

Effectiveness of Implementing Diversion in Sentencing Case of Beating with Child Perpetrators

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Abstract. *This research aims to find out and analyze the implementation, obstacles and effectiveness in the future regarding diversion in the criminalization of cases of beatings involving child perpetrators because basically, Indonesia is a country of law and as time goes by, there are more and more legal challenges faced by law enforcement officers. .Legal issues seem to be a phenomenon that never subsides in social, national and state life, which now even involves children. Childhood is a vulnerable period in mental conditions where the psychological condition is still unstable, not independent and easily influenced Almost every year, children who become perpetrators of criminal acts always increase and become a special concern for law enforcement officials. For this reason, various efforts to prevent and deal with children in conflict with the law are carried out, including the implementation of the juvenile criminal justice system through a restorative justice system approach. One solution that can be taken in handling juvenile criminal cases is a restorative justice system approach, which is implemented by means of diversion. Diversion itself is the transfer of resolution of children's cases from the criminal justice process to a process outside criminal justice. There are also various cases of child crime, one of which is beatings. Cases of criminal acts of beatings are now increasingly common, such as in the problem which is now being studied by the author and ultimately carrying out diversion based on the Decree on Termination of Prosecution of the Head of the Kendal District Prosecutor's Office Number: Tap-1167/M.3.27/Eoh.2/08/2023 dated 28 August 2023 and Determination of the Diversion Agreement from the Chairman of the Kendal District Court Number: 02/Pen.Div/2023/PN Kdl dated 22 August 2023. This research uses a normative legal approach with research specifications descriptive analytical, secondary data sources and using qualitative analysis. Existing problems are analyzed using legal system theory and progressive legal theory. From the results of the discussion, it can be seen that*

the implementation of diversion in the criminal case of beatings involving child perpetrators in case no. 2/Pen.Div/2023/PN Kdl based on the facts has fulfilled the requirements for diversion, namely, he is threatened with imprisonment for less than 7 (seven) years and is not a repeat criminal act. The diversion process carried out is also in accordance with the Regulation of the Attorney General of the Republic of Indonesia Number: PER-006/A/JA/04/2015 concerning Guidelines for Implementing Diversion at the Prosecution Level.

Keywords: *Beating; Child; Diversion.*

1. Introduction

The Indonesian state is a legal state as regulated in the 1945 Constitution of the Unitary State of the Republic of Indonesia, especially in Article 1 paragraph (3) which reads: "The Indonesian state is a legal state". As time goes by, there are more and more legal challenges faced by law enforcement officials. Legal issues seem to be a phenomenon that never subsides in social, national and state life, which now even involves children. Childhood is a vulnerable period in mental conditions where the psychological condition is still unstable, not independent and easily influenced. Children themselves are part of the young generation as one of the human resources who are the potential and successors of the ideals of the nation's struggle, who have a strategic role and have special characteristics and characteristics, require guidance and protection in order to ensure physical, mental and social growth and development of society as a whole, in harmony, harmony and balance.

In its development and protection, challenges in the form of legal issues are often encountered in society. Almost every year, children who become perpetrators of criminal acts always increase and become a special concern for law enforcement officials. For this reason, various efforts to prevent and deal with children in conflict with the law are carried out, including the implementation of the juvenile criminal justice system through a restorative justice system approach. The aim of implementing the juvenile criminal justice system is not solely aimed at imposing criminal sanctions on children who commit criminal acts, but is more focused on the accountability of the perpetrators towards the victims of criminal acts, for the welfare of the children concerned, without reducing attention to the interests of society.¹One solution

¹ Ananda, Fiska. "Implementation of Diversion as a Legal Protection Effort for Children Perpetrating Crimes". Journal of Legal Sovereignty Vol 1, No 1 (2018), p. 78, url : <http://jurnal.unissula.ac.id/index.php/RH/article/view/2566/1923> accessed December 5, 2023.

that can be taken in handling juvenile criminal cases is a restorative justice system approach, which is implemented by means of diversion.

The restorative justice system is a process of resolving criminal cases involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation. Meanwhile, in the general explanation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is explained that for children's cases before entering the judicial process, law enforcers, families and the community are obliged to seek a resolution process outside of court, namely through diversion based on a restorative justice approach. . Based on Article 1 number 7 of Law no. 11 of 2012, what is meant by diversion is the transfer of resolution of children's cases from the criminal justice process to a process outside criminal justice. Therefore, the application of diversion in handling criminal cases committed by children is very important. This is intended to avoid and distance children from the justice process so as to avoid stigmatization of children in conflict with the law and it is hoped that children can return to a normal social environment. Based on the Regulation of the Attorney General of the Republic of Indonesia Number: PER-006/A/JA/04/2015 concerning Guidelines for Implementing Diversion at the Prosecution Level, it is stated that the Public Prosecutor is obliged to seek Diversion at the Prosecution level.

There are also various cases of child crime, one of which is beatings. The crime of assault itself is regulated in Article 170 of the Criminal Code, namely "Anyone who openly and with concerted force uses violence against people or property, is threatened with imprisonment for a maximum of five years and six months." Beatings are a type of crime that have a negative impact on the victims and result in physical and mental trauma. Cases of criminal acts of beatings are now increasingly common, such as in the problem which is now being studied by the author and ultimately carrying out diversion based on the Decree on Termination of Prosecution of the Head of the Kendal District Prosecutor's Office Number: Tap-1167/M.3.27/Eoh.2/08/2023 dated 28 August 2023 and Determination of a Diversion Agreement from the Chairman of the Kendal District Court Number: 02/Pen.Div/2023/PN Kdl dated 22 August 2023, which is a form of beatings with children as perpetrators and victims.

Based on this description, the author wants to examine this problem in research with the title "Effectiveness of Implementing Diversion in Punishment in Cases of Beatings with Child Perpetrators." The aim of this research is to determine and analyze the implementation of diversion in the criminal case of beatings involving child perpetrators in case no. 2/Pen.Div/2023/PN Kdl and to find out

and analyze the effectiveness of implementing diversion in prosecuting cases of beatings with child perpetrators in future cases.

2. Research Methods

The approach method used in this research is normative legal research. This normative legal research uses a statutory approach and a case approach.² Meanwhile, the research specifications used in this research are analytical descriptive. With data collection methods, literature studies use qualitative analysis.

3. Results and Discussion

3.1. Implementation of Diversion in Sentencing Cases of Beatings with Child Perpetrators (Study of Determining Diversion Agreement No. 2/Pen.Div/2023/PN Kdl)

Article 1 number 7 Law no. 11 of 2012 explains that what is meant by diversion is the transfer of the resolution of children's cases from the criminal justice process to a process outside of criminal justice and is an alternative for resolving children's cases using a restorative justice system approach. The Kendal District Prosecutor's Public Prosecutor carried out diversion in the prosecution of the case of a beating involving a child perpetrator (Study for Determining Diversion Agreement No. 2/Pen.Div/2023/PN Kdl), because apart from fulfilling the conditions for diversion, it is a criminal offense that is punishable by imprisonment under 7 (seven) years and is not a repetition of a criminal act, diversion is something that must be pursued in accordance with the Regulation of the Attorney General of the Republic of Indonesia Number: PER-006/A/JA/04/2015 concerning Guidelines for the Implementation of Diversion at the Prosecution Level that the Public Prosecutor is obliged to undertake Diversion at the Prosecution level.

In 2023, the Kendal District Court itself will determine 2 (two) diversion orders. The first, with the Kendal District Court Determination Number: 1/Pen.Div/2023/PN Kdl dated March 24 2023 involving Children in Conflict with the Law with the initials DHSP who have violated the provisions of Article 362 of the Criminal Code. This diversion reached an agreement that the perpetrator with the initials DHSP was obliged to take part in coaching and training at the Kartini Temanggung Social Rehabilitation Center for People with Intellectual Disabilities for 6 (six) months. And secondly, with the Kendal District Court Determination Number: 2/Pen.Div/2023/PN Kdl dated 22 August 2023 involving

²Marzuki, Peter Mahmud. (2022). Legal Research. Jakarta: Kencana Prenada Media Group. h. 133-136.

Children in Conflict with the Law with the initials AS who have committed criminal cases as in Article 170 Paragraph 2-1 or Article 80 (1) Jo Article 76c Law no. 17 of 2016 concerning the establishment of government regulations in lieu of Law no. 1 of 2016 concerning the second amendment to Law no. 23 of 2002 concerning child protection as amended into Law no. 35 of 2014 concerning amendments to Law no. 23 of 2002 concerning child protection in conjunction with Article 55 Paragraph 1 1 of the Criminal Code. This diversion determination is used in this research.

The alleged article is Article 170 Paragraph 2 1st or Article 80 (1) in conjunction with Article 76c of Law no. 17 of 2016 concerning the establishment of government regulations in lieu of Law no. 1 of 2016 concerning the second amendment to Law no. 23 of 2002 concerning child protection as amended into Law no. 35 of 2014 concerning amendments to Law no. 23 of 2002 concerning child protection in conjunction with Article 55 Paragraph 1 1 of the Criminal Code. So the threat of imprisonment is a maximum of 7 (seven) years or 3 (three) years 6 (six) months. This is an alternative charge, namely there are 2 (two) types of articles alleged. Alternative charges are used because they have a different role, Article 170 of the Criminal Code is a beating where the perpetrators beat the victim together. Meanwhile, under the Child Protection Law, Article 80 in conjunction with Article 55 of the Criminal Code, the perpetrator took turns beating the victim. This case also fulfills 2 (two) diversion requirements, namely:

- The threat is under 7 (seven) years according to the threat of imprisonment under the Child Protection Law Article 80, namely 3 (three) years 6 (six) months;
- It is not a repeat crime because the perpetrator is committing a crime for the first time.

The process of implementing diversion in the punishment of cases of beatings involving child perpetrators in case no. 2/Pen.Div/2023/PN Kdl are as follows:

- After receiving the Notification Letter for the Commencement of the Investigation from the Sukorejo Police Number: SPDP/04/VII/2023/Reskrim dated 28 July 2023, the Head of the Kendal District Prosecutor's Office issued an Order for the Appointment of a Public Prosecutor to Follow the Progress of the Investigation of Children's Cases Number: PRINT-1071A/M.3.27 /Eku.1/07/2023 dated 31 July 2023. Apart from following the progress of the investigation, the Public Prosecutor also monitors the progress of diversion efforts at the investigative level and coordinates with investigators to prevent cases going back and forth.

- Then, because there was no peace between the AS child and the victim during the investigation stage, after accepting the transfer of responsibility for the child and evidence (stage II), the Head of the Kendal District Prosecutor's Office issued an Order for the Appointment of a Public Prosecutor to Settle the Children's Case Number: PRINT-1158 /M.3.27/Eku.2/08/2023 dated 11 August 2023. Settlement of children's cases as referred to includes settlement outside criminal court through diversion or settlement within criminal court. The Public Prosecutor accepts the handover of responsibility for the child and the evidence, then carries out research into the correctness of the identity of the child and the evidence and records the results of the research in the Minutes of Acceptance and Research of the Child and the Minutes of Acceptance and Research of Evidence consisting of 1 branded black jacket greenlight, 1 morta brand blue jacket and 1 x-sefa blue jacket. Which was then sealed and recorded in the evidence register Number: 03/KNDAL/Eku.2/05/2023 dated 11 August 2023.
- On August 14 2023, the Public Prosecutor then carried out diversion efforts by summoning and/or offering to settle the case through diversion to the child and/or parent/guardian as well as the victim or victim's child and/or parent/guardian. In the event that the child and/or parent/guardian as well as the victim or child victim and/or parent/guardian agree to carry out diversion, the Public Prosecutor determines the date for the commencement of Diversion deliberations and records it in the Minutes of Diversion Efforts.
- Because both parties agreed, on August 16 2023 a diversion deliberation was held led by the Public Prosecutor as facilitator and attended by the child and/or parent/guardian as well as the victim or child victim and/or parent/guardian, TPP/Bapas Community Counselor Class I Semarang and Community Figures. This diversion deliberation is recorded in the Diversion Minutes which are signed by the facilitator and the parties present.
- Because diversion succeeded in reaching an agreement, the facilitator or in this case the Public Prosecutor prepared and formulated it in a Diversion Agreement. The Diversion Agreement must be approved and signed by the child and/or parent/guardian as well as the victim or child victim and/or parent/guardian. This diversion agreement states that the child has apologized to the victim and the victim has forgiven him. It was also stated that the AS child's parents/guardians were willing to provide medical assistance to the victim in the amount of Rp. 5,000,000,- (five million rupiah).
- Then, the Head of the Kendal District Prosecutor's Office submitted the Diversion Agreement and Diversion Minutes to the Head of the Kendal District Court where the crime occurred, to request a Determination.

- The decision of the Chairman of the Kendal District Court regarding this diversion was issued on 22 August 2023 with Number: 2/Pen.Div/2023/PN Kdl. This determination then became the author's research material. In the determination, it was stated that the child had apologized to the victim and the victim had forgiven him. It was also stated that the AS child's parents/guardians were willing to provide medical assistance to the victim in the amount of Rp. 5,000,000 (five million rupiah) and the child AS was returned to his parents/guardians to be fostered, educated and returned to school and the evidence was used in another case with the initials RKP committing the crime of beating the victim together with the child AS.
- After receiving the Court Determination Letter, the Head of the Kendal District Prosecutor's Office issued a Decree on Termination of Prosecution Number: Tap-1167/M.3.27/Eoh.2/08/2023 dated 28 August 2023.

The justice system must always prioritize the principle of the best interests of the child, and the punishment process is the last resort (*ultimum remedium*) while not ignoring the child's rights.³ Apart from that, children's cases can be resolved through non-formal mechanisms based on standard guidelines. Forms of non-formal handling can be carried out through diversion as well as a mediation process facilitated by law enforcement at every level to achieve restorative justice. Usually by requiring children who are in conflict with the law to attend education or training at certain institutions in the form of other actions carried out with the aim of providing rehabilitation for the child and the victim. Or if punishment is necessary, the child's rights must not be ignored. So that in the end non-formal handling can be carried out well if it is balanced with efforts to create a conducive justice system.⁴

The criminal justice system is a judicial network that uses material criminal law, formal criminal law and criminal implementation law. However, this institution must be seen in a social context. A nature that is too formal if based solely on the interests of legal certainty will bring disaster in the form of injustice.⁵ So that the criminal justice system does not only pursue formal truth but also material truth

³ Ariani, NV "Implementation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in an Effort to Protect the Interests of Children". *Legal Media Journal* Vol 21, No 1 (2014), p. 108, url : <https://journal.umy.ac.id/index.php/jmh/article/view/1160/1232> accessed December 5, 2023.

⁴ Siregar, VA, Adnan, IM, & Ridwan, M. "Legal Politics in the Implementation of the Juvenile Criminal Justice System in Indonesia". *Journal of Research Innovation (JIP)* Vol 2, No 7 (2021), p. 2301, url : <https://repository.unisi.ac.id/296/> accessed on December 5, 2023.

⁵ Azhar, AF "Application of the Concept of Restorative Justice in the Criminal Justice System in Indonesia". *Court: Journal of Islamic Law Studies* Vol 4, No 2 (2019), p. 138, url : <https://www.jurnal.syekhnurjati.ac.id/index.php/mahkamah/article/view/4936/2469> accessed December 5, 2023.

or values that live and are recognized in society. Diversion uses a consensus deliberation mechanism which is a concrete manifestation of strengthening the laws that have existed in society for a long time. If diversion specifically in this research is analyzed using Friedman's legal system theory that the legal system in its actual operations consists of legal structure, legal substance and legal culture where these elements influence each other in the implementation of law enforcement, then:

1. Legal Structure, all existing legal institutions and their apparatus. In relation to this research, the legal structure is that the Public Prosecutor at the Kendal District Prosecutor's Office is the facilitator of diversion itself, namely reconciling all parties involved in the case and to satisfy all parties, where the way out of diversion itself is to listen to each party and get a solution to the problem. . Diversion must also involve law enforcement at the Kendal District Court to determine diversion which has been successfully carried out by the Public Prosecutor.

2. Legal substance, all legal rules, legal norms and legal principles, both written and unwritten. In this research, apart from being guided by the Criminal Code and Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, diversion efforts and processes are specifically regulated in the Regulation of the Attorney General of the Republic of Indonesia Number: PER-006/A/JA/04/2015 concerning Guidelines for Implementing Diversion at the Prosecution Level.

3. Legal culture, human attitudes towards law and systems

Laws-beliefs, values, thoughts, and hopes. In the form of social thinking and social forces that determine how the law is used, avoided, or misused. Legal culture is closely related to society's legal awareness. The higher the public's legal awareness, the better the legal culture will be and can change people's mindset. The problem at the cultural level that exists in the diversion process in this research is the involvement of the community itself, namely regarding children and victims/child victims. Because in practice, awareness of the community itself without the role of a facilitator, in this case the Public Prosecutor, to encourage the community to carry out diversion is still quite low.

3.2. Effectiveness of the Implementation of Diversion in Sentencing Cases of Beatings with Child Perpetrators in the Future

Effective is a word that describes something/a method/rule that has succeeded in achieving the desired/desired goal. If you want to see the effectiveness of implementing diversion in the future, you can look at the data on the number of child offenders who recidivate (repeat criminal acts). Repetition carried out by

children after previously successful diversion means that the goal of diversion has not been achieved, namely, instilling a sense of responsibility in children.

Whereas, the process of the presence of progressive law is not something that is born without a cause, progressive law is born as part of the process of searching for justice and truth which cannot, never stops.⁶ Progressive laws based on humans have important consequences for creativity. Creativity in the context of law enforcement is not only aimed at overcoming legal lags, overcoming legal inequalities, but is also intended to create legal breakthroughs. It is these legal breakthroughs that can be expected to realize humanitarian goals through the operation of law, to create human happiness.⁷ Satjipto Rahardjo interprets progressive law with the phrase "law is for humans and not vice versa."

In this research, the author asked for the opinions of the parties involved, namely AS children and AS children's parents as well as victims and community figures. Both AS children, AS children's parents and victims agree that diversion can provide justice now and in the future. Because with diversion, AS children can continue their studies and reduce the bad stigma embedded in society. Meanwhile, community leaders view diversion as a form of justice because diversion means that children are not imprisoned and their growth and development can continue well. With the application of the concept of diversion, the existing form of formal justice prioritizes efforts to provide protection for children rather than imprisonment. Because according to Law Number 11 of 2012, children are a trust and gift from Almighty God who have dignity and dignity as complete human beings and to maintain their dignity, children have the right to receive special protection, especially legal protection in the justice system. Apart from that, the victim also received an apology and compensation in the form of medical expenses, which means that restoration to its original condition is not retribution. This effort fulfills justice for both parties, because the highest value of law is the fulfillment of justice. This is in accordance with the opinion that the law is for humans, not humans for the law.

4. Conclusion

The implementation of diversion in criminal cases of beatings with child perpetrators (Study Determining Diversion Agreement No. 2/Pen.Div/2023/PN Kdl) is based on facts that have fulfilled the requirements for diversion, namely,

⁶ Harahap, IS "Legal Protection for Child Victims of Sexual Crimes in a Progressive Legal Perspective". *Legal Media Journal*, Vol 23, No 1 (2016), p. 38, url : <https://journal.umy.ac.id/index.php/jmh/article/view/1924> accessed December 5, 2023.

⁷ Wahyudi, S. "Enforcement of Criminal Justice for Children with a Progressive Legal Approach in the Context of Child Protection." *Journal of Legal Dynamics*, Vol 9, No 1 (2009), p. 31, url : <https://dynamica.Hukum.fh.unsoed.ac.id/index.php/JDH/article/view/52> accessed December 5, 2023.

being threatened with imprisonment for less than 7 (seven) years and not repeated criminal act. The diversion process carried out is also in accordance with the Regulation of the Attorney General of the Republic of Indonesia Number: PER-006/A/JA/04/2015 concerning Guidelines for Implementing Diversion at the Prosecution Level. Apart from that, the author believes that the effectiveness of implementing diversion in punishing cases of beatings involving child perpetrators in the future is the emergence of a sense of responsibility for children who are in conflict with the law so that they do not repeat their actions.

5. References

Books:

Peter Mahmud Marzuki, 2022. *Legal Research*, Kencana Prenada Media Group, Jakarta.

Journals:

Ahmad Faizal Azhar, Application of the Concept of Restorative Justice in the Criminal Justice System in Indonesia. *Court: Journal of Islamic Law Studies*, Vol 4, No 2 (2019);

Fiska Ananda, Implementation of Diversion as a Legal Protection Effort for Children Perpetrating Crimes, *Journal of Sovereign Law*, Vol 1, No 1 (2018);

Irwan Safaruddin Harahap, Legal Protection for Child Victims of Sexual Crimes in a Progressive Legal Perspective, *Legal Media Journal*, Vol 23, No 1 (2016);

Nevey Varida Ariani, Implementation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in Efforts to Protect Children's Interests, *Legal Media Journal*, Vol 21, No 1 (2014);

Setya Wahyudi, Enforcement of Juvenile Criminal Justice with a Progressive Legal Approach in the Context of Child Protection, *Journal of Legal Dynamics*, Vol 9, No 1 (2009);

Vivi Arfiani Siregar, Adnan, & Ridwan, Legal Politics in the Implementation of the Juvenile Criminal Justice System in Indonesia. *Journal of Research Innovation (JIP)*, Vol 2, No 7 (2021).