

LEGAL CONSTRUCTION IN DIVERSION IMPLEMENTATION IN CHILDREN'S CRIMINAL ACT

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ABSTRACT

The implementation of diversion has not been carried out in accordance with existing provisions. Criminal acts involving children dealing with laws that are very likely to be attempted diversion, but due to lack of human resource capacity of law enforcement officials to convince victims of the impact of diversion on children, and there are some diversions that do not get assistance from Correctional Guidance. The obstacle faced by investigators in carrying out diversion against children is the lack of coordination between agencies that carry out the diversion, in addition to the lack of public trust in the implementation of diversion rules. Although it has been regulated in the Law, the idea of diversion is still hindered by the view of people who tend to be grudging and want to retaliate against children who commit criminal acts, without thinking about the impact that the child will face. Diversion is a very important policy applied to protect children from the formal justice process. But sometimes the authorities are still hesitant to run it. This is because the demands of the community, politics, or others are taken into account by the apparatus. The apparatus is also afraid of being blamed if the child repeats his actions later on. The community is also still pessimistic about apparatus diversion policies that will harm the interests of certain parties. Formulation of criminal mediation in the future, in material criminal law substance related to criminal mediation, can be included or outside the general rules of mediation. It covers the type of criminal offense resolved by criminal mediation namely a minor criminal act with the crime caused in a very small crime or criminal act heavy with the restrictions set by the legislator by paying attention to the sense of justice in the community. Criminal mediation can delay the conduct of investigations, prosecutions and trials. Criminal mediation is as a reason for eradicating investigations or prosecutions, criminal penalties that take into account criminal mediation as a factor that mitigates criminal prosecution or does not impose penalties or elimination of criminal penalties for longer. In formal criminal law, the substance related to criminal mediation can be regulated in the reason for termination of prosecution, including the termination of investigations, diversionary authority of law enforcement officers for child crimes. The formulation of the consequences or legal consequences of settlement is done through criminal mediation and criminal mediation institutions.

Keywords: Legal Construction, Diversion, Substance and Legislation Formulations

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A. Background

The State of Indonesia is a state of law not only based on mere power, but also based on Pancasila and the 1945 Constitution of the Republic of Indonesia (RI 1945 Constitution). This means that the State of Indonesia upholds human rights and guarantees all its citizens at the same time its position in law and government, and must uphold the law and government without exception.

Even in the case of law, the legal treatment between adults and children is distinguished, both regarding their detention and the criminal sanctions imposed. The children are subject to sanctions half of the sanctions for adults. This is intended to uphold the law consistently to better guarantee legal certainty, justice and truth, rule of law and respect for human rights, both by ratification of international conventions and enhancing the protection and enforcement of human rights in a free and independent judicial process

Child delinquency is always increasing every year. If observed deeply, the development of criminal acts committed by children so far, both from the quality and modus operandi, are felt to have disturbed all parties, especially the parents. The phenomenon of increasing acts of violence committed by children, as if not directly proportional to the age of the perpetrator. In addition, various efforts to prevent and overcome child delinquency need to be done immediately. One of the efforts to prevent and overcome child delinquency (child criminal politics) is currently through the implementation of a juvenile justice system. The purpose of implementing a juvenile justice system is not solely aimed at imposing criminal sanctions on children who have committed criminal acts, but is more focused on the rationale that the imposition of sanctions is a means of supporting the realization of child welfare of perpetrators.³

The definition of a child nationally is based on the age limit of children according to criminal law, civil law, customary law, and Islamic law. Internationally, the definition of children is contained in the United Nations Convention on Children or the United Nations Convention on Right of the Child.

³ Andi Hamzah, *Sistem Pidana dan Pemidanaan Indonesia dari retribusi ke reformasi*. Jakarta: Pradnya Paramita, 1985, page. 9

According to Nicholas Mc. Bala in his juvenile justice system, he said that⁴:

"Children are periods between birth and the beginning of maturity. This period is a period of life development, also a period of limited ability including limitations to endanger others. "

Therefore, children are easily affected by lawlessness or criminal acts that are strongly influenced by several other factors outside the child such as association, education, playmates, etc. Since criminal acts committed by children in general are a process of imitating or being influenced by actions, negative from adults or people around them. When the child is suspected of committing a criminal act, the formal justice system that ultimately places the child in prisoner status certainly brings considerable consequences in terms of child development.

Crimes committed by children are serious problems faced by every country. In Indonesia, the problem is mostly raised in the form of seminars and discussions held by government agencies and other relevant institutions. The tendency of increasing violations committed by children or perpetrators of young age that lead to criminal acts, encouraging efforts to overcome and handle them, especially in the field of criminal law (children) and their programs. This is closely related to the special treatment of perpetrators of juvenile crime.

The Diversion process is carried out through deliberation by involving the Child and his/her parents, victims and/or parents, Community Counselors, and Professional Social Workers based on the Restorative Justice approach.

The philosophy of the criminal justice system of children is to prioritize protection and rehabilitation of child perpetrators (emphasized the rehabilitation of youthful offender) as people who still have a number of limitations compared to adults. Children need protection from the state and society in the long term⁵. To the children who have already become perpetrators of a criminal act, the strategy of the criminal justice system is needed to try to minimize the intervention of the criminal justice system. ⁶

Children who violate the law or commit criminal acts are strongly influenced by several other factors outside the child such as relationships, education, playmates and so on. To protect children from the influence of the formal process of the criminal justice system, human thoughts or legal and humanitarian experts arise to make formal rules for the act of

⁴Marlina, *Peradilan Pidana Anak Di Indonesia*, PT. Refika Aditama, 2009, page. 32-36

⁵ Nicholas M.C. Bala dan Rebecca Jaremko Bromwich, *Tindak Pidana Anak*, Jakarta: Rineka Citra, 2002, page. 5

⁶ Haines dan Drakeford, *Peradilan Anak (terjemahan ke bahasa Indonesia)*, Jakarta: Erlangga, 1998; 73

removing (removing) a child who violates the law or commits a crime from the criminal justice process by providing another alternative which is considered better for children. Based on this thought, the concept of diversion was born which in Indonesian terms is called diversion.

The concept of diversion is based on the fact that the criminal justice process against 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 as children are considered evil, so it is better to avoid them outside the criminal justice system. The United Nations Minimum Standards Rules for the Administration of Juvenile Justice ("The Beijing Rules") points 6 and 11 contained statements about diversion, namely as a process of transferring children in conflict with the law from the criminal justice system to the informal process, such as returning to a social institution, either government or non-government.⁷

Consideration is carried out by the court of diversion, namely the philosophy of the criminal justice system of children to protect and to rehabilitate (protection and rehabilitation) children of perpetrators of crimes. Diversion actions are also carried out as an effort to prevent a child perpetrator from becoming an adult criminal. This child prevention effort is what brings law enforcement officers to take discretionary authority or in the United States is often referred to as the de-institutionalization of the formal criminal justice system.

This is what drives the diversion idea especially through the concept of Restorative Justice to be a very important consideration in resolving criminal cases committed by children. A child who commits a crime must be tried in a special court of a child who is in the general court environment, with a special process and special officials who understand the problem of the child, ranging from arrest, detention, trial and coaching process. Meanwhile, from the perspective of criminal science, believes that criminal imprisonment (*delinkuen*) tends to harm children's mental development in the future. This detrimental tendency is the result of criminal imprisonment effects, especially imprisonment, which is in the form of stigma. Social protection law requires the elimination of criminal liability (error) and is replaced by its place of view on anti-social actions.

B. Problem Formulation

What is legal construction in the implementation of diversion to the child offenders?

⁷ *Opcit*, And Hamzah, page. 20

C. Theoretical Framework

a. Legal System Theory

According to Lawrence Meir Friedman, the success or failure of law enforcement depends on three main things, namely Legal Substance, Legal Structure / Legal Institution and Legal Culture.

1) Substance

What is meant by the substance is the rules, norms and patterns of real human behavior that are in that system. So the substance of the law concerning the prevailing laws and regulations that have binding power and become a guideline for law enforcement officers. Legal Substance in Lawrence Meir Friedman's theory is referred to as a substantial system that determines whether or not the law can be implemented. Substance also means products produced by people who are in the legal system that includes the decisions they make, the new rules they form. Substance also includes living law, not only the rules in the law (law books). As a country that still adheres to the Civil Law System or the Continental European system (although some laws and regulations have also adopted the Common Law System or Anglo Saxon) it is said that the law is written rules while unwritten rules are not legally stated. This system affects the legal system in Indonesia. One of the influences is the principle of Legality in the Criminal Code. In Article 1 of the Criminal Code is determined "there is no criminal act that can be punished if there are no rules governing it". So that whether or not an act is imposed is subject to legal sanctions if the act has obtained its regulation in the legislation. Lawrence Meir Friedman's Second Theory,

2) Structure

The structure of the legal system consists of elements of the number and size of the court, its jurisdiction (including the types of cases that are authorized to be examined), and the procedure for appeals from other courts. The legal system, if viewed from its structure, is more directed towards institutions (institutions), such as the legislature, executive, and judiciary, how these institutions carry out their functions. Structure means also how many members sit as legislators, what the president may or may not do, how law enforcement officers carry out their duties and others. In other words, the structural system determines whether or not the law can be implemented properly.

The structure also means how the legislative body is organized, what the president may and may not do, procedures are followed by the police and so on. So the structure (legal

structure) consisting of existing legal institutions is intended to carry out the existing legal instruments.

Legal Structure/Legal Institution in Lawrence Meir Friedman's theory is referred to as a Structural system that determines whether or not the law can be implemented properly. The legal structure based on Law No. 8 year 1981 includes; starting from the Police, Attorney General's Office, Court and Criminal Executing Agency (Lapas). The authority of law enforcement agencies is guaranteed by the Law. Therefore, in carrying out their duties and responsibilities does not bounded to the the influence of government power and other influences. There is an adage stating that "*fiat justitia et pereat mundus*" even though the world is collapsing the law must be upheld. The law cannot run or be upright if there are no law enforcement officers who are credible, competent and independent. How good is a law if it is not supported by good law enforcement officials, then justice is only wishful thinking. The weak mentality of law enforcement officials has resulted in law enforcement not working properly. Many factors influence the weakness of the mentality of law enforcement officers, including the weak understanding of religion, the economy, the recruitment process that is not transparent and so forth. So that it can be emphasized that law enforcement factors play an important role in the functioning of the law. If the regulations are good, but the quality of law enforcement is low, there will be problems. Likewise, if the regulations are bad while the quality of law enforcement is good, the possibility of problems arising is still open.

3) Culture

Lawrence Meir Friedman's Third Theory, Legal Culture or Legal Culture according to Lawrence Meir Friedman is a human attitude towards the law and the legal system of beliefs, values, thoughts and expectations. Legal culture is the atmosphere of social thinking and social forces that determine how the law is used, avoided, or misused. Legal culture is closely related to community legal awareness. The higher the legal awareness of the community, the better the culture of law will be and can change the mindset of the public regarding the law so far. Simply put, the level of community compliance with the law is one indicator of the functioning of the law. The relationship between the three elements of the legal system itself is powerless, like mechanical work. Structure is like a machine, substance is what is done and produced by a machine, while legal culture is anything or anyone who decides to turn on and turn off the machine, and decide how the machine is used. Associated with the legal system in Indonesia, the Friedman Theory can be used as a benchmark in measuring the law enforcement process in Indonesia. The police are part of the structure together with the organs

of prosecutors, judges, lawyers and correctional institutions. The interaction between the components of the law enforcement determines the legal structure. Even so, the upholding of the law is not only determined by the strength of the structure, but also related to the culture of law in society.

Legal culture is more directed to the attitudes of society, public trust, values embraced by society and their ideas or expectations of the law and the legal system. In this case, legal culture is an illustration of attitudes and behavior towards the law, as well as the overall factors that determine how the legal system obtains a suitable place and can be accepted by citizens in the cultural framework of society. The higher the legal awareness of the community, the better the culture of law will be and can change the mindset of the people so far. Simply put, the level of community compliance with the law is one indicator of the functioning of the law.⁸

b. Legal Effectiveness Theory

Legal effectiveness theory was put forward by Bronislaw Malinowski and Soerjono Soekanto. Bronislaw Malinowski presents a theory of the effectiveness of social or legal control. Bronislaw Malinowski presents the theory of legal effectiveness by analyzing three problems which include:

- 1) In modern society, social order is maintained by, among other things, a compelling system of social control, namely law, to implement it, the law is supported by a system of instruments of power (police, courts, etc.) organized by a country.
- 2) In primitive societies such instruments of power sometimes do not exist.
- 3) Thus there is no law in primitive societies.⁹

Bronislaw Malinowski analyzed the effectiveness of law in society. Communities can be divided into 2, namely modern society and primitive society. Modern society is a society with a broad market-based economy, specialization in industry and the use of advanced technology. In modern society, the law made and established by the competent authority is enforced by the police, the courts and so on, while primitive society is a society that has a simple economic system and in primitive societies do not know the tools of power.¹⁰

⁸ <https://fidianurulmaulidah.wordpress.com/2014/05/18/sistem-hukum-menurut-laurence-m-friedman/>

⁹ Koentjaraningrat dalam H. Halim HS, Erlies Septiana Nurbani, *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*, Raja Grafindo Persada, Jakarta, 2014, page. 305

¹⁰ *Ibid*

Soerjono Soekanto said that effective is the extent to which a group can achieve its objectives. The law can be said to be effective if there is a positive legal impact, at that time the law achieves its goals in guiding or changing human behavior so that it becomes legal behavior. In connection with the issue of legal effectiveness, legal identification is not only with the element of external coercion but also with the court process. The threat of coercion is an absolute element so that a rule can be categorized as a law, so of course this element of coercion is closely related to whether or not a rule or rule of law is effective.¹¹

Legal effectiveness theory according to Soerjono Soekanto is that the effectiveness or failure of a law is determined by 5 (five) factors, namely¹²:

1. The legal factor (law).
2. Law enforcement Factors, namely parties that form or apply the law
3. Facilities Factors that support law enforcement.
4. Community factors, namely the environment in which the law applies or is applied.
5. Cultural factors, namely as a result of work, creativity and taste based on human intentions in the life relationship.

The five factors above are closely related, because it is the essence of law enforcement, it is also a measure of the effectiveness of law enforcement. In the first element, it determines whether the written law can function properly or not. It is dependent on the rule of law itself.

Legal effectiveness theory put forward by Soerjono Soekanto is relevant to the theory put forward by Romli Atmasasmita, namely that the factors that hinder the effectiveness of law enforcement not only lies in the mental attitude of law enforcement officers (judges, prosecutors, police and legal counsel) but also lies in factors of legal socialization that are often overlooked.¹³

According to Soerjono Soekanto, the measures of effectiveness in the first element are:

- 1) The existing regulations concerning certain areas of life are systematic enough.

¹¹ Soerjono Soekanto, *Efektivitas Hukum dan Penerapan Sanksi*, Bandung : CV. Ramadja Karya, 1988, page 80.

¹² Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, Jakarta : PT. Raja Grafindo Persada, 2008, page. 8.

¹³ Romli Atmasasmita, *Reformasi Hukum, Hak Asasi Manusia & Penegakan Hukum*, Bandung :Mandar Maju, 2001, page. 55.

- 2) The existing regulations regarding certain areas of life are already quite synchronous, hierarchically and horizontally there is no contradiction.
- 3) Qualitatively and quantitatively the regulations governing certain areas of life are sufficient.
- 4) Issuance of certain regulations is in accordance with existing juridical requirements.¹⁴

Criminal liability for children and the age of adult criminal responsibility (minimum age of criminal responsibility and age of criminal responsibility) in some foreign countries.¹⁵

Country	Minimum Age	Age of Criminal Responsibility
Australia	10	6,17
Austria	15	19
Belgium	14	18
Denmark	14	18
England	10	18
France	13	18
Germany	14	18
Hongaria	14	18
Italia	14	18
Japan	14	20
Dutch	12	18
New Zealand	14	18
Rusia	14,16	18

The age limit provisions that can be submitted to the court in the Indonesian child criminal system in the juvenile court law:

1. Minimum age limit for children who can be put on trial
2. Child age can only be judged by court
3. The age limit of children who can be subject to criminal / action
4. Maximum age limit for children, to be accountable

Minimum age limit for children to be able to submit a child court trial in court law is 8 years old.

The principle of the formation of legislation in the formulation of the diversion idea

¹⁴ Soerjono Soekanto, *Penegakan Hukum*, Bandung : Bina Cipta, 1983, page. 80.

¹⁵ Setya Wahyudi, Disertasi *Implementasi ide diversifikasi dalam Sistem Peradilan Anak*, Undip, 2010

The principle of establishing legislation	a description of the principle of the formation of statutory regulations in the formulation of the diversion idea
The principle of clarity of the purpose of the diversion idea has a clear and intended goal	child protection by transferring the court process so that children are not negatively affected by the court process for children
Institutional principles for proper forming organs	the formulation of the diversionary ideas must be carried out by the institution / official forming the legislative regulations
Principle of suitability between type and material content	the formulation of the diversionary idea is expected to be effective because it is made in accordance with the basics of philosophy, juridical, sociological
Principles of usefulness and usefulness	formulation of diversion ideas is made to be beneficial for the protection of children and for the benefit of the child's future
The principle of clarity of formulation	the formulation of diversionary ideas is made in accordance with the technical requirements of systemic laws and regulations and the choice of words or terminology and legal language is clear and understandable, so as not to reflect various interpretations in its implementation.
The principle of the content of the role of the role in the formulation of the diversion idea	a description of the principle of the content of the formation of legislation in the formulation of the diversion idea
Guiding principle	the idea of diversion can function to provide protection and child protection, and diversion programs can create peace of the perpetrators and victims
Humanitarian principle	the idea of diversion can be a means of protection and protection of human rights and the dignity of children
Family principle	the implementation of the diversionary idea is preceded by deliberation to reach consensus between the perpetrator / person / victim and the victim
Nusantara Principle	the contents of the formulation of the diversion idea always pay attention to the interests of all children in the territory of Indonesia
Diversity in unity Principle	the formulation of diversion ideas was made in general to accommodate the diversity of population, religion, ethnicity, and class, special regional and cultural conditions
Justice Principle	The diversion idea programs are expected to reflect proportional justice for every citizen without exception
The principle of equality in law	Material formulation of diversion ideas does not distinguish based on background, religion, social

	tribe etc.
The principle of order and legal certainty	formulation of the diversionary idea in the form of law so that it can lead to orderliness in society through guarantee of legal certainty
Principle of balance, harmony, harmony	the formulation of diversionary ideas is made without leaving to reflect the balance, harmony and harmony between the interests of individuals and society

The idea of diversion is based on comparative studies

In Australia there is a criminal act of child law in which the law gives the authority of law enforcers to carry out diversion against child perpetrators. Rene David Brierley said that the purpose of a comparative law study is to understand better and to develop national law, understanding the laws of the nations, creating good relations / atmosphere for the development of international relations.

Provisions of criminal conditions are actions that fulfill the formulation of laws that are against the law and the ability to be accountable by people as well as dolus or culpa (there is no reason for forgiveness). The aspects considered in criminal imposition are the terms of punishment covering aspects of victims and aspects of perpetrators. In a criminal act of a child against a minor criminal act of mediation carried out at the stage of investigation and prosecution, it can lead to termination of prosecution. A serious criminal offense, the mediation carried out at the stage of investigation and prosecution must be passed on to the court and the judge assesses the outcome of the mediation in a criminal case to establish a sentence or forgive the perpetrator. Legal mediation initiative. Victims and perpetrators of crimes are given the freedom to determine whether to conduct mediation or not. Law enforcers are limited to minor cases that always have criminal mediation. Mediation carried out in the parenting institution has an impact on the reduction of punishment, changes in the type of sanction to the provision of conditional release.

Legislation should also offer opportunities to make clear decisions on criminal mediation agreements with different circumstances and varying degrees in the criminal law mechanism. From the outset it should be clear what types of cases can be resolved outside the court. The law must provide a clear deadline for how long after the crime takes place fulfilling the obligations contained in the agreement agreed between the perpetrator and the victim. Legislation must regulate the procedures and time the contents of the criminal can be considered. Legislation must regulate the procedure and time to fulfill the obligations contained in the agreement agreed between the perpetrator and the victim. Criminal law

policy in resolving conflicts between perpetrators and victims of criminal acts through penal mediation.¹⁶

Criminal law reform or penal reform needs to be done to accommodate reasoning mediation in resolving conflicts between perpetrators and victims of crime, especially by developing a restorative justice idea. Criminal mediation is also developed to overcome rigidity or formality in the system that applies to criminal law enforcement. Rigidity in criminal law enforcement led to the accumulation of cases and the increase in the number of criminal offenders in the correctional institutions, causing the capacity of the penitentiary institutions to exceed the capacity to ultimately lead to the failure of prisoners and when they left the prison they became criminals again. The current formulation of criminal law recognizes the resolution of conflicts between perpetrators and victims of crimes outside the courts for criminal cases, contained in the national and local laws and regulations. The formulation of national legislation regulates the resolution of conflicts between perpetrators and victims of crimes for settlement outside the court carried out by the police as a form of discretion. There is also a form of payment of the maximum fine for criminal acts that are threatened only with a fine of fines which is the reason the case is not transferred to the court.

Generally, non-court settlements in national legislation do not accommodate mediation as a form of settlement of criminal cases. Although in various legislation that includes criminal sanctions regulating alternative dispute resolution in which there is mediation, the alternative dispute resolution which is intended to resolve civil cases, regional regulations governing the resolution of criminal cases regulate mediation as a form of conflict resolution between perpetrators criminal acts of mediation and victims of criminal acts. This is inseparable from the material arrangement in the regional agreement generally accommodating the customary settlement mechanism.

Normative criminal law enforcement is carried out through the justice mechanism, but law enforcement officers in this case the police often apply discretion in resolving criminal cases in minor crimes, mediation is carried out at the stage of investigation and prosecution, can cause prosecution to stop. A serious criminal act, the criminal mediation carried out at the stage of investigation and prosecution must be forwarded to the trial and the judge assesses the results of the mediation in criminal cases to apply the law or forgive the perpetrator. Criminal mediation initiatives can be carried out by victims, perpetrators of criminal acts or law enforcement officers. Victims and perpetrators of crimes are given the freedom to

¹⁶ Trisno raharjo, barda nawawi arif, paulus hadisuprpto, makalah *Ide diversi berdasar kajian komparasi*, Undip, 2011

determine whether or not to conduct mediation. Law enforcement officials are limited to minor cases to always be in possession of criminal mediation. Mediation carried out in the correctional institutions has an impact on the reduction of punishment, changes in the type of criminal sanctions and the provision of conditional release.

Legislation should also offer opportunities to make clear decisions on criminal mediation agreements with different circumstances and varying degrees in the criminal law mechanism. From the beginning, it was clear what kind of cases could be settled outside the court. The law must provide a clear deadline in the form of a long time after the crime of criminal mediation can be considered. Legislation must regulate the procedures and time to fulfill the obligations contained in the agreement agreed upon by the legal consequences of various ways of criminal mediation carried out.¹⁷

D. Research Methods

Research is a scientific activity related to analysis and construction that is carried out methodologically, systematically, and consistently within a certain framework.¹⁸ This type of research is normative research with the approach used in this research is a statute approach because the use of legislation and regulation approaches focuses on literature study which means that it will examine and examine the existing and applicable legal rules. In this study requires legal material-legal material because it will function to supplement and support legal materials in library research (library research). The Data Sources used were:

1. Secondary Data

Data that is not directly obtained from the source but through literature search, consisting of;

- a. Primary legal material is legal material derived from binding legal rules, namely:
 - 1) The 1945 Constitution
 - 2) The Penal Code
 - 3) Law Number 35 of 2014 concerning the Child Criminal Justice System
 - 4) Law Number 4 of 1979 concerning Child Welfare
 - 5) Law Number 23 of 2003 concerning Child Protection
- b. Secondary Legal Materials, are legal materials that provide explanations and instructions to primary materials, such as:
 - (1) Books (Literature)

¹⁷ Trisno raharjo, Disertasi *kebijakan hukum pidana dalam penyelesaian konflik antara pelaku dan korban tindak pidana melalui mediasi penal*, Universitas Gajah Mada, 2011

¹⁸ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta : Penerbit Universitas Indonesia : 1986, page 42

(2) Scientific articles, legal articles and scientific writings related to the object of research.

- c. Tertiary Legal Materials, namely legal materials that will provide guidance on primary legal materials and secondary legal materials derived from legal dictionaries, news, magazines, newspapers and the internet.

This research was conducted with data analysis method in normative analysis, is a way of interpreting and discussing legal materials based on the understanding of law, legal norms, legal theories and doctrines relating to the subject matter of the dissertation research. Legal norms are needed as a major premise, then correlated with relevant facts (legal facts) which are used as a minor premise and through the syllogism process conclusions will be obtained against the problem.¹⁹

E. Conclusion

The implementation of diversion has not been carried out in accordance with existing provisions. Criminal acts involving children dealing with laws that are very likely to be attempted diversion, but due to lack of human resource capacity of law enforcement officials to convince victims of the impact of diversion on children, and there are some diversions that do not get assistance from Correctional Guidance. Obstacles faced by Investigators in carrying out diversion against children are the lack of coordination between agencies that carry out the diversion, in addition to the lack of public trust in the implementation of diversion rules. Although it has been regulated in the Law, the idea of diversion is still hindered by the view of people who tend to be grudging and want to retaliate against children who commit criminal acts, without thinking about the impact that the child will face. Diversion is a very important policy applied to protect children from the formal justice process. But sometimes the authorities are still hesitant to run it. This is because the demands of the community, politics, or others are taken into account by the apparatus. The apparatus is also afraid of being blamed if the child repeats his actions later on. The community is also still pessimistic about apparatus diversion policies that will harm the interests of certain parties. Formulations of criminal mediation in the future are:

1. In the material criminal law the substance related to criminal madiasi can be entered or excluded from the rules of mediation covering the type of criminal offense resolved by criminal mediation namely a minor criminal act with the crimes incurred in a very

¹⁹ Sugiyono. *Metode Penelitian Kuantitatif Kualitatif Dan R&D*. Bandung: Alfabeta, 2012, page 10

small criminal offense or a serious criminal offense with stipulated restrictions by law enforcement by paying attention to the sense of justice in society. Criminal mediation can delay the conduct of investigations, prosecutions and trials, criminal mediation as a reason for eradicating investigations or prosecutions, criminal penalties that pay attention to criminal mediation as a factor which reduces punishment or does not result in criminal prosecution or elimination of longer penalties.

2. In formal criminal law, the substance related to criminal mediation can be regulated in the reason for termination of prosecution including termination of investigation, diversionary authority of law enforcement officers for child crimes, formulation of the consequences or legal consequences of settlement through criminal mediation, criminal mediation institutions.

Suggestion

1. Improve quality and professionalism and provide special training in carrying out investigations on children who commit criminal acts in the diversion process, which is a new thing in the criminal justice system of children which was previously not regulated in Law Number 3 year 1997 concerning Juvenile Courts.
2. The government must maximize the functions of social institutions related to the implementation of diversion against children in conflict with the law.
3. The need to provide socialization and understanding in the implementation of diversion, namely the impact on children as perpetrators of crimes and victims of crime, so that people no longer tend to hold grudges and do not think that the diversion is only beneficial to the perpetrators, so the implementation of diversion can be fully supported by the community .
4. Construction of a restorative justice approach: a new criminal philosophy that is different from conventional that puts it against the state. Crime is not seen as a violation of law, but a violation of people per person. Building joint participation between perpetrators, victims and the community in resolving criminal acts.

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