

## Implementation of Diversion in Handling Criminal Cases Violence against Children in Conflict with The Law

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**Abstract.** *The purpose of this study is to examine and analyze the implementation of diversion and its obstacles in handling cases of criminal acts of violence against children in conflict with the law. In this writing, the author uses the Sociological juridical method or an approach with direct surveys in the field and secondary data through library studies with research specifications in the form of descriptive analysis. One of the efforts to analyze and explain legal problems related to objects with a comprehensive and systematic description of everything related to the diversion of children in conflict with the law, protection of children in conflict with the law, namely through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The existence of the Law on the Criminal Justice System in its implementation there is a requirement to uphold justice for children in conflict with the law, namely by implementing restorative justice as one method of resolving child cases in Indonesia. The purpose of such juvenile justice is operationally played by law enforcement officers, in this context to law enforcement officers as regulated in Law No. 2 of 2002 concerning the Indonesian National Police is given the widest possible freedom and in all examination improvements to exercise discretion. The implementation of diversion is motivated by the desire to avoid negative effects on the soul and development of children by 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; is the authority of law enforcement officers who handle criminal cases.*

**Keywords:** *Children; Examination; Implementing; Justice.*

### 1. Introduction

In cases where children are perpetrators of crimes, this is a matter of concern. specifically for law enforcement officers in dealing with it, therefore efforts are needed prevention of handling children in conflict with the law is necessary get a lot of attention. Children who break the law or are usually called with children in conflict with the law (ABH) in Indonesia tend to increasing, recently there have been frequent cases of theft accompanied by violence, rape and abuse.

One of the protection efforts for children in conflict with law, namely through Law Number 11 of 2012 concerning the Legal System Juvenile Criminal Justice. The Existence of the Law on the Criminal Justice System in its implementation there is a requirement to enforce a justice for children in conflict with the law, namely by implementing

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restorative justice as a method of resolving children's cases in Indonesia.

The SPPA Law provides more legal protection for ABH= because of several legal provisions that were not previously regulated in Juvenile Court Law. This law is a legal instrument in the implementation of criminal justice for children. In handling children who in conflict with the law, restorative justice becomes an important approach and beneficial. This approach focuses on recovery and reconciliation, as well as pay special attention to the needs of children as perpetrators and children as a victim of a crime. The purpose of the juvenile criminal justice system in principle proportionality is to be able to advance the welfare of children, which the purpose of proportionality is to restrain the use of sanctions, most of which expressed in terms of rewards commensurate with their weight violaion of the law but also taking into account the circumstances his personal.

The operational objectives of juvenile justice are played out by law enforcement officers, in this context to law enforcement officers as regulated in Law no. 2 of 2002 concerning The Republic of Indonesia National Police is given the widest possible freedom and in all increases in inspection to carry out Discretion through the Police investigator; the authority of law enforcement officers who handle crime cases criminal action to take action to continue the case or stop the case, take certain actions in accordance with its policies.

The implementation of diversion is motivated by the desire to avoid negative effects. on the child's soul and development through his involvement with the system criminal justice. The implementation of diversion by law enforcement officers is based on the authority of law enforcement officers is called discretionor Discretion; is the authority of law enforcement officers handling criminal cases.

One of the solutions that can be taken in handling criminal cases Juvenile punishment is a restorative justice approach, which is implemented by means diversion. Restorative justice is a resolution process that conducted outside the criminal justice system (*Criminal Justice System*) with involving victims, perpetrators, families of victims and perpetrators, the community and other parties who are interested in a criminal act that has occurred to realize agreements and settlements.<sup>4</sup>Restorative justice is considered a scheme new thinking or paradigm in viewing a crime done by someone.

In connection with this topic, to further research and pour it into writing legal works with the aim of writing for knowing how to implement diversion in handling criminal cases crimes of violence against children in conflict with the law and what become an obstacle to the implementation of diversion in handling criminal cases violence against children in conflict with the law.

## **2. Research Methods**

The approach used in this research is the legal method. Sociological or approach with direct surveys in the field and secondary data through a literature study with research specifications in the form of descriptive analysis. One of them an attempt to analyze and explain the legal problems that relates to objects with a comprehensive and systematic description regarding all matters relating to the diversion of children in conflict with law.

## **3. Results and Discussion**

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### 1. Implementation

There are various opinions expressed by experts and academics about the meaning of implementation. This needs to be explained so that understanding about implementation can be synchronized from the research concept to a policy or regulation that is the focus main in this research. Because implementation is an activity that important part of the entire policy planning process. The definition of This implementation can be seen in several opinions below.

According to Horn (Tahir, 2014:55), "implementation means actions carried out by both individuals/officials or government or private groups directed at achieving the goals outlined in the policy".

Ekawati (Taufik and Isril, 2013:136) stated, "that the definition implementation explicitly includes actions by private individuals/groups (private) and public that are directly related to achieving a series of continuous goals continuously in previously established policy decisions"

### 2. Diversion

Diversion is a term that comes from the English word "diversion". which refers to diversion. Then in Indonesia it is called diversion. In In the legal context, diversion is an effort to divert or placing child criminals out of the justice system criminal. The Juvenile Criminal Justice System has been regulated in Law No. 11 In 2012 in Article 1 number 7, diversion is the transfer of case settlement Children from the criminal justice process to processes outside the criminal justice system.

According to M. Nasir Djamil, in his book "Children are not to be punished" Diversion is the transfer of a child who is suspected of committing a case to be resolved criminal acts from formal criminal proceedings to peaceful resolution. In the process diversion, victims, defendants and related parties such as family, community, child's social counselor, police, prosecutor, or judge participate to achieve better solutions for children.

The goal of diversion is to achieve peace between the victim and children, avoiding deprivation of liberty for children, and encouraging the role of society. Diversion in its implementation is carried out by law enforcers which is based on the authority of law enforcers, which is called discretion.

In the SPPA Law it is explained that Restorative Justice is intended to avoid and keep children away from getting caught up in legal problems and it is hoped that the child can return to the social environment in a normal way. The process which is intended to create Restorative Justice for children as well as for the victims. Restorative Justice is an approach in resolving criminal cases focusing on justice and balance between the perpetrator and the victim. It can be interpreted that this approach takes into account the rights of the rights of both parties equally.

### 3. Criminal acts

According to Moeljatno, a criminal act is an act that is prohibited by a legal rule, the prohibition of which is accompanied by a threat or sanction in the form of certain criminal penalties for anyone who violates the prohibition.

The elements of a crime are formulated more specifically and in detail. in the Criminal

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Code. For example, for a crime of theft, the article of the law the invitation that regulates theft will include the following elements: anything that must be fulfilled, such as the act of taking other people's things, the purpose of possessing the goods unlawfully, there is criminal threats, and so on. Criminal acts are divided into crimes

listed in Book II and the violations listed in Book III Criminal Code. Criminal acts are divided into formal and material. Formal criminal acts based on written rules, while material is related to aspects substance of crime.

#### 4. Violence

The problem of violence is a social problem that is always interesting and demands serious attention from time to time. Moreover, according to general assumptions and several results of observations and research by various parties, there is a tendency for the development of an increase in certain forms and types of violence, both in quality and quantity. Talking about the concept and understanding of violence itself, there are still difficulties in providing a clear definition because there are still limitations to the understanding that is generally agreed upon. Violence also has different meanings based on the opinions of different experts and scholars.

In the legal sense, an act of violence according to Sue Titus Reid as quoted by Topo Santoso and Eva Achjani Zulfa is:

An act or deed that is legally defined, unless the elements established by criminal law or criminal law have been presented and proven through a reasonable doubt, that a person cannot be charged with having committed an act or deed that can be classified as an act of violence. thus an act of violence is an intentional act or a form of action or deed that is negligence, all of which are violations of criminal law, which are carried out without any defense or basis of truth and are sanctioned by the State as a serious crime or a minor violation of the law.

#### 5. Children

The definition of a child in Law Number 13 of 2003 concerning Manpower is that a child is any person under the age of 18 (eighteen) years.<sup>9</sup>And also the definition of a child in Law No. 17/2016 concerning the Second Amendment to Law No. 23/2002 concerning Child Protection, that a child is a person who is not yet 18 (eighteen) years old, including a child in the womb.

#### 4. Conclusion

Diversification ideas and arrangements are in accordance with internationally recognized instruments. international, namely paying attention to child welfare because of diversion is an educational juvenile justice process because it does not hurt children the development of the child's soul due to stigmatization or labeling so that provide opportunities for children to improve themselves on the basis of own will without any coercion but rather recommendation. Strengthening community participation in the implementation of diversion by means of socialization to the community that there are cases that can be resolved by Diversion needs to be carried out so that there is no negative response from the community implementation of diversion.

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