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LEGAL ANALYSIS OF THE IMPLEMENTATION OF DIVERSION IN THE JUVENILE CRIMINAL JUSTICE SYSTEM

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Abstract

Diversion is implemented to prevent the negative impacts of the criminal justice process on children's mental health and development. With diversion, the justice system focuses more on child protection than detention. Furthermore, child protection can be implemented at all levels, both through prevention before a crime occurs and by not prosecuting children who commit violations through legal channels. This study will analyze the obstacles to implementing diversion in the juvenile criminal justice system and the goals is to find solutions to existing obstacles so that diversion can be effective and oriented towards the best interests of children. This research employs a normative juridical approach, which relies primarily on doctrinal analysis grounded in statutory regulations and authoritative legal literature. In its implementation, diversion faces several challenges, such as a lack of understanding among law enforcement officials, weak inter-agency coordination, differing perceptions of restorative justice, and the absence of clear consequences for officials who fail to comply with diversion provisions. To achieve diversion goals, it is necessary to improve the professionalism of law enforcement officials, strengthen inter-agency coordination, and strengthen sanctions for those who fail to comply with diversion provisions. With these steps, diversion can be effective and provide optimal legal protection for children.

Keywords: Diversion; Restorative Justice; Juvenile Criminal Justice System.

INTRODUCTION

Children are a precious gift, endowed with inherent value, dignity, worth and are the future leaders of a nation. Ensuring their welfare and protection is a collective responsibility. The protection of children is not solely the responsibility of the government as the representative of the state but must also be carried out by parents, families, and the community to safeguard and uphold the fundamental rights of children. The government is accountable for protecting children's rights to exist, grow, and thrive, free from violence and marginalization. As the next generation of leaders and a vital asset for national progress, children need ongoing support for their holistic development and safeguarding against risks that could impact their future. A holistic education, encompassing both academic and moral development is crucial for children to grow into productive citizens. Children need moral guidance to develop into competent individuals with integrity. Preventing and reducing juvenile delinquency is a key component of child protection, given their vulnerability to environmental influences.

Children's involvement in criminal behavior frequently stems from broader influences, such as family dynamics, schooling, and peer relationships, often mirroring the negative behaviors of those around them. Protecting children is essential for a nation's development, as it fosters the growth of capable and responsible citizens. Neglecting child protection can lead to various social ills that threaten law and order, security, and overall national development. Safeguarding children is key to comprehensive national progress, encompassing both protection and justice for child victims and offenders. Given their unique status and potential, children's rights and futures should be prioritized in legal processes, with a clear distinction from adult offenders.

The government, however, plays a crucial role in providing facilities and access to ensure the optimal growth and development of every child. This aligns with Article 28B of the 1945 Constitution of the Republic of Indonesia, which states that every child has the right to live, grow, and develop, as well as the right to protection from violence and discrimination. The implementation of law can occur peacefully and orderly, however, when violations arise, law enforcement must be carried out to restore order.

The main function of law is to regulate human conduct so that it aligns with the prevailing norms within society. In the context of law enforcement in Indonesia, the application of criminal sanctions plays a crucial role. Legal rules are established based on the awareness and will of the people, reflecting the purpose of punishment to provide consequences for unlawful acts. Criminal sanctions represent a form of punishment that brings suffering to the perpetrator of a criminal act that threatens public interests. Essentially, criminal sanctions function as a means to rehabilitate and reform offenders' behavior, although in practice they are often perceived as a restriction on individual freedom.

But because protecting children is essential for a nation's development, as it fosters the growth of capable and responsible citizens. Crimes committed by children must be handled differently from crimes committed by adults. Handling juvenile justice cases demands expertise from investigators, prosecutors, and judges who understand the complexities of child offenders. The legal system must be adapted to accommodate the specific needs of children in conflict with the law. The Juvenile Criminal Justice System (UUSPPA) was introduced to overcome the shortcomings of the previous law, adopting a restorative justice approach through the Diversion System. This new regulation mandates law enforcement to pursue diversion at every stage of the process, marking a shift from the previous law's discretionary approach, which relied on informal mechanisms involving parents or guardians. The juvenile justice system adopts a progressive approach to dealing with child delinquency, focusing on the care and reintegration of young offenders rather than punitive action.

According to Article 1 Paragraph (3) of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, a "child in conflict with the law" is defined as a child aged 12 (twelve) years but not yet 18 (eighteen) years old who is suspected of committing a criminal act. Meanwhile, Article 1 Point 5 of Law No. 39 of 1999 concerning Human Rights defines a child as any human being under the age of 18 (eighteen) years and unmarried, including a child still in the womb if such recognition is in the child's best interest.

Furthermore, Article 1 Paragraph (2) of Law No. 11 of 2012 explains that a child in contact with the law includes a child who is in conflict with the law, a child who is a victim of a criminal act, and a child who is a witness to a criminal act. Therefore, justice for children in conflict with the law means ensuring that all children receive proper protection and services within the legal and judicial system. A child is said to be in

contact with the law when acting as a perpetrator, victim, or witness, whereas a child in conflict with the law refers specifically to one who is suspected or accused of committing a criminal offense.

Children in conflict with the law often engage in delinquent behavior, committing acts that are prohibited either by statutory law or by social norms prevailing in their community. To address juvenile criminal cases more humanely, one effective approach is the implementation of restorative justice through a mechanism known as diversion. Restorative justice is a process of resolving criminal cases outside the formal criminal justice system by involving the victim, the offender, their families, the community, and other relevant parties to reach a mutual agreement and resolution. This approach represents a new paradigm in viewing crime, focusing on repairing harm and restoring relationships rather than on punishment or retribution.

Essentially, restorative justice is a process that encourages all parties involved to work together in solving the problem, creating obligations to make amends, and fostering reconciliation and peace without relying on retribution. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System comprehensively regulates the entire process of handling cases involving children from investigation to post-sentence guidance with an emphasis on protection, rehabilitation, and the best interests of the child.

Article 646 of Law No. 23 of 2002 regulates the protection of children in conflict with the law and victims of criminal acts, with the main focus of diversion to avoid stigmatization and encourage social reintegration of children. The participation of all parties is very important for the realization of restorative justice for children and children as victims. The implementation of diversion is motivated by the desire to protect children from the negative impacts of the criminal justice system which can affect their psyche and development, so that law enforcement officers use discretion in implementing it. With diversion, the criminal justice system focuses more on protecting children from the negative impacts of imprisonment. Diversion also allows for the handling of juvenile cases at all levels, from prevention in the community to case management at the police level.

Diversion is implemented to prevent the negative impacts of the criminal justice process on children's mental health and development. This is based on the discretionary authority held by law enforcement officials. With diversion, the justice

system focuses more on child protection than detention. Furthermore, child protection can be implemented at all levels, both through prevention before a crime occurs and by not prosecuting children who commit violations through legal channels.

Diversion plays a crucial role in protecting children's rights and avoiding the negative impacts of the legal process. In its implementation, investigators, prosecutors, and judges are responsible for ensuring that diversion is effective and provides maximum protection to children. The police, as the vanguard of law enforcement, have an important role in maintaining public security and order, enforcing the law, and providing protection and services to the community in accordance with the mandate of Law No. 2 of 2002.

In carrying out their law enforcement duties, police are faced with two options: strict enforcement or exercising discretion, allowing for situation-based policies. With the authority granted by law, investigators are expected to make appropriate decisions, including implementing diversion to handle child cases more humanely. The implementation of diversion in the juvenile criminal justice system still faces various challenges, such as a lack of understanding of restorative justice among law enforcement officials, differing perceptions, minimal coordination between agencies, limited resources, and the absence of strict sanctions for officials who fail to comply with diversion provisions. Therefore, a legal analysis is necessary to assess the compliance of diversion implementation with laws and regulations and child protection principles. This study aims to find solutions to existing obstacles so that diversion can be effective and oriented towards the best interests of children. In a case of bullying and child abuse in Serpong involving both a child as perpetrator and victim, diversion efforts failed because the victim's parents forgave the case but still wanted the case to be prosecuted. This contradicts the goal of diversion, which is to resolve the case outside the legal process. Therefore, this study will analyze the obstacles to implementing diversion in the juvenile justice system.

METHOD

This research employs a normative juridical approach, which relies primarily on doctrinal analysis grounded in statutory regulations and authoritative legal literature. Within this framework, law is conceptualized as a normative system consisting of principles, rules, and doctrines derived from legislation, judicial decisions, contractual instruments, and scholarly opinions. The nature of this research is descriptive, as it seeks to systematically and comprehensively portray legal norms pertaining to the

issues under examination. Through this descriptive orientation, the study endeavors to elucidate the structure of the prevailing legal framework and its practical application within the criminal justice system. The data were examined using a descriptive-analytical method, which aims to present, interpret, and critically assess existing criminal law policies while simultaneously exploring their ideal configuration within future legislative developments. This analytical process employs a deductive reasoning approach, progressing from general legal principles to specific conclusions. Such an approach ensures a coherent, logical, and systematic evaluation of legal norms within the context of the research, thereby enhancing the rigor and reliability of the findings.

Accurate identification and utilization of data sources are fundamental to ensuring the validity of legal research outcomes. This study relies predominantly on secondary data, which encompass several categories of legal materials, namely The Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure (KUHAP), consisting of an extensive review of scholarly books, journal articles, and other academic publications that are directly relevant to the research problem and objectives, and legal dictionaries and the Kamus Besar Bahasa Indonesia (KBBI) serving as supporting instruments to elucidate and substantiate the secondary sources.

RESULTS AND DISCUSSION

RESULTS

1. Implementation of Diversion in the Juvenile Criminal Justice System

The Juvenile Criminal Justice System in Indonesia has established diversion as one of the efforts to resolve child cases, which is regulated in Law No. 11 of 2012 Articles 6-15, with investigators, public prosecutors, and judges as law enforcers who are authorized to carry out diversion, where investigators play an important role as the first law enforcement officers to carry out diversion efforts. The Juvenile Criminal Justice System has established clear rules for implementing diversion, which can be implemented by law enforcement at various levels, including investigation, prosecution, and the courts. However, diversion is not always successful and can fail at the investigation stage.

Failure of diversion during the investigation stage is regulated in the Juvenile Criminal Justice System Law, specifically in Article 29 Paragraph (4), which states: "If diversion fails, the investigator is obliged to continue the investigation and transfer the case to the public prosecutor by attaching the diversion report and the community research report." The diversion application was rejected because the specified conditions were not met, in accordance with Article 7 Paragraph (2) of the Child Criminal Justice System Law, which requires a criminal threat of under 7 years and not a repeat crime.

Diversion is the process of transferring the handling of child cases from criminal to non-criminal channels which can be carried out by law enforcement officers in accordance with the Child Criminal Justice System Law. According to Article 7 Paragraph (2) of the Juvenile Criminal Justice System Law, diversion can be carried out in cases of children who commit crimes with a criminal penalty of under 7 years and are not repeat offenders. Diversion is initiated by investigators and its regulations are set out in the Juvenile Criminal Justice System Law, including successful and failed diversion. If diversion is unsuccessful during the investigation phase, the investigator must proceed to the next stage, where the case will be processed and treated as a regular juvenile case. Diversion is the transfer of juvenile cases from the criminal justice process to a process outside the criminal justice system. In restorative justice, investigators, as the primary law enforcement officers, play a role in enforcing diversion, ensuring that juveniles facing legal issues can be processed in accordance with applicable laws.

The implementation of diversion in the juvenile criminal justice system has the following stages:

a. Stages of Implementing Diversion in Juvenile Criminal Justice System

   Investigators who receive reports of criminal acts will conduct an investigation and inquiry process, then coordinate with the Correctional Center to obtain diversion recommendations based on community research reports.

b. Stages of Implementing Diversion in the Prosecution Process

   During the prosecution phase, the public prosecutor is obligated to initiate diversion within a maximum of seven days of receiving the case file from the investigator. This diversion process will last a maximum of 30 days and involve consultation between the child, the child's parent/guardian, the victim, the

victim's parent/guardian, community counselors, and professional social workers.

c. Stages of implementing diversion in the trial process

During the trial process, the Chief Justice must appoint a judge or panel of judges for a juvenile case within three days of receiving the case file. The appointed judge must attempt diversion within seven days, with the diversion process lasting a maximum of 30 days.

According to Article 5 paragraph (1) of the Child Criminal Justice System Law, the Restorative Justice approach is a priority, which is implemented through the obligation to carry out diversion. Article 7 of Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System states that, in paragraph (1), "at the investigation, prosecution, and examination levels of juvenile cases in the District Court, diversion efforts must be made." In paragraph (2), "diversion as referred to in paragraph (1) shall be implemented in cases where the crime is:

a. punishable by imprisonment of less than 7 (seven) years;
b. not a repeat offense;

Law enforcement officials, especially investigators, who are the first to initiate diversion efforts, must fully understand their role in pursuing diversion in accordance with applicable legal provisions to achieve the goals of restorative justice. The effective implementation of the Juvenile Criminal Justice System Law depends on the willingness of investigators to properly carry out their duties to protect children. If investigators diversion efforts fail, they must take appropriate action, in accordance with the provisions stipulated in the Juvenile Criminal Justice System Law. Investigators are required to have an understanding of diversion to avoid errors in its implementation. Because diversion is mandatory, it is crucial for officials at every level of investigation to thoroughly understand the mechanisms for implementing it.

Diversion in the Juvenile Criminal Justice System Law aims to protect children from negative stigma resulting from the legal process. The use of this diversion mechanism is granted to law enforcement officers (police, prosecutors, judges, and other institutions) to handle violations involving children without resorting to formal court proceedings. The implementation of diversion is intended to reduce the negative impact of children's involvement in the judicial process. The objectives of diversion, as

stated in Article 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, are:

1. To achieve reconciliation between victims and children.
2. To resolve children's cases outside of the court process.
3. To prevent children from being deprived of their liberty.
4. To encourage community participation.
5. To instill a sense of responsibility in children.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System was established with the aim of providing protection for children, both those in conflict with the law and those who are victims of crime. This protection for children embodies the general principles of child protection, namely non-discrimination, the best interests of the child, survival and development, and respect for child participation.

2. Obstacle in the Process of Diversion Requests in Juvenile Criminal Cases

An investigator who fails to implement a court's determination rejecting a diversion has clearly committed a violation of law as regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, particularly Article 29 paragraph (4). This provision explicitly states that if the diversion process fails, the investigator is obliged to continue the investigation and submit the case to the public prosecutor, accompanied by the diversion report and a social inquiry report. Therefore, when diversion efforts in a juvenile case fail, the investigator must proceed with the next stages of the juvenile criminal justice process.

This law applies to all law enforcement officials investigators, prosecutors, judges, and court officers to ensure that the implementation of the Juvenile Criminal Justice System is carried out in accordance with legal provisions. The existence of criminal sanctions in this law is expected to guarantee consistent law enforcement and prevent abuse of authority by law enforcement officers, thereby ensuring legal certainty and the protection of children's rights. The implementation of Law Number 11 of 2012 cannot be separated from the role of law enforcement officials. These officials are responsible for upholding legal regulations, and failure to carry out their duties may result not only in legal consequences for themselves but also in adverse effects on others, especially children in conflict with the law. The non-enforcement of legal provisions can create uncertainty and undermine the credibility of the justice system.

According to Article 1 point 10 of Law Number 2 of 2002 concerning the Indonesian National Police, an investigator is a police officer authorized by law to conduct criminal investigations. Furthermore, Article 5 paragraph (1) of Law Number 11 of 2012 stipulates that the juvenile criminal justice system must prioritize the restorative justice approach, which is implemented through the process of diversion. Consequently, when an investigator fails to achieve diversion, they must proceed in accordance with the applicable legal framework. Investigators are therefore required to have a comprehensive understanding of the concept and mechanism of diversion to avoid errors in its application.

Since diversion is a legal obligation, every officer at each stage of the judicial process must understand and properly implement it. As stated in Article 29 paragraph (4) of the Juvenile Criminal Justice System Law, if diversion fails, the investigator must continue the investigation and submit the case to the public prosecutor with the required documents. Accordingly, if a diversion request is rejected by the District Court, the case automatically becomes a juvenile criminal case and must be handled according to the procedures set forth in the juvenile criminal justice process.

During the investigation stage, the investigator must continue the case in accordance with the procedural rules stipulated by law. In principle, the procedural provisions under the Criminal Procedure Code (KUHAP) also apply to juvenile proceedings unless otherwise stated in the Juvenile Criminal Justice System Law. During the investigation and prosecution stages, the results of the diversion must be submitted to the Chief Judge of the District Court, who will then issue a ruling. Based on that ruling, the investigator may issue a decision to terminate the investigation, while the prosecutor may terminate the prosecution.

Article 109 paragraph (2) of the Criminal Procedure Code (KUHAP) provides that if an investigation is terminated due to insufficient evidence, because the act does not constitute a crime, or for legal reasons, the investigator must notify the public prosecutor, the suspect, or their family. Moreover, according to Article 140 paragraph (2) letter a of the KUHAP, a prosecutor may terminate prosecution based on three grounds: (a) insufficient evidence; (b) the act is not a criminal offense; or (c) the case must be closed for legal reasons.

However, in practice, the implementation of restorative justice still encounters several obstacles, including:

1. Increasing needs that are not matched by adequate resources, both in personnel and facilities.
2. Differences in understanding among law enforcement officials regarding the handling of children in conflict with the law and victims.
3. Lack of cooperation between law enforcement officials and child social workers.
4. Ethical and bureaucratic barriers in the exchange of data and information among law enforcement institutions.
5. Poor coordination among law enforcement agencies (police, prosecutors, judges, lawyers, probation officers, detention centers, and correctional facilities) due to sectoral ego.
6. The absence of a unified perception among law enforcement officers regarding the principle of “the best interests of the child.”

The purpose of Article 29 paragraph (4) is to ensure that cases for which diversion has failed can still proceed to the next judicial stage, preventing any case from being left unresolved. If a diversion agreement is not fulfilled within the specified time, the Probation Officer must promptly report it to the immediate supervisor of the responsible official for follow-up action. According to Soerjono Soekanto, one of the key factors influencing the effectiveness of law enforcement is the mentality and integrity of law enforcement officers. Even with well-drafted laws, the implementation will fail if the officials lack integrity and professionalism.

Thus, the personal quality and commitment of law enforcement officers play a vital role in ensuring justice and compliance with the law. If the Juvenile Criminal Justice System Law were to explicitly stipulate sanctions for investigators who fail to implement a court’s rejection of diversion, investigators would likely be more careful and comply with their legal duties. In Article 95, the law provides for administrative sanctions against officials who violate certain provisions, while Article 96 sets forth criminal sanctions for investigators, prosecutors, or judges who deliberately fail to fulfill their obligations.

Nevertheless, there remains no explicit regulation prescribing sanctions for investigators who fail to carry out the court’s determination rejecting diversion as mandated in Article 29 paragraph (4). This legal vacuum creates uncertainty and the potential for procedural violations. Therefore, it is essential to establish a more explicit provision imposing sanctions on investigators who neglect this obligation, to ensure accountability and consistency in implementing diversion procedures. Such measures

would help achieve the ultimate goal of the Juvenile Criminal Justice System Law the protection and promotion of the best interests of the child within the justice system.

DISCUSSION

This study examines the legal norms related to the application of diversion in the Juvenile Criminal Justice System based on Law No. 11/2012 and its implementation. This study explains that :

a. Diversion is regulated in sufficient detail (stages of investigation, prosecution, and trial) and is mandatory in certain cases (threats of <7 years and not reoffending).
b. In practice, there are significant obstacles: lack of resources/personnel, differences in understanding among officials, weak coordination between institutions, sectoral egos, and bureaucratic and ethical issues regarding data exchange.
c. There are gaps in implementation and enforcement: the oversight and sanction mechanisms for investigators who fail to fulfill their obligations for example like continuing a case when diversion fails are not firm enough or the application of sanctions is not clear enough. The author highlights that articles on administrative and criminal sanctions exist, but their implementation and scope have not yet addressed certain gaps for example like violations of Article 29 paragraph (4).

The author's interpretation in this study is that the law adopts a restorative justice paradigm and mandates diversion, but institutional capacity and bureaucratic/enforcement culture are not yet fully prepared. Consequently, the goal of protecting children from stigma and imprisonment is not optimal. Furthermore, the existence of sanctions provisions does not guarantee implementation; clear mechanisms for monitoring, reporting, and enforcement of sanctions are needed to ensure compliance by officials and Diversion is a solution, but not automaticly, diversion is effective when facilitated by multidisciplinary coordination (Bapas, social workers, families, officials), without it, diversion can fail or become a mere formality.

Compared to empirical studies that assess diversion outcomes for example recidivism rates or victim satisfaction, this article makes a juridical analytical contribution that exploring legal provisions, formal procedures, and the gaps in

sanctions/supervision aspects that are often under-explored by empirical studies that focus on social-diversion effects.

CONCLUSION

In the Juvenile Criminal Justice System, diversion is a mechanism for transferring cases from criminal proceedings to alternative out-of-court processes. This is regulated by Law Number 11 of 2012 and is mandatory for children who commit crimes punishable by less than seven years, but not for repeat offenders. Diversion aims to achieve restorative justice by prioritizing the best interests of the child, the victim, and the community, while avoiding formal court proceedings that can have negative impacts.

In its implementation, diversion faces several challenges, such as a lack of understanding among law enforcement officials, weak inter-agency coordination, differing perceptions of restorative justice, and the absence of clear consequences for officials who fail to comply with diversion provisions. To achieve diversion goals, it is necessary to improve the professionalism of law enforcement officials, strengthen inter-agency coordination, and strengthen sanctions for those who fail to comply with diversion provisions. With these steps, diversion can be effective and provide optimal legal protection for children.

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