

## Settlement Policy of Criminal Actions which Performed by Children through Penal Mediation

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Abstract. One form of progressive law in the Juvenile Criminal Justice System is the existence of penal mediation. The benchmark for the positive implications of penal mediation as a force is expected to encourage efforts to alleviate various issues that have been identified. Thus, the conditions for implementing penal mediation as the embodiment of Pancasila values in order to support the rule of law in the context of national development are expected to be truly realized.

The problem in this research is how is the technical implementation of penal mediation in Indonesia? and How is the Penal Mediation Process at the stage of Investigation, Prosecution and Examination in Court Sessions.

The method used in this study is normative juridical, which relates to the policy of resolving crimes committed by children through penal mediation.

Penal mediation in the Juvenile Criminal Justice System Act is called Diversion. In accordance with Article 7 paragraph (1) of Act No. 11 of 2012 concerning the Juvenile Justice System, at the level of investigation, prosecution and examination of children's cases in district courts, diversion must be sought, based on a Restorative justice approach.

Keywords: Penal Mediation; Diversion; Juvenile Criminal Justice.

### 1. Introduction

It has been realized that children are the nation's successors because on their shoulders lies the nation's tasks that have not been completed by previous generations. As the successors of the ideals of the nation and state, they must be able to grow and develop, become mature human beings who are physically and mentally healthy, intelligent, happy, educated and have high morals and are commendable. However, in Indonesian Criminal Law, the principle is known that punishment for a convict is not revenge, but must be a form of education to prevent him from committing another crime in the future.<sup>1</sup>

In the practice of juvenile justice, the process always begins with arrest, detention, then being prosecuted by the prosecutor, which ends with a verdict by the judge.<sup>2</sup> The formal justice process only causes stigma and criminalization of children.<sup>3</sup>

According to data from the Indonesian Child Protection Commission (KPAI), cases of children in conflict with the law, or ABH, are the most frequently reported cases to KPAI. From 2011 to 2019, the number of ABH cases reported to KPAI reached 11,492 cases, much higher than reports of cases of children entangled in health and drug

<sup>1</sup>Sunaryati Hartono, 1991, *Politik Hukum Menuju Satu Sistem Hukum Nasional*, Alumni, Bandung, p. 167.

<sup>2</sup>M. Ghufuran H. Kordi K., 2010, *Hak dan Perlindungan Anak di atas Kertas*, PT.Perca, Jakarta, p. 222.

<sup>3</sup>Ibid., p. 225.

problems (2,820 cases), pornography and cyber crime (3,323 cases), and trafficking and exploitation (2,156 cases). )<sup>4</sup>

Act No. 39 of 1999 concerning Human Rights, Article 66 paragraph (4) and Article 16 paragraph (3) of Act No. 23 of 2002 concerning Child Protection states that, "Arrest, detention or imprisonment of children may only be carried out in accordance with applicable law and can only be carried out as a last resort." So imprisonment for crimes committed by children is a last resort if other settlement methods cannot provide a solution.

Juvenile justice in Indonesia was originally regulated by Act No. 3 of 1997 concerning Juvenile Court. According to Nasir Jamil, the Juvenile Court Law is no longer relevant from a juridical, philosophical and sociological perspective. The Juvenile Court Law does not provide an appropriate solution for handling Children in Conflict with the Law (ABH) because the case is directed to be resolved in court, which results in mental and sociological pressure on the child, as well as various other adverse effects that interfere with the child's growth and development.<sup>5</sup>

Act No. 11 of 2012 is commonly referred to as the SPPA Law, the substance of which is to avoid and keep children away from the judicial process so as to avoid stigmatization of children who are in conflict with the law and it is hoped that these children can return to their social environment properly.<sup>6</sup>

Law enforcement is essentially a process to realize legal goals, legal ideas become reality.<sup>7</sup> One of them is the progressive legal theory. Satjipto Rahardjo's progressive legal theory stems from the conditions of reform in Indonesia, which according to Satjipto Rahardjo has not been successful, due to the large number of corruption, commercialization, and commodification. To overcome the problems in this situation, Satjipto Rahardjo offers a concept of thought called progressive law.<sup>8</sup>

One form of progressive law in the Juvenile Criminal Justice System is the existence of penal mediation. The benchmark for the positive implications of penal mediation as a force is expected to encourage efforts to alleviate various issues that have been identified. Thus, the conditions for implementing penal mediation as the embodiment of Pancasila values in order to support the rule of law in the context of national development are expected to be truly realized.<sup>9</sup>

Based on the description of the background above, the research objectives in this paper are: To find out and analyze the Technical Implementation of Penal Mediation in

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<sup>4</sup> Quoted from <https://www.voice.com/health/2019/07/23/071000/anak-berhadapan-hukum-potret-buram-perlindungan-anak-di-indonesia?page=all>

<sup>5</sup> M. Nasir Djamil, 2013, *Anak Bukan Untuk Dihukum Catatan Pembahasan Undang-Undang Sistem Peradilan Pidana Anak (UU-SPPA)*, Sinar Grafika, Jakarta, p. 3.

<sup>6</sup> See the Elucidation of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, 7th paragraph.

<sup>7</sup> Anwaruddin, Sri Endah Wahyuningsih, 2020, *Fungsi dan Peran Hakim Pengawas di Wilayah Hukum Pengadilan Negeri Kudus* dalam Prosiding Konferensi Ilmiah Mahasiswa Unissula (KIMU) Klaster Hukum, URL : <http://jurnal.unissula.ac.id/index.php/kimuh/article/view/11746>, p. 505

<sup>8</sup> Philippe Nonet and Philip Selznick, 2015, *Hukum Responsif*, translation by Raisul Muttaqien, Nusa Media, Bandung, p. 87-88.

<sup>9</sup> Yusriando, Implementasi Mediasi Penal Sebagai Perwujudan Nilai Nilai Pancasila Guna Mendukung Supremasi Hukum Dalam Rangka Pembangunan Nasional, *Jurnal Pembaharuan Hukum*, Vol. II No. 1 January 1 – April 2015, url: <http://jurnal.unissula.ac.id/index.php/PH/article/view/1413>, p. 34.

Indonesia and To find out and analyze the Process of Implementing Penal Mediation at the stage of Investigation, Prosecution and Examination in Court Sessions

## 2. Research Methods

The method used in this study is normative juridical, which relates to the policy of resolving crimes committed by children through penal mediation.

The data used in this research is secondary data. Data collection techniques contain meaning as an effort to collect data using certain data collection tools.<sup>10</sup> Determination of data collection tools in this study is guided by the type of data. The data collected in this study is secondary data obtained through literature study. This literature study was conducted by searching for books related to the research. Data collection tools used in the literature study include primary legal materials, secondary legal materials, and tertiary legal materials.

In the data analysis method used is qualitative analysis, what is meant by qualitative analysis itself is a research procedure that produces descriptive data because this research is intended to provide a detailed, systematic, and comprehensive picture.<sup>11</sup>

## 3. Results and Discussion

### 3.1. Technical Implementation of Penal Mediation in Indonesia

Article 7 paragraph (1) of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System states that at the level of investigation, prosecution and examination of children's cases in district courts, diversion must be sought. Based on the article, it is known that diversion is carried out in several stages, namely diversion efforts in the investigation stage, prosecution stage, and examination stage in court.

Article 13 of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System states, the (formal) juvenile criminal justice process is continued if:

- The act diversion process results in an agreement between the parties
- Diversion agreement not implemented

In accordance with Article 7 paragraph (1) of Act No. 11 of 2012 concerning the Juvenile Justice System, at the level of investigation, prosecution, and examination of cases of children in district courts, diversion must be sought.

The diversion stage starts from the investigation stage. At the investigation stage, investigators seek diversion and carry out a diversion process. If the diversion is successful, a decision will be made by the district court so that the case will be completed. Meanwhile, if it fails, it will proceed to the next stage, namely prosecution. The prosecution stage also carried out diversion efforts by the public prosecutor. If successful, a decision will be made by the district court and if it fails, it will be continued at the stage of examination in court.

The stage of examination in court is still being tried for diversion by the judge. If successful, a decision will be made by the district court so that the case is not brought

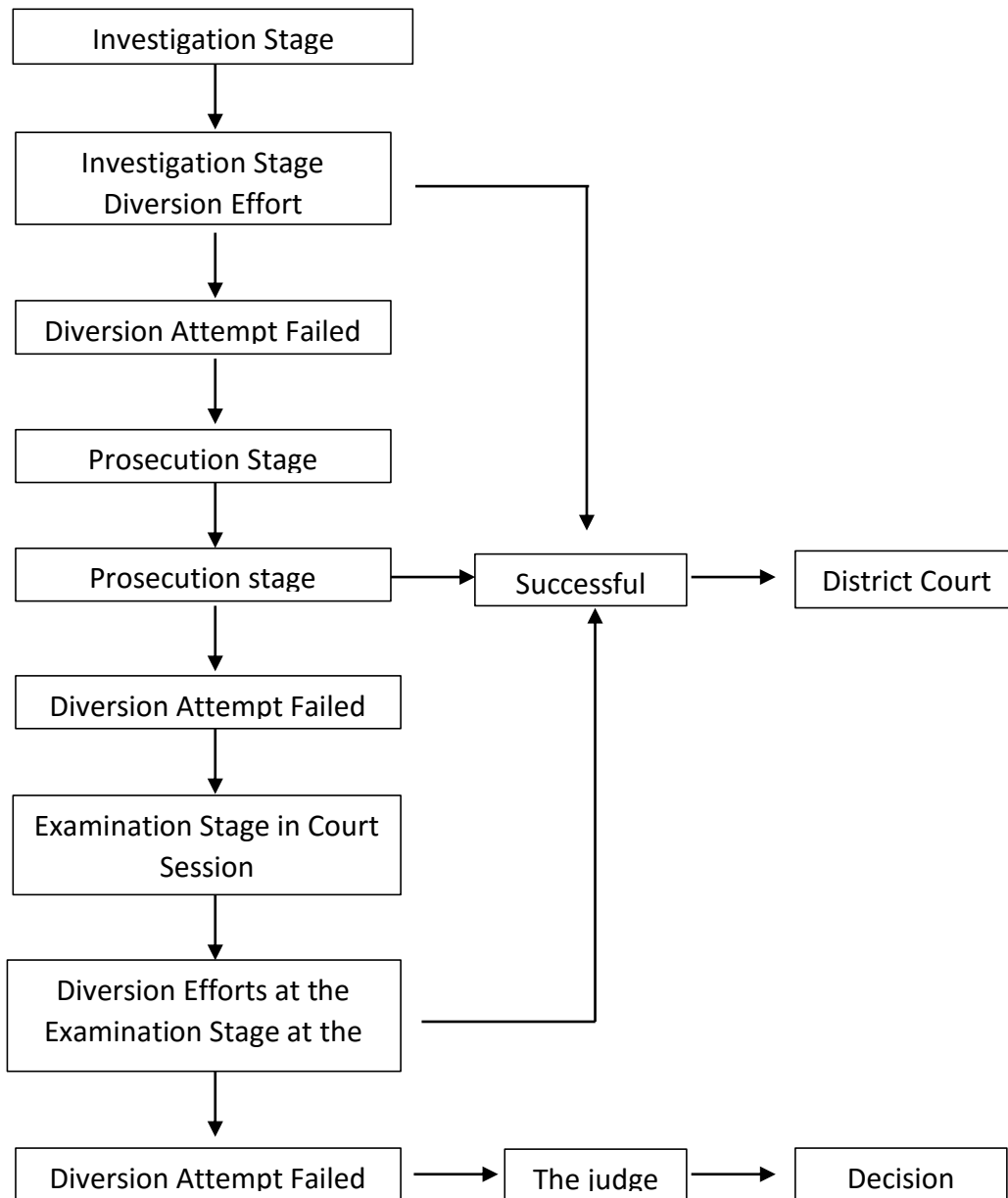
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<sup>10</sup>W. Gulo, 2002, *Research Methods*, Gramedia Widiasarana Indonesia, Jakarta, p. 123.

<sup>11</sup> Nasution S, 2002, *Metode Penelitian Kualitatif*, Tarsito, Bandung, p 52.

to trial. If it fails, it will continue to be examined at trial and continue with the child's case until the judge makes a decision.

The following is a chart of the diversion stages:



### 3.2. The Process of Implementing Penal Mediation at the stage of Investigation, Prosecution and Examination in Court Sessions

The role of the police in the penal mediation process is one of the responsibilities that emerged from Act No. 2 of 2002 concerning the Indonesian National Police which gives

freedom to the police to carry out all duties, responsibilities and authorities in law enforcement.<sup>12</sup>

The investigation stage is the first stage in the criminal justice process, which can be continued with prosecution or diversion (outside the criminal justice process). In the event that the investigator is a police officer, in accordance with Act No. 2 of 2002 concerning the Police Article 16 paragraph (1) letters h and l it is stated that the authority of the police is to stop the investigation and take other actions according to the law that is responsible. Thus the police can exercise discretion (discretionary power), namely the authority possessed by the police to stop case investigations by releasing child suspects or diversion with the aim of preventing children from further legal proceedings.

Investigators are based on the agreement of the two litigants. The existence of the agreement is a form of protection, protection, service, and law enforcement that is adapted to the culture of the local community. Article 7 paragraph (1) letter j of the Criminal Procedure Code which reads "Take other actions according to responsible law". This article indirectly regulates investigators to take other actions that are in accordance with the conditions they face. However, other actions taken by investigators to apply penal mediation are still based on the agreement of the two litigants.<sup>13</sup>

Article 29 of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System explains that investigators are obliged to seek diversion within 7 (seven) days after the investigation begins. The diversion process is carried out no later than 30 (thirty) days after the start of the diversion. If the diversion process succeeds in reaching an agreement, the investigator submits the diversion report along with the diversion agreement to the head of the district court for a determination to be made. If the diversion fails, the investigator is obliged to continue the investigation and delegate the case to the public prosecutor by attaching the diversion report and community research report. This provision is intended so that the examiner at a later stage (prosecution) knows whether there was an attempt at diversion and the reason for the failure of the diversion.

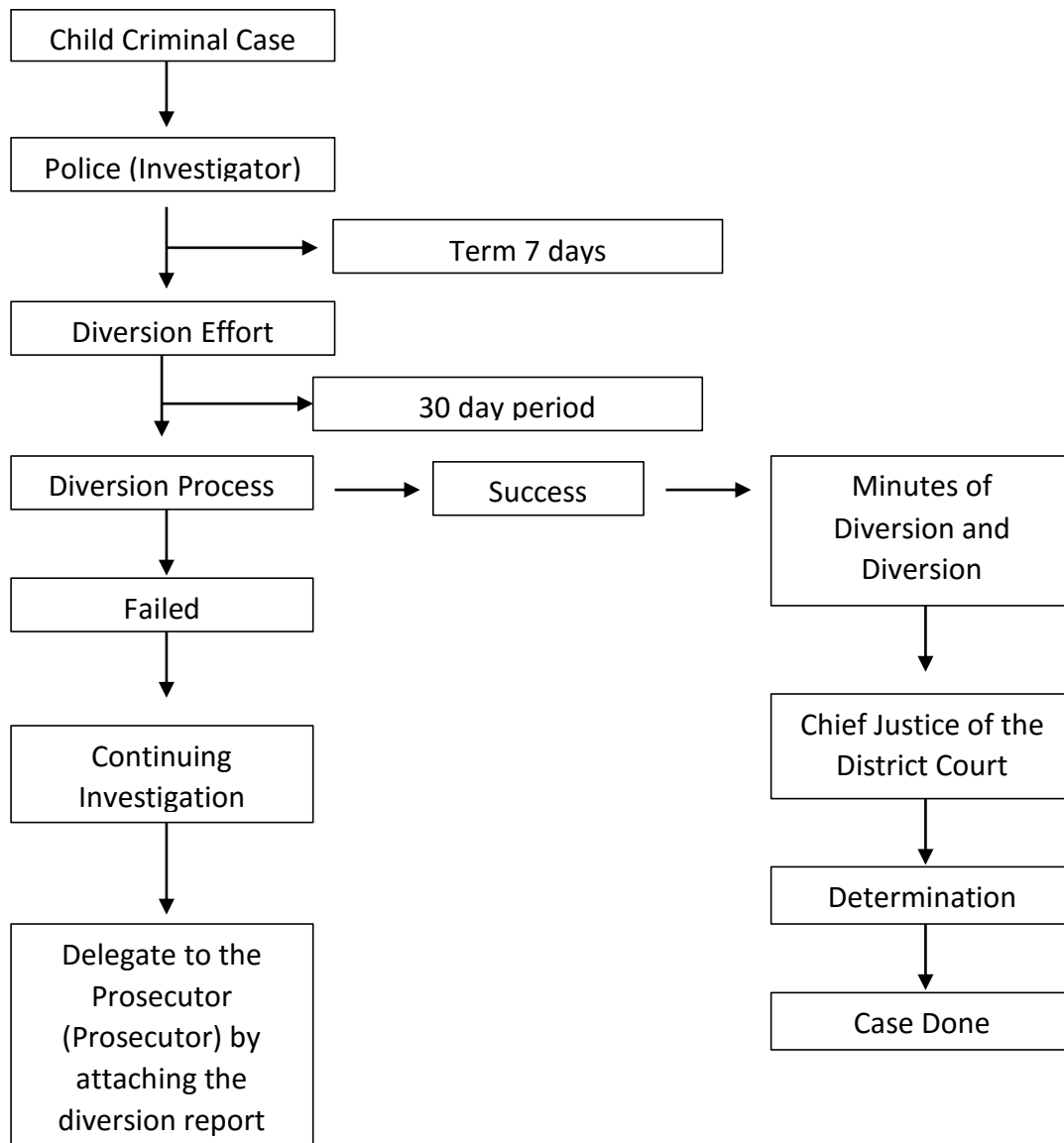
Even though it failed at the investigation stage, in the next stage, diversion efforts must still be made. It is hoped that children's cases are not resolved through the judicial process, but from outside the judicial process with the aim that children are avoided from further judicial processes and reduce the impacts arising from the formal examination

The following is a chart of the investigation stage diversion process:

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<sup>12</sup>Agus Triatmoko, Anis Mashdurohatun, *Police Role In The Process of Penal Mediation*, Jurnal Daulat Hukum, Vol. 11 No. 3 September 2018, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/3345>, p. 619.

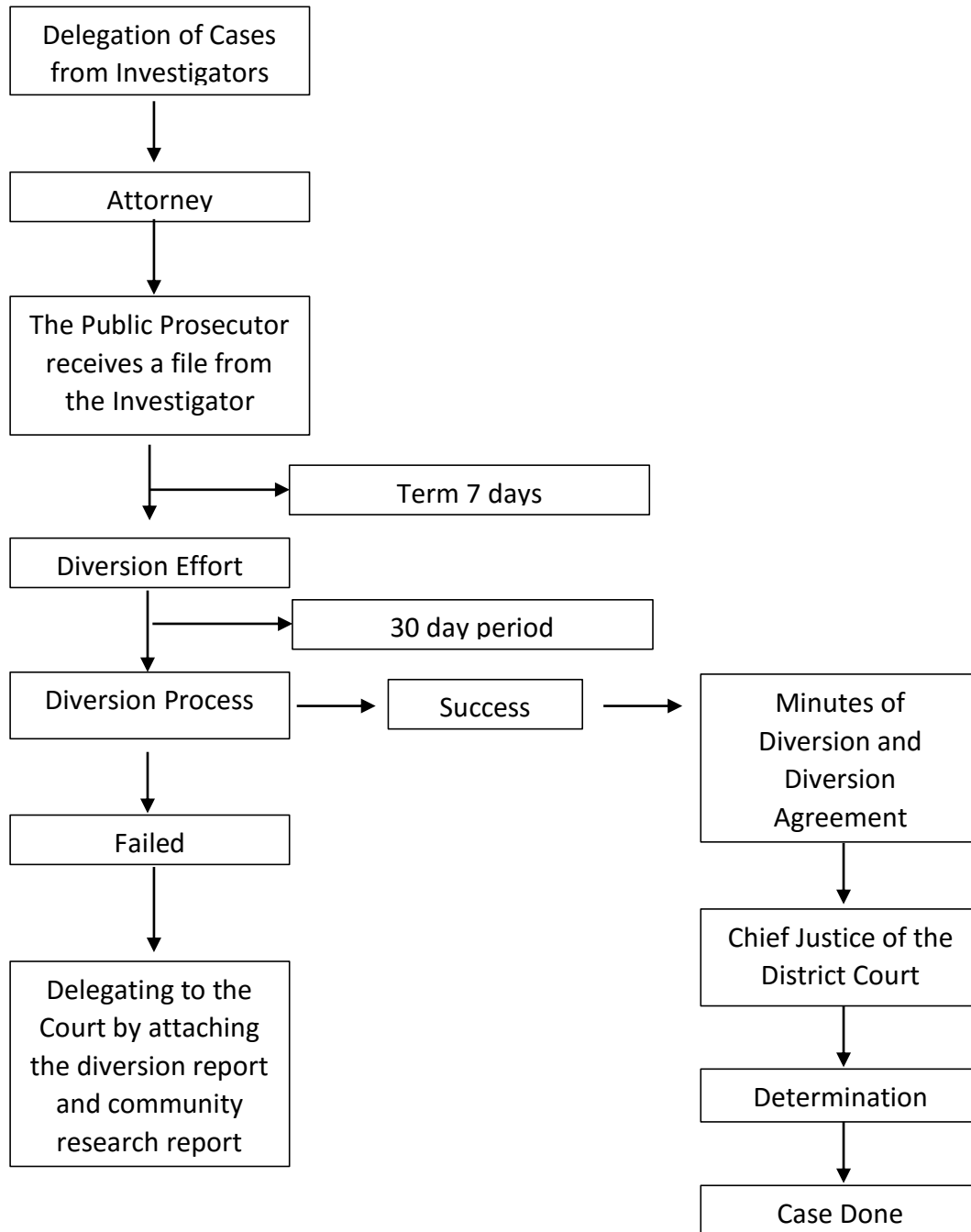
<sup>13</sup> Arif Septria Hendra Saputra, Gunarto, Lathifah Hanim, *Penerapan Restoratife Justice Sebagai Alternatif Penyelesaian Tindak Pidana Penganiayaan Di Satreskrim Polsek Lasem*, Jurnal Daulat Hukum Vol. 1 No. 1 March 2018, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/2629>, p. 160.



The next stage is the prosecution stage. Article 42 of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, the public prosecutor is obliged to seek diversion no later than 7 (seven) days after receiving the case file from the investigator. The diversion is carried out no later than 30 (thirty) days. In the event that the diversion process succeeds in reaching an agreement, the public prosecutor submits the diversion report along with the diversion agreement to the head of the district court for determination. If the diversion fails, the public prosecutor is obliged to submit a diversion report and delegate the case to the court by attaching a report on the results of the community research.

In addition to being tasked with prosecuting, the public prosecutor is also required to make diversion efforts against child criminal cases, because in principle children must be avoided from the judicial process in accordance with the Convention on the Rights of the Child.

The principle that children must be avoided from the judicial process makes the prosecutor also obliged to conduct diversion in Act No. 11 of 2012 concerning the Juvenile Criminal Justice System other than by investigators at the investigation stage. To clarify, here is a chart of the prosecution stage diversion process:



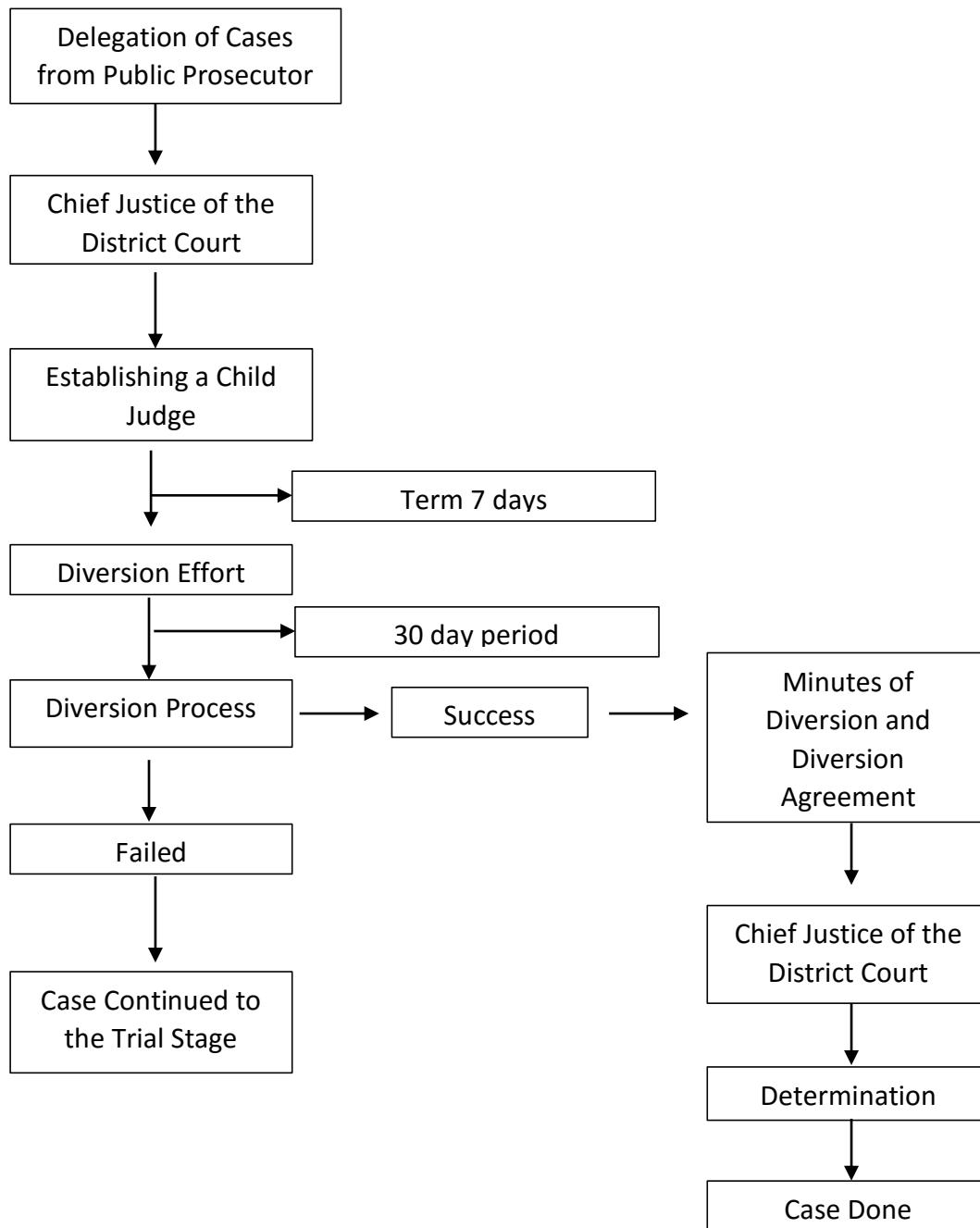
The next stage and the last stage in seeking diversion is the stage of examination in court. Article 52 of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System states that judges are obliged to seek diversion no later than 7 (seven) days after being appointed by the head of the district court as juvenile judge. The diversion is carried out no later than 30 (thirty) days. The diversion process can be carried out in the

mediation room of the district court. In the event that the diversion process succeeds in reaching an agreement, the judge submits the minutes of the diversion along with the diversion agreement to the chairman of the district court for a determination. If the diversion process fails, the case will proceed to the trial stage.

Before entering the trial, the judge is tasked with seeking diversion of the child's case. If successful, a decision will be made by the district court and the case will be completed and not forwarded to trial.

If the diversion process fails, it will proceed to trial by following the provisions of Act No. 11 of 2012 concerning the Criminal Justice System and the Criminal Procedure Code (Book of the Criminal Procedure Code).

The following is a chart of the diversion process at the court examination stage:





#### 4. Closing

Penal mediation in the Juvenile Criminal Justice System Act is called Diversion. In accordance with Article 7 paragraph (1) of Act No. 11 of 2012 concerning the Juvenile Justice System, at the level of investigation, prosecution and examination of children's cases in district courts, diversion must be sought, based on a Restorative justice approach.

Settlement using penal mediation must be used in every criminal case involving children in it by taking into account the best interests of the child. With the deliberation between the perpetrator and the victim, it is hoped that an agreement will be reached that results in substantive justice, true justice because it contains the wishes of the disputing parties.

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