliation, social restoration, and the prevention of stigmatization of children. This study concludes that diversion in Indonesia's Juvenile Criminal Justice System has a strong legal foundation and is oriented toward child protection. However, its effectiveness requires further enhancement through improving the competence of law enforcement officers, strengthening inter-agency coordination, optimizing the role of Community Counselors, and increasing community participation in the resolution of juvenile cases.*

Keywords: *Criminal; Diversion; Effectiveness; Justice; Protection.*

1. Introduction

Children are generation successor the rightful nation get protection, growth and development in a way worthy Good in a way physical, mental and social. However, in in fact, no A little the child who actually entangled in system law criminal consequence categorized actions as action criminal. Children are asset valuable for nation and state, because they will become successor ideals nation, leader in the future front, and support hope generation previously. Regulation about protection rights child should Already ensure life children become worthy and more Good to in front of him. However, the reality is Still Lots children whose rights neglected and become victims of various form violence, such as physical, harassment sexual, pressure psychological, as well as form violence others. Human rights child is part from Human Rights The human being is loaded in the 1945 Constitution and the Convention Union Nations about rights child.

Seen from side life, nation and state, children is heir and at the same time portrait of the future nation in the future come so that every child entitled on continuity live. Grow and develop children, participate as well as entitled on protection from action violence and discrimination as well as right civil and liberty. With Thus, the formation of Constitution protection child must based on considerations that protection child in all its aspects is part from activity protection children, in particular in advance life nation and state.¹

Therefore that, in frame availability source Power qualified and capable human beings lead as well as look after unity and oneness nation in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution, is required coaching and mentoring in a way Keep going continuously for the sake of continuity life, growth and development physical, mental, and social as well as protection from all the possibility that will endanger child or generation youth and nation in the future futures. Protection child is all activity for guarantee and protect children and their rights so that they can live, grow develop, and participate optimally according to with dignity and honor humanity, as well as protection from violence and discrimination.²

In principle every man want life with harmony, harmony, peace and tranquility, in undergo his life, will but in fulfil his needs pressed For do violations law.³ Likewise the children involved case law, sometimes child No understand, and sometimes child affected from socializing environment or game, so that it happened misbehavior that violates law, they also do not realize his actions, with so if must

¹ Ahmad Kamil and Fauzan, 2008. *Child Protection and Detention Law in Indonesia*, Jakarta: Rajagrafindo Persada. P. 7

² Explanation of Law Number 3 of 1997 concerning *Juvenile Courts*

³ Soerjono Soekanto, *A Sociology of Law Against Problem Social*, Bandung: Citra Aditya Bakhti, 1989, p. 7

processed law will result in Lots problem in self child mentioned, here should be protection done.

For accommodate protection right child in the judicial process criminal law in Indonesia, the government has validate Constitution Number 3 of 1998 concerning Juvenile Court. Law This born for carry out coaching and providing protection to children facing each other with law. institutions and apparatus law more goods as well as adequate in organization justice child need done in a way special so that create a sense of security for child especially in their rights because children, who should given spacious room for realize his actions so that created good and harmonious recovery.

In the The UN Convention on the Rights of the Child affirms that, children who are in conflict with law This categorized to in children in need protection specifically, in consideration Convention on the Rights of the Child that child Not yet own intelligence physical both physically and mentally, then should be need special and appropriate safeguards and protection, protection worthy Lots done one of them with make Constitution as above, because Legislation is one of the real actions in Protection child in a way preventive and repressive for child.⁴

Serious and urgent issues notice is handling children facing each other with law or child naughty as in Law no. 3 of 1997 concerning Court child need We think about it together that problem criminalization very serious child because basically in the formal judicial process tends to happen violation right basic man even Lots proof show There is practice violence and torture to incoming child in the formal judicial process.

The prison that became place punishment child proven No is good place For foster child achieve the expected maturation process, during the judicial process children facing each other with law or child naughty often lost rights basically like communication with parents, rights obtain education and health rights, and there are discrimination against children after completion of the judicial process so that will make things difficult in development psychological and social to child to in front of him.⁵

With existence provisions about children caught in the system process justice criminal (formal law), then in Constitution Number 11 of 2012 concerning System Justice Child Criminalization is known There are diversion efforts. Diversion is diversion handler case suspected child has do action criminal from the formal process with or without conditions. Intervention to children facing each other with the law is very broad and diverse but most more emphasizes detention and

⁴ Made Sadhi Astuty, *Criminalization of Children as Perpetrators of Criminal Acts*, Malang: IKIP Publisher, p. 2

⁵ Hadi Supeno, *Decriminalization of Children, Indonesian Child Protection Commission (KPAI)*, Jakarta. 2010

punishment, without care How many heavy or light something violation the or in the form of his youth age child the.⁶

According to Commission Child Protection (KPAI), within 6 (six) years Lastly, KPAI noted there were a total of 9,226 cases of Child Confrontation with the Law (ABH). From January to October 2024, the KPAI received 1,637 complaints. related fulfillment of children's rights and protection special. Related with matter the explain that in in practice implementation principle restorative justice in System Justice Child Criminalization in Indonesia has not yet implemented in a way effective, because a number of problems, including understanding law from the victim or the victim's family who is still sticky with retributive paradigm, so that more prioritize retaliation efforts to child as Perpetrator Crimes compared with method alternative best Ffinish problem criminal with peace. So that protection law for Child Perpetrators Criminal acts are often overlooked by law enforcement Law and Society.

2. Research Methods

Types of methods research used in compilation writing This use type method study law normative juridical. Research methods law normative juridical can interpreted as A method study on rules legislation, both reviewed from corner hierarchy legislation (vertical), or harmony legislation. Research normative law is studies document, which source material his in the form of regulation legislation, decisions or provisions court, contract or agreement or agreement, principles and principles law, theory law and doctrine or expert opinion law. ⁷this normative juridical method focus on analysis regulation legislation, doctrine books and decisions court. approach this give base strong theory for understand and interpret applicable legal norms. research law use various approach, with objective for get information from various corner about with problem being researched. approach interpreted as business for stage connection with people or method for reach the meaning of issue in research. specifications in study this is nature descriptive analysis that is research that describes implementation regulation applicable laws associated with theories law and practice implementation law positive regarding the problem being researched. it is said descriptive because from study this expected will obtained a general picture comprehensive and systematic about all related matters implementation diversion as a preventive measure criminalization child based justice. it is said analysis because then will analysis was conducted on various aspect law with use theories law, principles laws, doctrines laws and regulations related legislation with effectiveness implementation diversion as a preventive measure criminalization child based justice.

⁶ Edy, Tarsono, Yunan Prasetyo, *Juvenile Justice Law*, 2011, p. 70.

⁷ *Ibid* , p . 48

3. Results and Discussion

3.1. Implementation of Diversion in the System Justice Child Criminalization in Indonesia

Implementation diversion is form implementation from draft restorative justice in system justice criminal children. diversion is designed for avoid child from a negative impact of the judiciary formal criminal law, as well as can notice victim selection and interests society. in general normative implementation diversion can done through mechanism deliberation involving various party with objective reach priority solution recovery against victims, sanctions, or perpetrator in condition originally. principle *restorative* with diversion in a way clear poured out in constitution system justice criminal child, however not formally yet can apply a sense of justice for society. justice is condition where morally ideal truth, good about things and about people. justice aim for protect child for get appropriate rights with applicable laws.

John Rawls argues that the coaching program with aspect populist must respecting two principles justice such as, creating equality rights and opportunities for the broadest possible fundamental freedoms. In accordance with its reach like equal freedom for everyone. Next organize repeat gap social emerging economy so that can beneficial for everyone, regardless from whether they originate from lucky group or lucky. Therefore that, the principles difference demands that the structure base public formed such appearance so that gap in prospects get things important like welfare, income, and prestige profitable the most disadvantaged party. Justice is here can interpret as restorative justice, not punitive justice perpetrator crime in accordance with his actions but the judicial process Where perpetrator, family perpetrators, victims and victims' families who are still under 18 (eight) twelve) years, and competent parties follow as well as involved How overcome consequence from something crime whose implications. Approach restorative justice is a judicial process that involves and is implemented entirely by the community and authorities law. The needs and safety of victims are attention main from the restorative justice process, the concept that discusses change from system justice criminal with emphasize integrity, involvement society, and victims who feel ostracized from mechanisms at work in system justice criminal moment This.

Arrangement diversion based on Constitution System there is conflict between Article 2 (two) c and Article 7 (seven) concerning principles discrimination or non-discrimination in diversion as one of the principles protection child. Article 7 (seven) of the law system justice criminal child state that investigator, prosecutor general, and the judge must consider category action criminal moment do diversion. According to explanation chapter this, shows that apparatus enforcer law must consider category action criminal moment demand or decide type criminal offenses that must be implemented to children under age or those who

haven't speak law. The more light type crimes committed by children, then possibility effort diversion the more big for implemented. The weight of it punishment received by the child depends to heavy light action crimes committed.

Diversion is right every child, so No There are limits to that. In addition, children who are caught in case like narcotics, terrorism, rape, and crime criminal heavy other entitled accept diversion. every child must own chance for repair himself and his actions, because objective criminal as *ultimate remedium* still far than expected by society, punishment prison still very tight, and the hope is is that with give punishment to children, they will become more good and bad will do same error. without consider negative impact of punishment said, because that, article 7 (seven) paragraph (1) of the law system justice child criminals must changed again or added rule alternative for handle children who do or involved action criminal heavy. currently recognized in a way international as the most effective method for finish problem children in conflict with law. this is method protection child.

Diversion is actions taken for divert a settlement action crime caused by children under conflicting ages with law through deliberation which is part from system justice criminal children. diversion can done start from investigation, prosecution carried out by the prosecutor general, and process court. during the investigation process, the police as investigator given authority for do diversion in settlement case action criminal children. Of courses matter This done Because position of the police institution This as enforcer law first and direct touching with circles society. One of the form action diversion that can taken by investigators to child perpetrator action criminal is with return it to his parents.

Therefore that, for fulfill a sense of justice child so Constitution system justice the criminal code on children, especially article 7 (seven), has been reformulated. children in conflict with law have equal rights for get protection law as protection the law obtained by the victim. based on matter the diversion the is with amend article 7 (seven) paragraph 2 (two) such as diversion as referred to in paragraph 1 (one) is mandatory implemented to all type action criminal without see threat crimes committed by children. if chapter this reformulated as sound mentioned above no there is again distinction its implementation, diversion to the child who did action criminal agreement diversion naturally must get agreement from the victim and the victim's family, and the will children and their families. this is show that the victim and his family must do action in the diversion process so that the recovery process can achieved in accordance with restorative justice. if the procedure diversion fail reach agreement or no implemented then the criminal process child will to be continued step by step through court as effort last / *ultimate remidium*.

If if at each action crimes committed by children can apply diversion (*restorative justice*) so in a way No direct will can reduce amount children detained at home prisoners or in the development institution. With thus If draft diversion (*restorative*

justice) is implemented in a way comprehensive to action criminal whatever the child does. It will decrease the amount of cases coming to court and of course will impact for subtraction of residents at the foster care institution as well as with its own state budget. For finance, prisoners in the institution will also experience decline. Through draft from restorative justice, children will be avoided from implementation of law. Usual criminal offenses considered as a criminalizing factor for children. In the sense of avoiding child from doing wicked return driving day. Besides with strive restorative justice for child will return to the environment and can socializing return with the environment, so that the stigma of "children" evil "no attached to the child who is entangled action criminal.

With restorative justice approach should be made into solution in finish case children involved in action criminal, of course with restorative *justice* expected child have responsibility on what he does and does with method involving victims and parties related especially parents, family and society for play a role as well as repair morals child perpetrator action criminal so that child No feel as the patient who must judged and excluded from the environment.

3.2. Weaknesses of Diversion in System Justice Child Criminalization in Indonesia

Diversion is one of the how important in System Justice Child Criminalization which aims avoid child from the formal judicial process as well as realize approach restorative justice. However in the implementer diversion Still face a number of weaknesses that affect effectiveness achievement objective his as protection for entangled child action criminal law. Effectiveness implementation diversion This No only determined by the existence of legal norms but also by ability from system the law that applies objective has determined. In the context of This relevant theories is theory effectiveness the law states that success enforcement law influenced by several faculty like:

- 1) Legal factors itself (substance law)
- 2) Enforcement factor law
- 3) Means factor or facility
- 4) Community factors
- 5) Cultural factors law

In a way normative, regulatory from diversion has arranged in System Justice Child Criminalization. However his weaknesses located in the presence of restrictions implementation diversion so that no all over child perpetrator action criminal get chance settlement through restorative mechanisms. restrictions this often causes objective from protection child not yet completely achieved, legal norms diversion has progressive but not yet completely fulfil principles from *the best interest of the child*. in the enforcement factor law his implementation diversion need method

same view from apparatus enforcer law. In practice Still Lots there is trend use retributive approach or called oriented towards revenge and punishment) compared to with restorative approach. As a results diversion sometimes only understood as procedural obligations. Difference with paradigm between apparatus can reduce effectiveness implementation diversion.

If seen from the facilities and infrastructure factors success diversion is highly dependent on support from institutional, because limitations amount mentor community, facilities mentoring children, and as well means mediation become real obstacles. This is Lots cause implementation diversion in the region certain No can running optimally. Good norms No will effective if without existence support infrastructure adequate law.

Draft from this restorative justice resemble practice penal mediation that has been Lots implemented in Indonesia. Penal mediation is settlement case criminal with agreement between perpetrator and victim. After existence something violation or things done by children so will searching for settlement best moreover formerly between perpetrator and victim. Criminal process only used if settlement the No achieved. Difference justice restorative and penal mediation is, restorative mediation is implemented simultaneously with enforcer law, whereas penal mediation can done perpetrator and victim only without involving party others, including enforcer law. However, the practice this penal mediation No own base strong law in its implementation. According to restorative justice settlement case child should focus on victim recovery, accountability children, reintegration social children. Weakness diversion appears during the diversion process only produce formal agreement without notice recovery psychological and social aspects of the perpetrators action crimes committed by children.

ideal concept of implementation diversion to children in conflict with is with enforce diversion to all action crimes committed by children without must differentiate threat punishment his action crimes committed and repetition action criminal. Difference in treatment giving punishment to child said, will conclude impact towards the future for si child. The child who came out from confinement prison will stamped as a child who can said evil and of course matter the will impact in a way psychological child.

Substance law related with norms, regulations legislation and policies that regulate implementation diversion. Although according to law number 11 of 2012 concerning System Justice Child Criminalization has arrange diversion in a way clear, still there is a number of weaknesses. Such as existence restrictions diversion only for entangled child action criminal threatened with criminal sentence under 7 (seven) years cause No all children facing each other with law can get chance settlement through restorative approach. Still not there is guidelines uniform technical regarding procedures implementation diversion so that cause difference interpretation between apparatus enforcer law. Still lacking his arrangement in

role community and victims in the diversion process Still not optimal so that sign cause failure in reach agreement diversion.

In structure laws that cover institutions and apparatus that carry out law, implementation diversion like structure laws involving prosecutors, courts, correctional facilities (BAPAS), workers social, and protection institutions children. Weakness the found among others still limited amount mentor community in various area, lack of training about restorative justice for enforcer law, as well as Not yet optimally coordination between agency in the process of diversion, and still Lots apparatus that prioritizes formalistic approach through the judicial process justice compared to settlement restoratively

According to Soerjonon Soekanto, one of the determining factors effectiveness law is enforcer law. In Indonesia, there is still there is difference understanding apparatus enforcer law about diversion so that implementation Not yet uniform at each area. Condition This affect the success rate diversion. As In comparison, New Zealand has standard operational which are more integrated through Family Group Conference so that every parties involved own common understanding about objective settlement case for entangled child law. With thus effectiveness that, Indonesia needs to strengthen restorative justice training and developing guidelines implementation more diversification uniform as implemented in New Zealand.

3.3. Effectiveness in Implementation of Diversion by Law Enforcement Officers

Effectiveness implementation dives No only seen from There is or whether or not arrangement the laws that govern obligation diversion. But also from how far are the rules the truly implemented and achieved expected goals. In the context of system justice criminal children, effectiveness becomes size success apparatus law in apply principles protection children and restorative justice. This research at the level investigation finds that, the implementation diversion at this level reach success more from 50% Success implementation diversion This No let go from efforts made. In an effort investigation provide 7 (seven) investigators who have fulfil existing criteria in article 26 paragraph (3) of the Law Number 11 of 2012 concerning System Justice Criminal child, as following such as. Have experience as investigators, have interest, attention, dedication and understanding problem children, and have follow training technical about justice children. Diversion at the investigator level is carried out with deliberation with involving children and parents, victims and parents, mentor community and workers social.

Children are individuals who are still in the learning process, searching for identity, overall his activities towards the process of maturity. With role very important child this, right child has in a way firm stated in constitution, that the state guarantees every child entitled on continuity live, grow and develop as well as entitled on

protection from violence and discrimination.⁸ Under normal circumstances the role of parents as well as environment around very much influence the process of a person child become human completely. Therefore it is very important role from parents and environment always trying to ensure that children No fall into become a victim of crime, or child fall into do actions wicked or actions No commendable other.⁹

Implementation *restorative justice* in action moves children in Indonesia have potential big create greater justice humane, but its effectiveness Still varies in various area. There are still many a number of area show success in apply mechanism diversion, where children perpetrator action criminal No need undergo a formal judicial process, but rather completed through deliberation involving all parties. As a result, the relationship between perpetrators and victims can restored, and the child No stigmatized as criminals, who can be said to be evil. However Still Lots constraint in effectiveness application by understanding apparatus enforcer laws that have not been adequate. In some case, police, prosecutors, or judges are still tend use retributive approach, which is more punishment - oriented rather than recovery. Lack training special challenge *restorative justice* is one of the reason low effectiveness implementation approach This.

Success implementation *restorative justice* is very depend on support from society. In some area public tend support approach this, because in line with mark mark local culture that emphasizes settlement conflict through deliberation or outside court. However there are in other areas of society precisely want punishment as form justice, which shows existence difference perception to draft *restorative justice*. Effectiveness implementation is also influenced by infrastructure supporters, such as existence competent facilitators and availability place carry out the deliberation process. In many area, limitations become obstacle Serious in implementation of restorative justice. Without trained facilitators, resolution process tend walk No effective, so that No reach objective recovery.

In this aspect structure law apparatus enforcer law own position central in determine success diversion. Investigator, prosecutor general, judges, and mentor community No only act as implementation procedure law will but also as facilitator settlement matters that are based on interests best for children. Therefore That success diversion is very depends on understanding apparatus to objective from Constitution System Justice Child Criminalization in Indonesia. In practice implementation diversion in Indonesia is still lah found various many obstacles cause effectiveness Not yet Can executed optimally. One of the constraint from not enough his effectiveness diversion in Indonesia is Still trend use paradigm

⁸Indonesia , 1945 Constitution , Meeting 5th Plenary Session MPR Annual Meeting 2002 , Article 28B paragraph (2).

⁹Setya Wahyudi, Op. Cit., p. 1.

criminalization compared to restorative approach. Apparatus law on conditions certain Still put settlement case through formal mechanisms as choice main so that system diversion Not yet used as an important instrument protect child from formal court.

Effectiveness diversion by the authorities law in Indonesia is still face Lots challenges in aspects implementation. Diversion has own runway strong normative, but its effectiveness Still Not yet fully walk and achieve Because Still there is hamper in understanding apparatus, coordination between Institutions, and as well reception society. So the implementation effective diversion need No only compliance to provision law, but also change in handling case child so that objective protection children and restorative justice can realized right together and children avoided from noose law confinement that causes child will loss of future his.

4. Conclusion

Based on discussion about implementation diversion in system justice criminal children in Indonesia, can concluded that diversion is mechanism settlement case child - oriented approach restorative justice with objective avoid child from the judicial process formal criminal law and give protection to grow flower children. Carry out diversion done on every stage of the judicial process, such as start from the investigation level, prosecution, to court hearing throughout fulfil condition in accordance with regulation legislation in Indonesia regarding protection children. Implementation diversion show existence shift handler case child from approach punishment going to approach a trickling recovery focus on interests for child. Based on discussion about weaknesses diversion in system justice criminal children in Indonesia, can concluded that although diversion has become an important instrument for realize protection children and restorative justice implementation Still There is obstacles that cause objective diversion Not yet fully achieved in a way comprehensive. Weaknesses the especially seen on yet ready and evenly distributed understanding apparatus enforcer law to draft from diversion, still trend use approach criminalization, its weaknesses coordination between the institutions involved, limitations means and resources Power supporters, and existence resistance from victims and society to settlement through diversion. With thus weakness from diversion No solely sourced from aspect arrangement law but also influenced with implementation and cultural factors law in system justice criminal children. Regarding the effectiveness implementation diversion by the authorities law, concluded that implementation diversion Not yet completely walk effective although has own base clear and strong laws. Effectiveness diversion is largely determined by the role enforcer law in understand and apply principles protection child as well as restorative justice in every stage of the judicial process. In practice Still just there is various inhibiting factors achievement effectiveness diversion, between his Not yet optimally understanding apparatus to objective

diversion, existence trend maintain approach criminalization, limitations supporting facilities, as well as Not yet maximum coordination between the institutions involved. Effectiveness implementation diversion No only determined by compliance to provision regulation legislation, but also by the quality and commitment apparatus law make diversion as means protection and recovery for children facing each other with law. Implementation diversion need strengthening capacity apparatus, improvement coordination institutional, as well as change handling case child going to approach more prioritize right the best rights for children involved action criminal.

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