

## DIVERSION AS THE CASE RESOLUTION FOR CHILDREN IN CONFLICT WITH THE LAW WITHIN THE PERSPECTIVE OF LEGAL PSYCHOLOGY

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### Abstract

Children have an important role in life, so children's problems are initially personal problems, namely the relationship between parents and their children. Children in conflict with the law are children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts. Children in Conflict with law must be viewed comprehensively, both sociologically, psychologically and formally juridically. If done carefully, we will achieve comprehensive protection of children's rights and human rights. The method used in this research is normative research with a statutory and psychological approach in analyzing the data. The existence of a child rights convention which contains international regulations which have been adapted into national law in the form of a law is often frightening when viewed from the perspective of "protecting behind the law". Diversion is mandatory at every level in Article 7 that at the level of investigation, prosecution and examination of children's cases in district courts, diversion must be attempted.

**Keywords:** Children in Conflict with the Law, Diversion, Legal Psychology

## INTRODUCTION

The definition of a child from a legal perspective is essentially the same, and is formulated to provide the fairest possible decision for the child. The definition of a child based on Law no. 23 of 2002 concerning Child Protection means every human being who is not yet 18 years old, including children who are still in the womb. Meanwhile, the definition of a child is based on Law no. 39 of 1999 concerning Human Rights means every human being under 18 years of age and unmarried, including unborn children, if this is in their interests. According to Nicholas Mc Bala in his book *Juvenile Justice System*, children are the period between birth and the beginning of adulthood. Childhood is a time of limited abilities, including limitations in endangering others. Children still have unstable and immature psychological aspects, so they cannot think properly about the impacts that will accompany their bad behavior.

Considering that children have an important role in life, children's problems, which were initially a private problem, namely the relationship between parents and their children, gradually children's problems are placed as public problems where the Government must be present through various regulatory instruments to regulate all legal interests towards children. as well as to ensure the child's survival in a good and useful manner. The role of the government through this regulation is considering that children are a group that is vulnerable and susceptible to exploitation because physically and mentally children have also had quite a few encounters with the law.

Children who commit acts of violation of the law in this case are referred to as Children in Conflict with the Law (ABH) or in some other sources they are called Children in Conflict with the Law (ABH). Based on Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, Children in Conflict with the Law, hereinafter referred to as Children, are children who are 12 years old, but not yet 18 years old, who are suspected of committing a criminal act. This definition is further clarified in article 1 paragraph 2 that children in conflict with the law are children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts. Children in Conflict with the Law (ABH) are also defined as children who commit or are suspected of committing criminal acts and they are required to be responsible before the law for their actions so that they must be involved in legal processes such as investigations, prosecutions, examinations, court hearings, and many others. who must serve his sentence in prison.

A child's development cannot be separated from the development of the environment in which he is located. The environment in question is not only the nuclear family, but also relatives, school, neighbors and friends. Koji Yamashita, as quoted by Apong Herlina state:

"Children learn from the way they are raised. If they are raised with criticism, they will learn to find fault with others, if they are raised with hostility, they will learn to fight. If they are raised with tolerance, they will learn to be patient, if they are raised with fair treatment then they will learn to respect."

The statement above shows that a positive environment will provide the child with good psychological or mental development. In contrast, a negative environment makes the child easily imitate and be influenced by actions that deviate from their enviro this does not mean that children are raised in a positive environment. will not be a criminal, but it is recognized that imitation in society.

ABH must be viewed comprehensively, both sociologically, psychologically and formally juridically. If done carefully, we will achieve comprehensive protection of children's rights and human rights. And we all hope that this era of change is the right time to build things better in various fields, both legal, social and political. Various agencies have carried out various orientations, positions and created new paradigms in providing services to the people. Finally, we hope that the support of the various parties involved in this program will be able to play an active role in the child's best interests.

## RESEARCH METHOD

The method used in this research is normative research with a statutory and psychological approach in analyzing the data. Primary data in this research are sources of positive law in Indonesia, while secondary data is in the form of library sources which include scientific journals, articles and books obtained using search engines. The analysis was carried out conceptually by examining, distinguishing and presenting theories and concepts related to the issue of resolving cases of children in conflict with the law through diversion according to legal psychology.

## RESULTS AND DISCUSSION

### Children in Conflict with the Law

In Article 45 of the Criminal Code, children are people who are not old enough, by not old enough they mean those who commit acts before the age of 16. Article 47 paragraph (1) states that children who have not reached the age of 18 or have never been married are under the authority of

their parents as long as their parental authority is not revoked. Meanwhile, Article 91 paragraph (4) of the Criminal Code says: "By children, we also mean people who are under the same authority as the Father". Meanwhile, according to Article 1 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, a child is someone who is not yet 18 years old, including children who are still in the womb. Then in Article 1 paragraph (3) and Article 20 of Law Number 11 of 2012 concerning the Criminal Justice System, it is formulated: 1). The age limit for children in conflict with the law who can be brought before the Juvenile Court is at least 12 (twelve) years but has not yet reached the age of 18 and has never been married, and 2). in Article 20 that children who are in conflict with the law before they are 18 (eighteen) years old and are brought to court after the child has passed the age limit of 18 (eighteen) years, but have not yet reached the age of 21 (twenty one) years, the child remains submitted to juvenile court.

According to Heally and Bronner 91% of children's criminal behavior is caused by being unhappy and having emotional disorders. In terms of personal characteristics, the perpetrator is described as jealous, feeling lacking in personal matters, and always feeling blamed. The term "children in conflict with the law" means that children are really in conflict with the law, which causes children to be allergic to the law. In fact, in a child's view, law is associated with things like putting shoes in their place, closing the door to their room again, tidying up textbooks and so on. The existence of a children's rights convention which contains international regulations which are adapted into national law in the form of laws is often scary when viewed from the perspective of "protecting behind the law". The classic problem we face is that we tend to glorify human rights, conventions and intervention.

### **Resolving cases of children in conflict with the law through diversion**

The provisions of international instruments, determining the age limit between 8 and 18 years, align with what is confirmed in the Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).. Article 11 of SMRJJ (The Beijing Rules) contains the following principles of diversion:

1. The idea of diversion was carried out after considering appropriate considerations, namely that law enforcers (Police, Prosecutors, Judges and other institutions) were given the authority to deal with young law violators without using formal courts.
2. The authority to determine diversion is given to law enforcement officials such as police, prosecutors, judges and other institutions that handle children's cases, according to their policies, in accordance with the criteria determined for that purpose in their respective legal systems and also in accordance with the principles -principles contained in The Beijing Rules.
3. The implementation of the idea of diversion must be with the consent of the child, or their parents or guardians. However, the decision to implement the diversion idea was after a review by the authorized official regarding the idea request.
4. Implementing the idea of diversion requires cooperation and the role of the community, in connection with the diversion program: supervision, temporary welfare guidance, recovery and compensation to victims.

On July 30 2012, the DPR-RI passed Law no. 11 of 2012 concerning the Juvenile Criminal Justice System which replaces the Juvenile Justice Law, two years after its promulgation, which will come into force on July 30 2014. The Juvenile Criminal Justice System Law has adopted Constitutional Court Decision No. 1/PUU-VIII/2010, namely by providing the definition of a child in conflict with the law as a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a criminal act (Article 1 number 3 of the Law Juvenile Criminal Justice System). As a change and update to the Children's Court Law, the Indonesian Government has issued Law Number 11 of 2012 concerning the Children's Criminal Justice System (hereinafter abbreviated as Children's SPP). One of the substances regulated in the Law on the Juvenile Criminal Justice System is the regulation of Diversion.

With the existence of Law Number 11 of 2012, the concept of diversion has been regulated in this law, namely in Chapter II which specifically regulates diversion provisions starting from Article 6 to Article 15, meaning there are 10 articles that regulate diversion provisions at all stages. examinations starting from investigations, prosecutions and examinations in court in an effort to resolve cases of children in conflict with the law. The definition and objectives of Diversion in Article 6 Diversion is the transfer of settlement of children's cases from the criminal justice process to a process outside criminal justice, with the aim of:

- a. Achieve peace between victims and children
- b. Resolving children's cases outside the judicial process
- c. Prevent children from deprivation of liberty

- d. Encourage the public to participate, and
- e. Instill a sense of responsibility in children

Diversion is mandatory at every level in Article 7 that at the level of investigation, prosecution and examination of children's cases in district courts, diversion must be attempted. Diversion is carried out in cases where the crime committed is punishable by imprisonment for less than 7 years, is not a repetition of the crime, and is committed against children aged 12 years and over. Diversion Process in Article 8 states that the diversion process is carried out through deliberation involving children and their parents/guardians, victims and/or guardians, community counselors and professional social workers based on the Restorative Justice approach. If necessary, the deliberation can involve Social Welfare Workers, and/or the community. The Diversion Process must pay attention to:

- a. Victim's interests
- b. Child Welfare and Child Responsibility
- c. Avoiding negative stigma
- d. Avoidance of retaliation
- e. Community harmony, and
- f. Decency, decency and public order.

### **Diversion for Children in Conflict with the Law according to Legal Psychology**

Basically, the Government Regulation of the Republic of Indonesia Number 65 of 2015 functions to provide technical guidelines for implementing the diversion process in the legal and regulatory system which refers to the considerations for implementing the provisions of Article 15 and Article 21 paragraph (6) of Law Number 11 of 2012 concerning Systems Juvenile Criminal Justice needs to establish a Government Regulation concerning Guidelines for Implementing Diversion and Handling Children Who Are Not Yet 12 (twelve) Years Old. So, from the provisions of Government Regulation Number 65 of 2015, it can be seen that the implementation guidelines and procedures for coordination between law enforcement agencies, namely the Police, Prosecutor's Office and Court as executors in implementing diversion, are clearly outlined in Government Regulation Number 65 of 2015. Meanwhile, the provisions regarding the requirements and procedures for diversion and handling cases of children under 12 (twelve) years of age are in line with Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Legal psychology according to Soerjono Soekanto is a legal study that will attempt to highlight law as a manifestation of certain psychological symptoms, as well as the psychological basis for the behavior or attitudes of these actions. Legal psychology is a new field in legal studies. The location of legal psychology in legal studies is in the empirical study of law. The psychological approach to law is intended to examine the behavior of society as legal subjects in looking at existing legal phenomena. The legal psychology approach emphasizes human determinants in law, including from legislation and judges' decisions. The relationship between the function and role of psychology in law, according to Farrington and Hawkins that the role of psychology in law can be divided into 3 (three) types, namely: 1). psychology can be used to test the truth of the pre-suppositions used in the law itself; 2). can be used in legal proceedings; and 3). used in the legal system itself.

The Indonesian government has implemented a restorative justice approach or resolving cases outside of criminal justice by involving victims, perpetrators, victims' families, perpetrators' families, and other related parties to obtain agreements and resolutions while still paying attention to the best interests of the child. Outside of criminal justice, what is meant is placing the courts for prison sentences as a last resort. So, as long as ABH can still be fostered, educated and improve their character outside prison, this will be beneficial for ABH, and for the state, namely to reduce the number of children placed in prison. If the number of children placed in prison can be reduced or reduced, then there will be no overloading in detention. This is also in line with the concept of *parents patriae*, the state is like a parent that will provide attention and protection to children, so that the handling of children in conflict with the law must also be carried out in the best interests of the child and based on Pancasila.. However, the application of restorative justice in various sources is still considered less than optimal, and the police are still not implementing it in its entirety.

To handle children in conflict with the law, the government has not prepared special courts and special children's prisons in the form of rehabilitation centers. Juvenile justice here should be held with the basic principle not to punish the child, but to provide the best interests of the child. In this case, a special prison for children is really needed, because it is hoped that it can implement a system that is different from general prisons and provide justice in accordance with children's rights. Prisons in Indonesia are only intended for the general public or adults, although they are separated into rooms for adults and children. One example of an institution that implements a system that is appropriate

when implemented in children's prisons is the Children's Social Protection Home (RPSA) which is an Integrated Service Unit of the DIY Provincial Social Service. This place functions to provide protection for children who are in trouble with the law. By being in this place, Children in Conflict with the Law will not experience cruelty like in a public prison, but will receive protection, guidance and direction to become better citizens of society.

## CONCLUSION

Providing criminal sanctions against children in conflict with the law needs to take into account the protection and interests of the child. This includes the welfare of children which should not be ignored. If the child's welfare is not paid attention to, it will be detrimental to the child himself, especially in obtaining his rights. Children's rights in the judicial process can be understood as a manifestation of justice. In this context, a welfare approach can be used as a philosophical basis for handling legal violations committed by children. This approach in principle emphasizes 2 (two) aspects. Firstly, children are considered to not really have any wrongdoing that they have done, so it is appropriate to give reduced sentences and differentiate punishments for children and adults. Second, when compared with adults, children are believed to be easier to coach and educate than adults and there is a need for a psychology in law approach, namely referring to specific applications of legal psychology in the law in analyzing causes. violations committed by children and the causes of law violators who are still children or juvenile offenders.

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