

Diversion Methods by Investigators in Resolving Cases of Children in Conflict with the Law

Afifat Agung Dwi Cahyono

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: afifat2506@gmail.com

Abstract: *The purpose of this research is to review and analyze the function of investigator diversion in resolving cases of children in conflict with the law. In this writing, the author uses a juridical normative method with a research specification in the form of descriptive analysis. One of the efforts to protect children in conflict with the law is 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 contains 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, law enforcement officers as regulated in Law Number 2 of 2002 concerning the Republic of Indonesia National Police are 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 child's soul and development due to 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: *Criminal; Justice; Law.*

1. Introduction

In the case of children who are perpetrators of crimes, it is a special concern for law enforcement officers in dealing with it, therefore prevention efforts for handling children in conflict with the law need to receive great attention. Children who violate the law or are commonly called children in conflict with the law (ABH)

in Indonesia tend to increase, which lately often occurs in cases of theft accompanied by violence, rape and abuse.¹

One of the efforts to protect children in conflict with the law is 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 contains a requirement to uphold justice for children in conflict with the law, namely by implementing restorative justice as one of the methods of resolving child cases in Indonesia.

The SPPA Law provides more legal protection for ABH because of several legal provisions that were previously not regulated in the Juvenile Court Law. This law is a legal instrument in the implementation of criminal justice for children. In handling children in conflict with the law, restorative justice is an important and useful approach. This approach focuses on recovery and reconciliation, and pays special attention to the needs of children as perpetrators and children as victims of crime. The purpose of the juvenile criminal justice system in principle of proportionality is to be able to advance the welfare of children, where the purpose of proportionality is to curb the use of sanctions, which are mostly stated in the limits of punishment that are commensurate with the severity of the violation of the law but also take into account considerations of their personal circumstances.²

The purpose of such juvenile justice is operationally played by law enforcement officers, in this context, law enforcement officers as regulated in Law No. 2 of 2002 concerning the Republic of Indonesia National Police are given the widest possible freedom and in all examination enhancements to carry out Discretion through Police investigators; the authority of law enforcement officers handling criminal cases to take action to continue the case or stop the case, take certain actions in accordance with their policies.³

The implementation of diversion is motivated by the desire to avoid negative effects on the child's soul and development due to 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.

One of the solutions that can be taken in handling child criminal cases is the restorative justice approach, which is implemented by means of diversion. Restorative justice is a settlement process carried out outside the criminal justice system by involving victims, perpetrators, families of victims and perpetrators, the

¹ M Bachrudin Mufti, and Ali Muhammad. (2022). The Role of Community Guidance in the Implementation of Restorative Justice in Handling Children in Conflict with the Law in Class I Surabaya Prison, *Journal of Education and Counseling*, 4 (6), p 2683

² Herman Balla. (2022), *Diversion: Children in Conflict with the Law*, *JULIA: JurnalLitigasiAmsir*, 9 (3), May, p 204

³ Poppy Novita Ayu, Heru Susetyo. (2015), *The Role of Investigators in the Implementation of Diversion and Discretion for Children in Conflict with the Law*. *Lex Jurnalica*, 12 (1), April, p 45

community and parties interested in a crime that occurs to realize an agreement and settlement.⁴ Restorative justice is considered a new scheme of thought or paradigm in viewing a crime committed by someone.

In connection with this topic, to research it further and include it in writing a legal paper with purpose of writing fore examine and analyze the function of investigator diversity in resolving cases of children in conflict with the law.

2. Research Methods

The approach used in this study is normative juridical or written legal approach (statute approach). The normative juridical approach is an approach carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this study. This approach is also known as the literature approach, namely by studying books, laws and other documents related to this study.

3. Results and Discussion

3.1. Definition of Diversion

Diversion is a term derived from the English word "diversion", which refers to diversion. Then in Indonesia it is called diversion. In the legal context, diversion is an effort to divert or place child criminals out of the criminal justice system.⁵ The Juvenile Criminal Justice System has been regulated in Law No. 11 of 2012 in Article 1 number 7, diversion is the transfer of the settlement of Juvenile cases from the criminal justice process to a process outside the criminal justice system.

According to M. Nasir Djamil, in his book "Anak Bukan untuk Dihukum" diversion is the transfer of the settlement of cases of children suspected of committing crimes from the formal criminal process to a peaceful settlement. In the diversion process, the victim, defendant and related parties such as family, community, child community guidance, police, prosecutors, or judges participate to achieve a better settlement for the child.⁶

The purpose of diversion is to achieve peace between the victim and the child, avoid deprivation of liberty for the child, and encourage the role of society. Diversion in its implementation is carried out by law enforcers based on the authority of law enforcers called discretion. The SPPA Law explains that Restorative Justice is intended to avoid and keep children away from being entangled in legal problems and it is hoped that children can return to the social environment in a reasonable manner. The process in question aims to create Restorative Justice, for both the child and the victim. Restorative Justice is an approach to resolving criminal cases that focuses on justice and balance between

⁴M. Ghufran H. Kodri, (2010), Rights and Protection of Paper Children, PT Perca, Jakarta. p 20

⁵ Tomalili, Rahmanuddin and Agus Ariadi, (2022), Implementation of Diversion Through a Restorative Justice Approach Carried Out by Child Judges at the Unaaha District Court, Sibatik Journal, 1 (5), April, p 545

⁶ M Nasir Djamil, (2013), Children Are Not For Punishment, Sinar Grafik, East Jakarta: p 137

the perpetrator and the victim. It can be interpreted that this approach considers the rights of both parties in a balanced manner.

3.2. Children in conflict with the law

Based on Article 1 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, what is meant by children in conflict with the law are children who are in conflict with the law, children who are victims of criminal acts, and witnesses to criminal acts. The problem of children is a countercurrent that is not taken into account in the process and development of the development of nations that have high ideals and a bright future to welcome and replace the leaders of the Indonesian nation. In relation to this, the development paradigm must be pro-child.

Harry E. Allen and Clifford E. Simonsen explain that there are 2 (two) categories of child behavior that cause children to have to deal with the law, namely:

- 1) *Offense Status* is a child's delinquent behavior which, if committed by an adult, is not considered a crime, such as disobeying, skipping school, or running away from home;
- 2) *Juvenile Delinquency* is a child's delinquent behavior which, if carried out by an adult, is considered a crime or violation of the law.⁷

Based on the explanation above, children in conflict with the law or children in conflict with the law are those who are directly related to a crime, either as a victim or a witness in a crime. There are also differences in the behavior or unlawful acts of children and adults that cannot be equated, where an act committed by a child can be an unlawful act, but for adults it is not an unlawful act, or vice versa.

3.3. Function of Diversion Investigators in Resolving Cases of Children in Conflict with the Law

The police in handling children in conflict with the law must certainly prioritize the interests of the child or the rights of the child. This handling itself has been strictly regulated in the SPPA Law, which in handling children and adults has differences. Where in terms of handling itself, the police in cases of children in conflict with the law must prioritize a more therapeutic way for the child. While for adults, of course, the handling emphasizes punishment as a deterrent or reward for the perpetrators of the crime.

In relation to the functions/duties and authorities referred to, namely the application of diversion in restorative justice for children in conflict with the law at the investigation level, the implementation of the duties of the Police as stated in the provisions of Article 2 of Law Number 2 of 2002 concerning the Republic of Indonesia National Police, namely that the function of the Police is one of the

⁷ Harry E. Allen and Clifford E. Simonsen, Purniati, Mamik, Sri Supatmi, and Ni Made Martini Tinduk, (2003), *Correction in America An Introduction, Situation Analysis of the Juvenile Justice System in Indonesia*, Jakarta, UNICEF, p 2

functions of the State government in the field of maintaining public security and order, law enforcement, protection, shelter, and service to the community.

Between investigation and inquiry are two phases of action that become one, which must be carried out by investigators and investigators (Police Officers or according to the terminology of the Criminal Procedure Code, Police Officers of the Republic of Indonesia) including activities to search for and find an event suspected of being a crime; determine whether or not an investigation can be carried out; search for and collect evidence; provide clarity about the crime that occurred; and determine the suspect of the crime.

The investigation stage of a case is usually carried out after the investigator finds out about an event that is suspected to be a crime. In addition, the investigation will also begin if the investigator receives a report or complaint about the alleged occurrence of a crime.⁸ Investigation means a series of actions carried out by investigative officials in accordance with the methods set out in the Law to seek and collect evidence and with this evidence to make or clarify the crime that has occurred and at the same time determine the suspect or perpetrator of the crime.⁹ This means that investigations in criminal cases involving children are activities of child investigators to search for and determine an event that is considered or suspected to be a criminal act committed by a child.

Diversification of the investigation stage is the initial stage of the criminal justice process. In this stage, investigators are allowed not to continue the crime into the criminal justice process. Therefore, this stage is the most strategic stage to mediate certain crimes in order to avoid the criminal justice process by seeking solutions that benefit all parties, both the perpetrator and the victim of the crime.¹⁰ Arrest of children is carried out for the purpose of investigation, the investigation carried out must be coordinated with the Public Prosecutor within a maximum of 1 x 24 hours (one time twenty-four hours) since the start of the investigation. The coordination is intended to provide guidance and vision so that the completeness of the files can be immediately fulfilled formally and materially, with the aim that the child is not harmed in the next stage.

Investigators have been appointed based on the decision of the Chief of the Republic of Indonesia National Police or other officials appointed by the Chief of the Republic of Indonesia National Police. In juvenile criminal cases, it is the activity of juvenile investigators to search for and determine an event that is considered or suspected to be a crime committed by a child. In order to conduct an investigation into a child's case, investigators are required to request

⁸ Yahya Harapan, (2006), Discussion of Problems and Application of the Criminal Procedure Code, Investigation and Prosecution, SinarGrafika, Jakarta, p 109.

⁹ *Ibid*

¹⁰ Ani Purwati and Arief Syahrul Alam, (2015), Diversion as a Form of Sentencing Policy in the Juvenile Criminal Justice System in Indonesia, De Jure Jurnal Syariah dan Hukum, 7 (2), December, p 187

consideration or advice from Community Guidance after the crime has been reported or complained about. If deemed necessary, investigators may request consideration or advice from educational experts, psychologists, psychiatrists, religious figures, professional workers or social welfare workers and other experts, even in the case of conducting examinations of child victims and child witnesses, investigators are required to request a social report from professional social workers or social welfare workers after the crime has been reported or complained about. So that the results of community research must be submitted by the Correctional Center to investigators within a maximum of 3 x 24 hours after the investigator's request is received. In the provisions of Article 7 Paragraph 1 of Law 11 of 2012, it is stated that at every level of investigation, prosecution and examination of child cases in the District Court, diversion must be attempted.

That basically the role of police investigators is very important in carrying out diversity because it is carried out by child investigators, because children are the first time they encounter law enforcement. All criminal justice processes start from the investigation stage by the police, so that the police function as gatekeepers of the criminal justice system. The quality and quantity of investigators in the diversion process and monitoring the results of diversion agreements is very necessary so that diversion can achieve its objectives. For this reason, investigators need to understand the characteristics of children, namely they are determining their identity, their souls are very unstable so they are very easily influenced by the environment; and lack of experience.

In the juvenile criminal justice system, regulations regarding children are established, where this law prioritizes justice and the rights of a child, both as a perpetrator and as a victim. In chapter 1 Article 1 of Law Number 11 of 2012 is the entire process of resolving cases of children in conflict with the law, from the investigation stage to the guidance stage after serving a sentence. From the investigation stage, it continues with the Investigation stage. The investigation stage has several stages, namely, the investigation stage at the police. If the police diversion is successful then the results of the diversion agreement will be supervised by the correctional center. However, if this fails, the investigation will continue with the public prosecutor and will continue to be monitored by the correctional center.¹¹

It is important to remember that criminal records and being stereotyped as a criminal have a very long and wide-ranging effect on a child. Children also tend to suffer long-term consequences from having a criminal record. This affects their future appearance, including employment, obtaining visas, insurance, credit loans, police SKKB. This means that their future will be taken away just because they are positioned as criminals.

¹¹ Siti Aniza Rahmah, et al. (2021), Implementation of Diversion by Investigators in Child Crimes at the South Jakarta Metro Police, *Journal of Legal Research*, 3 (1), p 11

As victims of the “crime” of parental indoctrination, children who “perpetrate” crimes have the right to fair rights and effective recovery. So that giving rights to children who perpetrate crimes requires physical and psychological recovery, reintegration and social rehabilitation that can restore the child’s self-esteem and dignity. Therefore, a fast, fair, inexpensive and easily accessible informal procedure is very important in strengthening children’s access to obtain compensation. Meanwhile, children have a lack of understanding of the criminal justice system, related procedures and the rights they have.

The application of diversion through restorative justice can explore the interconnection between diversion and restoration of justice that is more natural without access to the judicial process. Diversion can be used to achieve restorative justice and, at the same time, as a tool to access justice. The restorative justice settlement itself must obtain the consent of both parties and be witnessed by the child protection institution. This is an effort to prioritize the interests of children and protect them from trauma due to dealing with the police. That in the Juvenile Criminal Justice System it is mandatory to prioritize the enforcement of restorative justice where the implementation of criminal cases involves the perpetrator, victim, the perpetrator's and victim's families, and other related parties to jointly seek a fair solution by emphasizing the restoration of the original state and not revenge.

Basically, in making arrests of children who commit crimes, police officers do not wear uniforms, neglecting ordinary clothes (thugs), in this case investigators also do not experience many difficulties, especially against children who are committing crimes for the first time, because most of them are still innocent and honest. After the suspect (child who commits a crime) is examined, based on the provisions of Law Number 11 of 2012, the examination can be carried out with the following provisions:

- 1) Investigators are required to examine suspects in a family atmosphere;
- 2) In conducting investigations into children who commit crimes, investigators are required to ask for consideration or advice from community counselors, and if necessary, may also ask for consideration or advice from education experts, mental health experts, religious experts, or other community officers.
- 3) The investigation process into juvenile delinquency cases must be kept confidential

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System has not clearly regulated the procedures and stages of the diversion process, the procedures and stages of diversion are clearly regulated in the Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Criminal Justice System. The diversion process (deliberation) can be carried out in the following ways: (1) The diversion deliberation is opened by the diversion facilitator by introducing the parties present, conveying the intent and purpose of the diversion deliberation, and the

rules of procedure for the deliberation to be agreed upon by the parties present; (2) The diversion facilitator explains the duties of the diversion facilitator; (3) The diversion facilitator explains the summary (allegations/charges) directed at the child perpetrator and invites the community counselor to provide information about the child's behavior and social circumstances and provide suggestions for obtaining a resolution; (4) Diversity facilitators are required to provide opportunities for:

- a. the child to be heard regarding the acts alleged/accused against him,
- b. Parents/guardians to convey matters relating to the child's actions and the form of resolution expected,
- c. Victims/victim children/parents/guardians to provide responses and the form of resolution expected,

(5) Professional Social Workers provide information about the social conditions of child victims and provide advice to obtain a resolution; (6) If deemed necessary, the diversion facilitator can call community representatives or other parties to provide information to support the resolution; (7) If deemed necessary, the diversion facilitator can hold separate meetings (caucuses) with the parties; (8) The diversion facilitator pours the results of the deliberations into a diversion agreement; (9) In preparing the diversion agreement, the diversion facilitator pays attention to and directs that the agreement does not conflict with the law, religion, local community propriety, morality or contain things that cannot be carried out by the child, or contain bad points.

In the diversion process (deliberation) the investigator takes the role of facilitator. In the case of diversion resulting in an agreement, the following stages will be implemented:

- 1) Poured into the form of a diversion agreement,
- 2) Submitted by the direct superior of the official responsible at each level of examination to the district court according to the jurisdiction within a maximum of 3 (three) days from when an agreement is reached to obtain a determination,
- 3) The determination shall be made within a maximum of 3 (three) days from the date of receipt of the Diversion agreement.
- 4) The decision is submitted to the Community Guidance Officer, Investigator, Public Prosecutor or Judge within a maximum of 3 (three) days from the date of the decision.
- 5) After receiving the determination, the Investigator issues a determination to terminate the investigation.

The diversion agreement must obtain the approval of the victim and/or the victim's child's family as well as the willingness of the child and his/her

family.¹²This indicates that there must be active participation from the victim and his/her family in the diversion process, so that the process of restoring the situation can be achieved in accordance with restorative justice. The diversion agreement can be excluded for criminal acts in the form of violations; minor crimes; crimes without victims; the value of the victim's loss is not more than the local provincial minimum wage. The forms of diversion agreement results can include a peace agreement with or without compensation; return to parents/guardians; participation in education or training at educational institutions or Social Welfare Institutions (LPKS) for a maximum of 3 (three) months; or community service.

Diversion is often connected with handling criminal cases through a restorative justice approach. This is indeed not absolutely wrong, considering that one of the meanings of restorative justice according to Galaway and Joe Hudson, namely the definition of restorative justice includes the following fundamental elements: "first, crime is viewed primarily as a conflict between individuals that results in injuries to victims, communities, and the offenders themselves ; second, the aim of the criminal justice process should be to create peace in communities by reconciling the parties and repairing the injuries caused by the dispute; third, the criminal justice process should facilitate active participation by the victims, offenders, and their communities in order to find solutions to the conflict".¹³The mechanism stated by Burt Galaway and Joe Hudson as a medium to bring together victims and perpetrators in the criminal justice system is considered impossible. Therefore, the development of practice in the field, law enforcement officers try to accommodate the shortcomings in the formal criminal law above through the Diversion Institution.¹⁴

4. Conclusion

The role of police investigators is very important in implementing diversion because it is carried out by child investigators, because children are the first to face law enforcement. All criminal justice processes begin with the investigation stage by the police, so that the police function as gatekeepers of the criminal justice system. The entire process of resolving cases of children in conflict with the law, starting from the investigation stage to the guidance stage after serving a sentence.

¹² HwianChristianto. (2011), Constitutional Interpretation of the Age Limit for Child Criminalization,*Constitution Journal*, 8 (5), October, p 761

¹³ Human Rights Research and Development Agency, Ministry of Law and Human Rights, (2013), Implementation of Restorative Justice in Resolving Criminal Acts Committed by Children. Jakarta, p 26

¹⁴ BPHN, (2007), Academic Draft of the Juvenile Justice Bill, BPHN, Jakarta, p 67

5. References

Books:

- Harry E. Allen and Clifford E. Simmons in Purniati, Mamik, Sri Supatmi, and Ni Made Martini Tinduk, (2003), *Correction in America an Introduction, Situation Analysis of the Juvenile Justice System in Indonesia*, Jakarta, UNICEF
- M Nasir Djamil, (2013), *Children Are Not for Punishment*, SinarGrafik, East Jakarta
- M. Ghufran H. Kodri, (2010), *Rights and Protection of Paper Children*, PT Perca, Jakarta
- Yahya Harapan, (2006), *Discussion of Problems and Application of Criminal Procedure Code, Investigation and Prosecution*, SinarGrafika, Jakarta

Journals:

- Ani Purwati and Arief Syahrul Alam, (2015), *Diversion as a Form of Sentencing Policy in the Juvenile Criminal Justice System in Indonesia*, *De Jure Jurnal Syariah dan Hukum*, 7 (2), December
- BPHN, (2007), *Academic Draft of the Juvenile Justice Bill*, BPHN, Jakarta
- Herman Balla. (2022), *Diversion: Children in Conflict with the Law*, *JULIA: Jurnal Litigasi Amsir*, 9 (3), May
- Human Rights Research and Development Agency, Ministry of Law and Human Rights, (2013), *Implementation of Restorative Justice in Resolving Criminal Acts Committed by Children*. Jakarta
- HwianChristianto. (2011), *Constitutional Interpretation of the Age Limit for Child Criminalization*, *Jurnal Konstitusi*, 8 (5), October
- M Bachrudin Mufti, and Ali Muhammad. (2022). *The Role of Community Guidance in the Implementation of Restorative Justice in Handling Children in Conflict with the Law in Class I Surabaya Prison*, *Journal of Education and Counseling*, 4 (6)
- Poppy Novita Ayu, Heru Susetyo. (2015), *The Role of Investigators in the Implementation of Diversion and Discretion for Children in Conflict with the Law*. *Lex Journalica*, 12 (1), April
- Siti Aniza Rahmah, et al. (2021), *Implementation of Diversion by Investigators in Child Crimes at the South Jakarta Metro Police*, *Journal of Legal Research*, 3 (1)
- Tomalili, Rahmanuddin and Agus Ariadi, (2022), *Implementation of Diversion Through a Restorative Justice Approach Carried Out by Child Judges at the Unaaha District Court*, *Sibatik Journal*, 1 (5), April