

Restorative Justice through Diversion Policy in the Child Justice System

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Abstract

The position of the rights and obligations of everyone in court is the same, but as a special relationship in the criminal justice system, children must receive different treatment, considering that children are an inseparable part of human survival and the sustainability of the nation and state. Law no. 11 of 2012 concerning the juvenile justice system emerged as a form of intention to create child-friendly courts, even looking further at the most basic substance of this rule, namely promoting the principles of restorative justice with a view to finding a settlement of cases without having to go through a trial. However, in practice there are still child cases that continue to take legal action through the courts. These problems will then be discussed, looking at the policies and realities as well as benchmarks about what kind of cases can be resolved in every process of resolving child cases in court. Currently with Law Number 11 of 2012 on the Criminal Justice System of Children (SPPA) which has sought diversion and restorative justice in terms of handling child conflict with the law. From the results of this study concluded that the policy formulation the concept of diversion and restorative justice pursuant to Law Number 11 of 2012 on the Criminal Justice System of Children (SPPA) and its implementation rules have been set regarding policy concept of diversion and restorative Justice with the aim that children who commit act the criminal is no longer confronted in the judicial process but through an alternative solution.

Keywords

restorative justice; diversion; policy



I. Introduction

In the Indonesian constitution, children have a strategic role which is explicitly stated that the state guarantees the rights of every child to survival, growth, and development as well as protection from violence and discrimination. This firm order through the constitution must be followed up by making government policies aimed at protecting and providing justice for children.

Justice for children who dealing with the law is by ensure that all children receive optimal services and protection through the justice system. The target is the norms, principles, and standards of children's rights that are fully given to every child without an exception, whether to children who are dealing with the law or children that are in conflict with the law. Dealing with the law means that the child can become a victim or witness, while in conflict with the law means that the child is in a position as a suspect or accused of a crime.

Diversi gets a positive response from the Government. The government has the power to make and apply laws as well as legislators, in the case of the juvenile criminal justice system. So that the House of Representatives, which functions as a legislative body, gave birth to Law number 11 of 2012 concerning the Juvenile Justice System instead of

law number 3 of 1997 concerning juvenile justice, which was legally passed on July 3, 2012. Legislation products The child justice system is a step forward because the rights of children facing the law are more secure. Where the law of the juvenile criminal justice system upholds restorative justice.

Children need to be protected from the negative impacts of rapid development, globalization in communication and information, and of course legal protection. The principle of legal protection in protecting children must be in accordance with the Convention on the Rights of the Child as ratified by the government of the Republic of Indonesia with Presidential Decree Number 32 of 1990. With the government's step by ratifying the convention, legal protection for children should be achieved.

However, it seems that if we look at the practice in the field, there are still many children involved in legal conflicts who are positioned as objects of the criminal justice system and this can certainly have a negative impact on children's development. This produce an intention to provide protection for children through a "child-friendly" justice system which is substantially regulated by Law Number 11 of 2012.

Many things are highlighted in this regulation, one of them is regarding the placement of children who undergo the judicial process can be placed in The Child Special Guidance Institution (LPKA), and the most important and fundamental is the strict regulation of Restorative Justice and Diversion.

Various obstacles in the process of investigation, prosecution, and trial are often encountered, so that in carrying out the orders of the law there are different implementations. Therefore, the existing policies are not enough to just regulate but also need to be detailed and also for the law enforcers must animate the rules themselves.

From what has been described through the background above, there is a problem formulation, namely as follows:

1. How is the diversion policy in its application to the juvenile criminal justice process and the obstacles that prevent diversion from being achieved?
2. What are the benchmarks for achieving restorative justice through diversion in relation to children's right to participate?

II. Research Method

The method of approach is the statutory approach and the comparative approach. Primary, secondary and tertiary legal materials obtained by the author will be analyzed using the method of systematic interpretation, namely interpretation by looking at the relationship between the rules in an interdependent law. For obtain data and explanations regarding everything related to problem requires a research method. This is because with using research methods that will really get the right data and make it easier to do research on a problem. Therefore used for methods of obtaining data and processing data as well as analyze it.

III. Results and Discussion

2.1 Diversion Policy and Supporting Rules of Child Criminal Justice Law System

Attempt to avoid and keep children away from the court process to avoid stigmatization of children who are in conflict with the law so that children can return to the social environment properly, is the mark of restorative justice through diversion. This process is realized when all parties involved in a particular criminal case work together to solve problems and create an obligation to make things better by involving victims,

children, and the community to find solutions in order to repair and reconcile which in the process is reassuring heart and not based on revenge.

Policies in dealing with diversion must actually be pursued in every sub-system of criminal justice both at the level of investigation, prosecution, and examination of children's cases in district courts. This obligation is determined as follows:

1. Criminal investigations and prosecutions of children are carried out in accordance with the provisions of the legislation, unless otherwise stipulated in this law (UU SPPA).
2. The trial of children carried out by the court in the general court environment.
3. Guidance, guidance, supervision, and/or assistance during the process of carrying out a crime or action and after serving a sentence.
4. In the juvenile criminal justice system as referred to in paragraph (2) paragraphs a and b, diversion must be sought.

The diversion process is carried out through deliberation involving children and their parents/guardians, victims and/or their parents/guardians, community counselors, and professional social workers. If necessary, it can involve Social Welfare Workers, and or the community.

In the diversion process, these following must be considered:

1. The interests of the victim
2. Child welfare and responsibility
3. Avoidance of negative stigma
4. Avoidance of retaliation
5. Community harmony
6. Propriety, decency, and public order

Investigators, public prosecutors, judges in conducting diversion must consider the category of crime, the age of the child, the results of research from the Fathers, as well as support from the family and community environment. In addition to the law regarding the criminal justice system, the National Police itself has the flexibility to see the potential for handling cases without having to go through a trial.

This is reinforced by the discretionary rights possessed by members of the National Police that in the context of carrying out their duties in the criminal field, the Indonesian National Police has the authority to: take other actions according to the law and are responsible. Of course, with careful consideration and in accordance with the legal obligations that require the action to be carried out, and it is appropriate and reasonable.

The Police are also provided with direction, namely by building an understanding that a child's actions in criminal acts are actually the result of the failure or mistakes of parents in educating and escorting children to adulthood.

Seriousness in providing child protection in the justice system is also manifested through a joint decision, which is related to paying attention to several provisions through Article 6 of Law No. 39 of 1999 concerning Human Rights and emphasized in Article 16 of Law No. 23 of 2003 concerning child protection, which some of the key points are:

1. Inhumane punishments shall not be imposed on children
2. The death penalty / lifelong cannot be applied to children
3. Arrest, detention, sentencing must be based on law and take the last resort.

The purpose of the establishment of a Joint Decree is to create integration and coordination in all parties involved in handling ABH cases.

a. Barriers to the Implementation of the Diversion System in Order to Fulfill Restorative Justice

1. Public Factors

It is undeniable that an understanding of the contents of the SPPA Law or an understanding of diversion and restorative justice is not deep enough. This is clearly very influential, seeing that law enforcement must be accompanied by an understanding of a rule. In addition, there is a strong tendency in society that the law is a law enforcer or law officer, which makes people accustomed to seeing that a criminal act needs punishment.

2. Law Enforcement Factors

Enforcement officers take an important role in the success and sustainability of diversion, the quality of officers must be directly proportional to the existing rules, this is where the problem that often arises is that some law enforcers do not carry out legal provisions properly. The mentality of officers must be formed as well as possible in order to carry out the law.

3. External Barriers in the District Court as well as Facilities and Infrastructure

In diversion, facilities can refer to facilitators, both prosecutors, judges, as well as investigators, who should have sufficient provisions as the executor of the diversion itself. Then the cooperation of other agencies related to the application of diversion that has not been able to synergize with the courts and related agencies, this is what is meant by infrastructure other than a special room for mediation, there needs to be a relationship between one institution and another.

4. Terms of Sentence Must be under 7 years

There are children whose sentences are indeed demanded above 7 years, this is of course very difficult to do diversion because diversion can only be carried out by criminal acts that are less than 7 years or 7 years, even if it comes back again if talk to the child, the resulting output is the result of failure that comes from the parents.

2.2 Children's Right to Participate in Diversion

In the definition of the category of children, they are those who are 12 years old but not 18 years old or 12 years old even though they have been married but are not yet 18 years old.

Then regarding the length of sentence that can be sought for diversion in the SPPA Law, it is said that diversion can be applied to cases of children whose demands are under 7 years old. However, in Perma No. 4 it is implied that a sentence of more than 7 years can be sought, which reads "Child judges are obliged to seek diversion in the event that a child is accused of committing a crime which is punishable by imprisonment for under 7 (seven) years and also charged with a crime. Criminal offense punishable by imprisonment of 7 (seven) years or more in the form of a subsidiary, alternative, cumulative or combination (combined) indictment."

Two things above are at least the first reference in measuring the category of children who can get diversion. Regardless of the category defined by law, every child basically has the right to participate. The right to participate is the right to express opinions, in this case everything that affects children.

For example, a child who is decided by a court gets death or for life, which should be prohibited because the violator is still young. Including children who are married, then the

status of children changes to adults, so that if they violate the law, they will be carried out as if they are capable of law.

Decision-making errors by judges, prosecutors, and investigators are not necessarily caused by the different definitions of children in each local instrument. The low level of socialization about changes in regulations and the lack of understanding of personnel in the field in dealing with young offenders led to a significant increase in the age difference variable.

If you look back at the Convention on the Rights of the Child, there are some interesting points that every child basically has the same rights in court, especially regarding diversion efforts, as follows:

1. Non-discrimination, namely acting fairly and not discriminating against children
2. The Best Interest of the Child, namely seeking all decisions, activities, and support from influential parties solely for the benefit of the child
3. Prioritizing children's rights to life, survival and growth and development, namely activities arranged for children's development based on their abilities and developmental tasks
4. Respecting children's views, namely paying attention to and including children's views in every process of discussion and decision-making in every activity.

Again, it should be remembered that children are very closely related to human rights, where everyone has the right to protection of human rights and human freedoms without discrimination. It is becoming increasingly clear that children have the right to be protected as a valuable entity, and when there is a problem with the law one way is to use diversion because diversion is a way to protect human rights.

Looking back a bit, even before the SPPA Law was born, concerns about children's rights have been explained indirectly that the concept of diversion is a concept that aims to fulfill human rights and children's rights. There are several points described, namely:

1. Article 2: Children have the right to protection against the environment that can harm or hinder their growth and development properly
2. Article 6 paragraph (1): Children who experience behavior problems are given services and care aimed at helping them to overcome obstacles that occur during their growth and development
3. Article 6 paragraph (2): Services and care, as intended in paragraph (1), are also provided to children who have been found guilty of violating the law based on a judge's decision.

All forms of rules and policies related to child protection have been tried to be implemented in such a way, and the most important thing is that there should not be discriminatory factors in the handling of children considering that "everyone is equal before the law and has the right to the same legal protection without discrimination. All are entitled to equal protection against any form of discrimination contrary to this Declaration, and against any incitement to discrimination".

In fulfilling human rights and children's rights, the concept of diversion is very suitable and necessary. So in essence, the implementation of the concept of diversion towards the fulfillment of human rights and children's rights has been accommodated in such a way both by the state and internationally. This is because many countries are of the view that human rights and children's rights are fundamental rights that must be considered and protected, considering that children are the nation's generation that will continue civilization.

IV. Conclusion

Punishment for perpetrators of child crimes does not then achieve justice for the victims, considering that from the other side it still leaves its own problems that are not resolved even though the perpetrators have been punished. Seeing the principles on child protection, especially the principle of prioritizing the best interests of the child, a process for resolving child cases is needed outside the criminal mechanism or commonly called diversion. Through the SPPA Law (Child Criminal Justice System) it is expected to be able to accommodate the mandate of the Constitution, Law No. 3 of 1997 concerning Juvenile Court and other regulations to the fullest.

Diversion is currently an alternative problem solving for children who are dealing with the law progressively. In its application, although there are still children who have not received diversion efforts due to lack of understanding or clear rules, but as a fundamental right, diversion is expected to be able to be given to every child in conflict with the law, without any discrimination, so that the dignity of justice Restorative, which is a form of legal reform that is not only changing the law, but also modifying the existing justice system, can reach every child. It is necessary to involve more elements of the community and non-governmental organizations (NGOs), especially in ABH prevention programs and after care programs for ABH. Guided by the principle that is best for children, several institutions that serve as care centers or places to undergo ABH punishment such as LPKA and other social institutions provide various facilities and infrastructure to support better child development.

Encouraging various parties to further intensify the settlement of legal cases for children (as perpetrators) through the principle of restorative justice by means of diversion, while ensuring that the diversion process is not only a means of compensation transactions, but is still able to provide a deterrent effect to children as legal actors. It is necessary to conduct socialization to the community related to the legal process for children which is different from the legal process for adults to prevent misunderstandings from the community about the ongoing legal process. Repair or conduct a judicial review in order to find weak points that make the diversion less successful. Conduct training and deepening related to restorative justice as well as diversion to law enforcers, so that they can be more passionate about the rules themselves.

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Supreme Court Regulation No. 4 of 2014 concerning Guidelines Implementation of
Diversion in the Juvenile Justice System

Joint Decision: Chief Justice of the Supreme Court of the Republic of Indonesia, Attorney
General of the Republic of Indonesia, Head of the Indonesian National Police,
Minister of Law and Human Rights of the Republic of Indonesia, Minister of Social
Affairs of the Republic of Indonesia, and State Minister for Women's Empowerment
and Child Protection of the Republic of Indonesia, concerning Handling of Children
in Conflict with the Law

Telegram Kabareskrim Polri No. 1124/XI/2006 about

_____Guidelines for the Implementation of Diversion for the Police