

IMPLEMENTATION OF DIVERSION IN THE JUVENILE CRIMINAL JUSTICE SYSTEM IN SAMARINDA DISTRICT COURT

Muhammad Rido^{1*)}, Ony Rosifany², Imron³

^{1,2,3}Faculty of Law, University of 17 August 1945, Samarinda, Indonesia
saverido1@gmail.com^{1*)}, ony@untag-smd.ac.id², aliimron.untag1945@gmail.com³

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Abstract

Children need to be protected from the negative effects of rapid development, globalization in the information and communication industry, scientific and technological breakthroughs, and changes in lifestyle and lifestyle of some parents. These factors result in fundamental social changes and have a major impact on children's behavior and values. Children who commit crimes are greatly influenced by socialization, education, playmates, and other external factors. This study uses the normative legal research method, utilizing primary and secondary legal sources, especially those that provide fresh or current scientific data or alternative perspectives on established facts or ideas. These sources in this case are books, journals, theses or dissertations, and other legal papers. The results of this study are that the implementation of Diversion is one of the restorative justice approaches that can be used to handle juvenile crimes. By focusing on how to return to the original state, diversion through a restorative justice approach is a fair and reasonable solution to children's cases involving perpetrators of criminal acts, victims, families of criminals, and other parties who collectively seek a solution to the crime and its consequences for the victim. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System regulates the procedures for diversion. Various studies have shown that there are obstacles that hinder the implementation of effective diversion. One of the main challenges is the lack of in-depth understanding of the procedures and principles underlying diversion among law enforcement officers and the community.

Keywords: Diversion, Justice System, Child Protection

INTRODUCTION

Children have intrinsic dignity as whole human beings, and they are both a responsibility and a gift from God Almighty. They are also the future generation of the country's endeavors, buds, and potential. They have special characteristics and perform a strategic function that ensure the future survival of the state and country. Every child must have the best chance to grow and develop physically, mentally, and socially as well as have a good character in order to be able to handle this responsibility. It is necessary to make protection efforts in order to realize the welfare of children by offering guarantees for the fulfillment of their rights and treatment free from discrimination.

In order to help them grow into healthy, intellectual adults, children should be guided rather than punished. Juvenile might sometimes encounter challenging circumstances that lead them to engage in unlawful behavior. But juvenile who violate the law are not deserving of punishment, much less incarceration (Djamil, 2013).

Juvenile in the community today need additional attention from their surroundings, both inside and outside of the family. Notably in the context of overseeing or supervising the behavior of juvenile who are still developing their sense of self. Rapid growth, changes in some parents' lives, scientific and technical breakthroughs, and globalization in the communication and information industries have all had a negative effect on children's values and conduct. Children should not be exposed to these changes. Juvenile that commit crimes are greatly influenced by their peers, their education, their socialization, and other factors. Laws and regulations that ensure the implementation and protection of juvenile's rights in particular, as well as institutional support, are essential to achieving the welfare and ensuring the protection of children in terms of the existence of treatment free from discrimination and the fulfillment of their rights. Many children have been pulled into the legal system due to a variety of illegal activities they have done, as a consequence of the complexity of issues that endanger children's development today, including issues in the family and the community. In cases where children are in conflict with the law, society's hope for justice appears to fall short of providing guarantees of justice and goodness for the children. The formal legal process they go through has a detrimental effect on their physical and mental health, making it difficult for them to reintegrate into society and even their families. It seems as if there is nowhere for a youngster to go after coming into contact with the police because of the stigma and unfavorable circumstances they face. When children are in confrontation with the law, the community wants them to be freed and shielded from the detrimental effects that the legal system has on their future.

Many juvenile have been pulled into the legal system due to a variety of unlawful action they have done as a consequence of the complexity of issues that hamper their development, including issues within the family and in the community. In cases where children are in conflict with the law, society's hope for justice appears to fall short of providing guarantees of justice and goodness for the children. The formal legal process they go through has a detrimental effect on their physical and mental health, making it difficult for them to reintegrate into society and even their families. It seems as if there is nowhere for juvenile to go after dealing with the law because of the stigma and unfavorable circumstances that they face. When children are in conflict with the law, the community wants them to be freed and shielded from the detrimental effects that the legal system has on their future. The restorative justice approach, which is carried out by diverting, is a non-formal method of resolving issues involving children in conflict with the law that avoids going through the criminal justice system. It involves the victim, the victim's family, the community, the perpetrator, and other parties that are thought to be related. Diversion is the process of resolving issues by putting the child's welfare first and getting rid of stigma, criminals, prospective criminals, immoral kids, and other things that have an influence on kids' development, particularly their psychological development.

Diversion is the process of transferring juvenile case settlements from the criminal court system to a procedure outside of court. One The UN experts meeting on "Children and Juveniles in Detention: Application of Human Rights Standards" in Vienna, Austria, from October 30 to November 4, 1994, recommended that all countries implement the Beijing Rules, the Riyadh Guidelines, and the United Nations Rules For The Protection of Juveniles Deprived of Their Liberty. This recommendation served as the foundation for the concept of diversion, which was introduced in the Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) as an international standard in the implementation of juvenile criminal justice (Wahyudi, 2011).

The researchers developed the issue statement based on the background information provided namely What Type of Diversion Arrangement Does the Indonesian Legal System Offer and "How the juvenile criminal justice system's use of diversion in the study of positive legislation is doing?"

The purpose of this study is to determine the Implementation of Diversion in the Juvenile Criminal Justice System in Positive Legal Studies and the Form of Diversion Regulation in the Indonesian Legal System.

The newness in this research refers to the fact that a well-conducted diversion approach can make a significant contribution to the handling of cases of children in conflict with the law, which does not only emphasize punishment, but also social recovery and reintegration.

RESEARCH METHOD

This normative legal research makes considerable use of primary and secondary legal sources, particularly those that provide fresh or up-to-date scientific data or alternative viewpoints on well-established facts or ideas. These resources in this instance consist of books, journals, theses or dissertations, and other legal papers (This research uses analytical qualitative descriptive data to take up problems or focus on problems as they exist when the research is carried out. The research results are then processed and analyzed to draw conclusions (Nasution, 2008).

RESULTS AND DISCUSSION

Forms of Diversion Arrangements in the Indonesian Legal System

Legal harmonization is notably implemented in national legislation by Law No. 3 of 1997 on Juvenile Justice and Law No. 23 of 2002 on Child Protection. Finding consistency or common ground among the core ideas of different current legal systems is the primary goal of legal harmonization. This consistency is evident in the provisions of all current child protection laws, particularly those pertaining to juvenile offenders (Hambali, 2019). Law No. 23 of 2002 requires the state to provide special protection for children who are in conflict with the law. This is done by providing humane treatment in accordance with children's rights, appointing special assistant officers from an early age, providing special facilities and infrastructure, imposing appropriate sanctions in the child's best interests, continuously monitoring and documenting the development of children in conflict with the law, providing guarantees to maintain relationships with parents or family, and protecting them from excessive media coverage and social labeling (Rosen et al., 2015). Prior to Law No. 11/2012, Indonesia had passed Law No. 3/1997 on Juvenile Courts, which dealt with the prosecution of minors who were in legal trouble. According to this law, children must be examined in a family setting; all children have the right to legal representation; the location of detention must be distinct from that of adult detention; detention is carried out after carefully weighing the child's and/or society's interests; and punishment need not involve imprisonment or detention but rather the return of the child to his parents or guardian (Saputra & Miswarik, 2021). The actual application of this law still falls far short of expectations.

Juvenile offenders must go through a number of higher legal procedures that no longer permit diversion once the investigation process is complete, because diversion only occurs during the investigation phase (Haerani et al., 2021). Even if the judge considers the issue in private, the public will be able to hear the court's conclusion in public. The child's mental state will undoubtedly be impacted if the court finds them guilty and places them in custody. In this case, labelling also starts when the public learns of the child's guilt (Siregar et al., 2022).

Both criminal and non-criminal methods may be used to prevent crime. The goal of crime prevention by penal measures is to use criminal law to combat crime. The criminal justice system is in charge of implementing the application of criminal law tools for crime prevention. Accordingly, Muladi said that the goals of the criminal justice system are (Darmini, 2019): (i) to rehabilitate and reintegrate criminals; (ii) to eradicate crime; and (iii) to attain social welfare. This assumption underpins the integrated juvenile criminal justice system's goals, which prioritize the first (resocialization and rehabilitation) and third (social welfare) initiatives. The police, prosecutor's office, court, and correctional institution are among the systemic movements of subsystems that make up the criminal justice system. Together, these subsystems attempt to convert inputs into outputs in the form of short, medium, and long-term goals. Re-socialization of criminals is the short-term objective of the criminal justice system; crime prevention is the medium-term objective; and social welfare is the long-term objective (Hirdayadi & Susanti, 2018).

Implementation of Diversion in the Juvenile Justice System at the Samarinda City District Court

Friedman contends that the substance of law, the institutions and/or structure of the legal system, and the culture of the legal system all influence the success or failure of the law enforcement is. Law enforcement is a multifaceted process that aims to make the legal ideas and conceptions that people expect to be a reality (Dellyana, 1988). Providing justice in a situation entails settling the law *in concreto* in order to uphold and guarantee the obedience to material law by using procedural techniques defined by formal law. In concrete words, law enforcement is the implementation of positive law in practice as it should be followed.

Because criminal law is an *Ultimum Remedium*, punishment is only considered a final alternative after all other options have been exhausted. When the victim and the offender have made amends, the convict's guilt is automatically released because the victim has forgiven him. This means that settling the case outside of trial will undoubtedly end the conflict that resulted from the criminal offense. It is possible to restore social harmony and restore the state of affairs that existed before to the illegal act. Diversion is the term for the resolution of criminal cases involving minors that might take place outside of the judicial system. Law Number 11/2012 on the Juvenile Criminal Justice System specifically regulates diversionary agreements as a legal foundation for the use of out-of-court procedures to resolve criminal cases involving minors.

It is quite alarming to see how juvenile who commit crimes are taken care of in reality. It is not unexpected that some juvenile inmates are placed in adult prisons because of overcapacity in many juvenile correctional institution. The standards of human rights legislation, which mandate that male, female, and juvenile inmates be kept apart, are not complied. There are severe consequences for children if this legal requirement is not taken properly. After completing their term, they can become more aggressive after they are freed (Harefa, 2015). According to criminological research, incarceration has the detrimental impact of teaching individuals how to commit crimes. The juvenile criminal justice system, which still applies the idea of justice with punitive punishment for juvenile, is the cause of this problem. This paradigm is out of step with current advancements. As much as possible, juvenile are not processed by formal law because of the many harmful effects of punishment; instead, they employ other methods, such as out-of-court conflict settlement (Hidaya, 2019).

Law enforcement officers, particularly Police Investigators for juvenile cases, have handled instances involving children. Police investigators often reach peace agreements to prevent cases from going to trial. This kind of agreement is not the anticipated diversion mechanism, however. The child's best interests are considered in this arrangement. Furthermore, present practices do not include legal considerations; for instance, diversion is limited to small infractions with minimal punishments (Triwati & Kridasaksana, 2021). Regardless matter how serious a case is, law enforcement must consider agreement option. This is an unlawful diversion as it does not meet the criteria for diversion. This makes sense given that law enforcement officers lack a strong legal foundation to carry out diversion as intended. Furthermore, law enforcement officers are not provided with any technical or practical guidelines for the diversion settlement approach when it comes to minors involved in criminal cases (Sidrat et al., 2019).

The treatment of juvenile criminal matters may be done using a restorative justice approach, notably by diversion. By stressing restoring back to its original state, diversion through a restorative justice method is a fair settlement of juvenile cases including offenders, victims, their families, and other parties involved in a criminal case working together to find a solution to the crime and its ramifications. Law Number 11 of 2012 regulating the Juvenile Criminal Justice System regulates the diversion implementation procedure. Government Regulation No. 65/2015 on Guidelines for the Implementation of Diversion and Handling of Children Under 12 Years of Age also contains regulations pertaining to this topic. The diversionary provisions of the SPPA Law are governed by Articles 6 through 15. Accordingly, diversion is described in Article 1 Point 7 of the SPPA Law as the transfer of the settlement of children's matters from the criminal court system to a mechanism outside of it. Law No. 11/2012 on the Juvenile Criminal Justice System governs diversion, which prevents young people in legal difficulty from being stigmatized as a consequence of the court processes they must endure.

Below are the data obtained by the author on the implementation of diversion in Samarinda City

The Samarinda District Court's juvenile diversion program is generally regarded as having been implemented successfully because it complies with UUSPPA. However, further streamlining of the diversion process is still necessary, including for victims and those who are not, beginning with the investigation, prosecution, and court examination stages. A number of factors, including legal content, legal structure, legal culture, legal knowledge, and facilities and infrastructure, affect how well the Samarinda District Court implements diversion for minors.

Various studies have shown that there are obstacles that hinder the implementation of effective diversion. One of the main challenges is the lack of in-depth understanding of the procedures and principles underlying diversion among law enforcement officers and the community. This indicates the need for capacity building and training for related parties so that they are able to carry out the diversion process in a manner that is appropriate and sensitive to children's rights.

CONCLUSION

Diversion is one of the form of restorative justice that may be used to handle juvenile criminal. By stressing on restoring back to its original state, diversion through a restorative justice method is a fair settlement of juvenile cases that includes offenders, victims, their families, and other parties involved in a criminal case working together to find a solution to the crime and its ramifications. Law No. 11/2012 on the Juvenile Criminal Justice System governs the diversion implementation procedure.

The Samarinda District Court's diversion program for children is generally regarded as successful because it complies with UUSPPA. However, diversion needs to be further streamlined, both on crimes with and without victims, beginning with the investigation, prosecution, and court examination stages. Facilities and infrastructure, legal substance, legal structure, legal culture, and legal knowledge are some of the elements that affect how successful the Samarinda District Court implements diversion for juvenile.

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