

Effectiveness of Implementing Diversion in Handling Criminal Acts Committed by Children at the Rembang Police

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Abstract. *Children are an inseparable part of human survival and the survival of a nation and state. In the Indonesian constitution, children have a strategic role which is expressly stated that the state guarantees the rights of every child to survival, growth and development and to protection from violence and discrimination. Therefore, the problem raised by the author is related to how effective the application of diversion is for criminal acts committed by children along with the obstacles and solutions in the application of diversion for criminal acts of children at the Rembang Police. The method used in the study is a sociological juridical theoretical framework used in the theory of child protection and also the theory of legal effectiveness. The conclusion in this study is that not all criminal acts committed by children can be diverted, there are exceptions and also the lack of society in understanding what diversion is.*

Keywords: *criminal; children; diversion.*

1. Introduction

Children are an inseparable part of human survival and the survival of a nation and state. In the Indonesian constitution, children have a strategic role which is expressly stated that the state guarantees the rights of every child to survival, growth and development and to protection from violence and discrimination. Therefore, the best interests of children should be lived as the best interests of humanity.¹ We know and hear the news circulating in the mass media, we often know a violation or unlawful act whose perpetrators are children. Children who, according to their nature, still have a reasoning power that is not good enough to

¹ Aidin Gultom, *Legal Protection for Children in the Juvenile Criminal Justice System in Indonesia*, Refika Aditama, Bandung, 2008, p. 1

distinguish between good and bad actions. In the implementation of the juvenile criminal justice system as stated in Law No. 3/1997, it is stated that it does not realize the interests of children and also the best welfare for children. So that the law does not yet recognize the values of restorative justice. To avoid the juvenile justice process in negative terms that have existed so far, it is necessary to carry out a mechanism for resolving children in conflict with the law that refers to the protection of the rights owned by children. One of the efforts that must be made is to give authority to law enforcement officers in taking policy action in handling the problems of children or children in conflict with the law by not only taking the formal path, but also by stopping or not continuing or releasing them from the trial process or by returning or handing them over to the community and other forms of social service activities. This action is called Diversion. Diversion itself is regulated in Law Number 12 of 2012, in addition to Diversion in the Law, the term Restorative Justice is also introduced. In its development, the birth of the Juvenile Criminal Justice System Law provides the best solution for children in conflict with the law so that children are no longer equated with adults from the level of investigation, inquiry, prosecution to examination in Court. In addition, children can continue their future and can return to society. The Juvenile Justice System Law provides the application of the concept of diversion using a restorative justice approach. Cases of children in conflict with the law, according to data from the Directorate General of Corrections, Ministry of Law and Human Rights, showed an increasing trend in the period 2021 to 2023. As of August 26, 2023, there were almost 2,000 recorded cases of children in conflict with the law. children in conflict with the law. A total of 1,467 children have the status of detainees and are still undergoing the trial process, while 526 children are serving sentences as convicts.² From the data in Rembang Regency itself, in the data I obtained, the number of children who are in conflict with the law from

²<https://www.kompas.id/baca/riset/2023/08/28/meningkatnya-kas-anak-berkonflik-Hukum-alarm-bagi-community-dan-negara>

2021-2023 and the data that was successfully resolved using the application of

No	Kasus	Tahun		
		2021	2022	2023
1	Penganiayaan ringan	1	1	-
2	Pencurian	1	2	-
3	Pencabulan	2	1	2
4	penggeroyokan	1	1	1
5	Kekerasan terhadap anak	-	2	-
	Jmlah	5	7	3
	Pemberlakuan diversi	3	6	1
	Berhasil pemberlakuan diversi	1	-	-

diversion:

It could be that the number of children in conflict with the law continues to increase due to several factors that are the basis for children to commit criminal acts. The involvement of children in criminal cases is a form of exploitation of children for certain interests. Based on the background above, the author focuses on the following problem formulation:

1. How effective is the implementation of diversion in handling criminal acts committed by children at the Rembang Police?
2. What are the obstacles and solutions in implementing diversion in handling criminal acts committed by children at the Rembang Police?

The type of research used in this study is the sociological juridical method, namely identifying and conceptualizing law as a real and functional social institution in the real life system.³In supporting the sociological legal method, direct research was conducted at the Rembang Police regarding the implementation of diversification of criminal acts committed by children. Primary legal materials are legal materials that have general binding force, for example legislation. Secondary data is data obtained normatively through intermediaries in the form of data and information contained in literature books, previous research results, journals and so on which are carried out using the Library study technique as a reference to obtain the data and information needed. In this study, 2 theories were used as the basis for the review, namely the theory of legal protection, which is intended by the theory as a condition where subjectively there is a necessity for the subject to know the process of implementing the law, the theory of legal effectiveness, namely to determine the effectiveness or not in implementing the law in its application.

³Soerjono Soekanto, Introduction to Legal Research, (Jakarta: Publisher University of Indonesia Press, 1986), p. 51.

2. Research Methods

3. Results And Discussion

3.1 The effectiveness of implementing diversion in handling criminal acts committed by children at the Rembang Police.

Basic idea about an object or phenomenon that serves as a foundation or perspective. The basic idea is a worldview (*weltblit*) that is believed in and determines how to view a phenomenon. It functions as a central cognitive resource (main source of observation) that determines the plausibility of a phenomenon, including what the main problem is and how the phenomenon is viewed and interpreted. As a basic idea, the basic idea is more of a thought, a basic idea about something. For example, legal ideals or *rechtsidee* are an ideological structure (ideas) that serve as legal guidelines for achieving desired ideals. As Rudolf Stammler said, legal ideals are guiding stars for the realization of social ideals.⁴ Therefore, the basic idea is always constitutive, namely the basic idea that determines the questions, methods, and interpretations that are considered relevant to the research, or following Gustav Radbruch on the *rechtsidee* line of thought, which according to him functions as a constitutive basis for positive law.

The juvenile justice system is all components of the criminal justice system involved in handling juvenile delinquency cases. First, the police serve as a formal

⁴A Hamid S Attamimi, 1990, *The Role of the President of the Republic of Indonesia's Decrees in the Implementation of State Government*, Postgraduate Faculty, University of Indonesia, Jakarta, p. 308

institution where a juvenile who commits a crime first comes into contact with the justice system, which will also determine whether the juvenile will be released or processed further. Second, prosecutors and parole institutions will also decide whether the juvenile will be released or taken to juvenile court. Third, juvenile justice, is a stage where the juvenile is faced with choices ranging from release to placement in a correctional institution. Finally, the punishment system.⁵

The police institution is the first national institution to intervene with children in conflict with the law. Arrest, detention, interrogation and interrogation are the authority of the police in enforcing the juvenile criminal justice system. In carrying out its duties, the police institution is given the authority of the board of directors. What is meant by the authority of the board of directors is the legal authority in which the police institution has the right to continue or not to continue a case. Based on this authority, the police can divert (divert) a child's case so that the child does not need to face formal criminal court settlement. The purpose of carrying out efforts to handle children who commit crimes with diversion is because the implementation of diversion at the investigation stage provides space to guarantee legal justice for children. However, in its implementation it is not as easy as we imagine, because not all crimes committed by children can be diverted, there are exceptions, namely crimes committed by children with a legal threat of less than 7 years and are not a repetition of the crime. In the implementation of diversion against criminal acts committed by children, there are several references used, starting from: international regulations a. Convention on the Rights of the Child b. The United Nations Standard Minimum Rules for Administration of Juvenile Justice the Beijing Rules c. The United Nations Rules for the Protection of Juvenile Deprived of Their Liberty.

In national regulations, among others: Law no. 2 of 2002 concerning the Republic of Indonesia Police, Law no. 23 of 2002 concerning child protection, Law no. 11 of 2012 concerning the juvenile criminal justice system.

In the implementation of diversion in the jurisdiction of the Rembang Police, it is carried out by presenting the perpetrator, victim or family of the perpetrator and victim, community counselors and third parties or religious figures and other parties involved. Before the diversion, investigators conduct direct interviews to obtain information from the perpetrator related to the motive of the crime committed by the perpetrator, so that it can facilitate investigators in trying to make the diversion successful and reach a peaceful agreement.

⁵Purnianti, Mamik Sri Supatmi, and Ni Made Martini Tinduk, citing Harry E. Allen and Clifford E. Simonsen, 2003, in *Correction in America: An Introduction, Analysis of the Situation of the Juvenile Justice System in Indonesia*, UNICEF, Indonesia, p. 2

In the law on the juvenile criminal justice system (Law No. 11 of 2012), especially in Article 5 paragraph (3), Article 7 paragraph (1) and also Article 29 numbers 1 and 2, it is mandatory to try diversion at the level of investigation, prosecution, and examination of juvenile cases in the district court. However, not all criminal acts committed by children can be diverted. There are several conditions for diversion as stated in Article 6 number (2) of Law No. 11 of 2012, diversion can be implemented in cases where the criminal act committed: is threatened with imprisonment of less than 7 (seven) years; and is not a repeat of the crime.

The purpose of implementing diversion based on the principle of restorative justice is to protect the rights of children as victims and the rights of children as perpetrators. Settlement with the principle of restorative justice in the justice system is only carried out at the investigation stage. In the investigation process, investigators are required to examine child suspects in a family atmosphere. Investigators as law enforcers have a social position. The social position in society held by investigators is the rights and obligations held by investigators. The length of the judicial process undergone by children who commit crimes, from the investigation process at the police to the completion of serving their sentences in correctional institutions, is a picture of a child's sadness. Incidents during the judicial process will be a unique experience for the child's life that is difficult to forget. According to the author, the effective handling of diversion for crimes committed by children is seen from the perspective of legal protection theory, that not all child crimes can be diverted because there are several exceptions to crimes that can be diverted which aim to protect the rights of children because they still have a future and can also learn from the mistakes they have made.

3.2. Obstacles and solutions in implementing diversion for criminal acts committed by children at the Rembang Police

In essence, the provisions of the Criminal Procedure Code relating to investigations are defined as follows. Investigation is a series of investigative actions carried out according to the methods specified in this Law (Criminal Procedure Code) with the aim of seeking and collecting evidence to determine the crime that has occurred and determine the suspect.⁶

Basically, it is an effort to divert the criminal justice process towards a family settlement, which is basically the ethos of the Indonesian nation in resolving problems in a family manner to reach consensus. This is in accordance with the fourth principle of Pancasila, namely "people's sovereignty led by wisdom and prudence in deliberation/representation". In the criminal trial process, there are several problems that become obstacles for investigators to improve their professionalism in investigations. Investigations into criminal acts whose perpetrators are children are carried out by child investigators, based on the

⁶ Article 1 point 2 of the Criminal Code

Decree of the Chief of Police of the Republic of Indonesia which is determined by the appointed official.

Investigations of juvenile delinquents take place in a family atmosphere, and for that reason investigators are required to ask for consideration or advice from Community Guidance in accordance with Law No. 3 of 1997. Examined in a family atmosphere, meaning that when examining a child suspect, investigators do not wear uniforms/service uniforms, and take an effective, active, and sympathetic approach to the obstacles experienced by PPA Polres Rembang investigators in implementing Diversion: The obstacles faced by investigators (Police) in implementing diversion are that sometimes the victim or the victim's family does not agree to a settlement using the diversion method through a restorative justice approach or peacefully and in implementing diversion, the victim's approval is needed to attempt diversion, this is an obstacle for investigators so that its implementation is still less effective.

Efforts to overcome the obstacles that occur in the implementation of diversion by the PPA Investigators of the Rembang Police are by providing an understanding to the perpetrators or victims in relation to the implementation of diversion in handling criminal acts committed by children, because the child perpetrators or victims still have a future that must be achieved for the future and also the addition of facilities and infrastructure that support the implementation of legal protection for children.

CONCLUSION

Based on the research results and discussions that have been described previously, the following conclusions can be drawn:

Handling of Child Cases Carried Out by Investigators of PPA Polres Rembang using the diversion method, that not all criminal acts committed by children can be diverted, there are exceptions to criminal acts committed by children. For investigators, it is not easy to implement diversion because there must be an agreement between the perpetrator, the perpetrator's family and also the victim or the victim's family. The role of the police is very much needed with this research because it is related to the increasingly massive criminal acts committed by children, especially in the Rembang district area. The essence of the police in following up on the occurrence of criminal acts committed by children is very important, especially in providing protection for children because they still have a future for the future.

Obstacles that arise in the implementation of diversion by Rembang Police investigators and their solutions

The obstacle: there is still a lack of understanding between the perpetrator's or perpetrator's family and also the victim's or victim's family regarding diversion, which gives rise to a perception in society that is still unfamiliar with the application of diversion to criminal acts committed by children.

The solution is to provide understanding to perpetrators or victims in relation to the implementation of diversion in handling criminal acts committed by children, because child perpetrators and victims still have a future that must be achieved in the future and also the addition of facilities and infrastructure that support the implementation of legal protection for children.

4. Conclusion

5. References

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