

## Jurisdiction Overview Of The Implementation Of Diversion Against Children Who Complete The Criminal Act Of Assembling (Case Study In Pekalongan State Court)

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### *Abstract*

Diversion is a process in the children's case settlement system, namely the transfer of the settlement process for children in conflict with the law from the criminal justice process to outside the criminal justice system. Diversion uses a restorative justice approach, which is a settlement of criminal cases by involving the perpetrator/victim and other related parties to jointly seek a fair solution by emphasizing restoration back to its original state, not retaliation. Diversion is carried out to provide protection and rehabilitation to perpetrators in an effort to prevent children from becoming adult criminals. Diversion against child offenders is carried out by the three components of the criminal justice system in Indonesia, from the police, prosecutors to the courts.

The results of this study indicate that the Pekalongan District Court has succeeded in implementing diversion against children who commit crimes of abuse and of course in the application of diversion from the initial stage to the end it still prioritizes and provides children's rights that they should receive.

**Keywords :** *Diversion, Restorative, SPPA Law*

### **A. INTRODUCTION**

Children are the future of the nation and state, children have a long life expectancy in which one day they will become the successors of a nation and state. Therefore, the protection of children's rights must be prioritized. Children have special characteristics (specific) compared to adults and are one of the vulnerable groups whose rights are still neglected, therefore it is important to prioritize children's rights. In general, what is meant as a child is someone who is still under a certain age and is not yet an adult and has not married. Every

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child is basically in the process of growing and developing and immature both physically, psychologically and socially. The development that is being experienced by children is very vulnerable to being disturbed by internal and external factors, so that guarantees are needed for the child's development process by means of child protection.<sup>4</sup>

The report from the Indonesian Child Protection Commission (KPAI) noted that there were 123 cases of children in conflict with the law (ABH) as perpetrators until the end of 2020. The most crimes were physical violence as many as 30 cases, sexual violence 28 cases, traffic violence 13 cases, theft 12 cases, psychological violence 11 cases, 9 cases of possession of sharp weapons, 8 cases of sodomy, and 6 cases of abortion, cases of child crime dominated by physical violence.<sup>5</sup> One of the efforts to overcome juvenile delinquency (child criminal politics) is currently through the implementation of the juvenile justice system (Juvenile Justice). The purpose of implementing the juvenile justice system is not solely aimed at imposing criminal sanctions for children who have committed criminal acts, but is more focused on the premise that the imposition of sanctions is a means of supporting the welfare of children who are perpetrators of criminal acts. Legal certainty needs to be sought for the continuity of child protection activities and to prevent abuses that have undesirable negative consequences in the implementation of child protection activities.<sup>6</sup>

This is emphasized in the 1945 Constitution of the Republic of Indonesia which states that, "every child has the right to survive, grow, and develop and has the right to protection from violence and discrimination."

The implementation of the juvenile criminal justice system is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. This new breakthrough in the juvenile criminal system is the settlement of out-of-court crimes, namely diversion. The concept of diversion is based on the fact that the criminal justice process against children perpetrators of criminal acts through the criminal justice system cause more harm than good.<sup>7</sup>

<sup>4</sup> PERMEN Women's Empowerment and Child Protection R.I. Number 15 of 2010, General Guidelines for Handling Children in Conflict with the Law, Ministry of Women's Empowerment and Child Protection R.I.

<sup>5</sup> Indonesian Child Protection Commission

<sup>6</sup> Candra Hayatul Imam, 2013, *Child Protection Legal Policy in Renewing the SPPA in Indonesia in the Journal of Law and Research*, p.359

<sup>7</sup> UU no. 11 of 2012 concerning *the Juvenile Criminal Justice System*

According to PERMA 4 of 2014 Diversion Deliberation is a deliberation between parties involving the child and his/her parents/guardians, victims and/or their parents/guardians, community advisors, professional social workers, representatives and other involved parties to reach a diversion agreement through an approach restorative justice.<sup>8</sup> The important point of PERMA is that judges are obliged to resolve problems with children who are in trouble with the law (ABH) by means of diversion and contain procedures for implementing diversion which are the judge's guidance in resolving child criminal cases.<sup>9</sup>

Diversion is carried out with the reason to provide an opportunity for lawbreakers to become good people again through non-formal channels by involving community resources. Diversion seeks to provide justice for cases of children who have already committed criminal acts to law enforcement officers as law enforcement parties. Both justices are presented through a study of circumstances and situations to obtain appropriate sanctions or actions (appropriate treatment). There are 3 types of implementation of the diversion program, namely:<sup>10</sup>

- 1) Implementation of social control (social control orientation), namely law enforcement officers hand over the perpetrators in the responsibility of supervision or observation of the community, with obedience to the approval or warning given. The perpetrator accepts responsibility for his actions and is not expected by the community to give the perpetrator a second chance.
- 2) Social services by the community to actors (social service orientation), namely carrying out functions to supervise, interfere, improve and provide services to perpetrators and their families. The community can interfere with the perpetrator's family to provide repairs or services.
- 3) Towards a process of restorative justice or negotiation (balanced or restorative justice orientation), namely protecting the community, giving the opportunity for the perpetrator to be directly responsible to the victim and the community and making a mutual agreement between the victim, the perpetrator and the community. In practice, all

<sup>8</sup> PERMA 4 of 2014

<sup>9</sup> Yul Ernis, 2016, *Diversion and Restorative Justice in the Settlement of Child Crime Cases in Indonesia*, *Scientific Journal of Legal Policy*, Vol 10 No 2

<sup>10</sup> Nicholas M.C Bala et al, 2002, *Juvenile Justice System an International Comparison of problems and solutions*, p. 57

relevant parties are brought together to reach an agreement on actions for the perpetrators.

Restorative justice is the effort of all parties involved in a particular crime to jointly solve problems and create an obligation to make things better by involving victims, children, and the community in finding solutions to repair, reconciliation, and reassurance that is not based on vengeance. The most basic substance in the SPPA Law is a strict regulation of restorative justice and diversion which is intended to avoid and keep children away from the judicial process so as to avoid stigmatization of children who are in conflict with the law and it is hoped that children can return to the social environment naturally.

## **B. Research Methods**

This research is a normative legal research that uses a normative juridical approach, namely research that examines document studies using various secondary data such as legislation, court decisions, legal theory, and can be in the form of opinions of scholars.

This study shows the importance of the Restorative Justice approach and the existence of diversion in the resolution of juvenile crime cases to change the paradigm of criminal punishment into the restoration of the perpetrator-victim-community relationship.

This type of normative research uses qualitative analysis, namely by explaining the existing data in words, using literature studies and field research.

## **C. Results and Discussions**

### **1. Application of the Diversion System Against Children Who Commit the Crime of Persecution in the Pekalongan District Court**

The Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in article 1 paragraph 7 diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system. However, the regulation in its implementation is regulated in the Supreme Court Regulation Number 4 of 2014 concerning guidelines for the implementation of diversion, the following is the explanation: The initial stages of implementing diversion are due to reports or complaints from the public to the police or courts about criminal acts committed by children, then the next process the report is in analysis and investigations and investigations are carried out

by child investigators or by the police, then proceed to prosecution by the public prosecutor's office by the child prosecutor, the public prosecutor is obliged to seek diversion for 7 days, after there are demands, children who are in conflict with the law will be examined, before At the stage of the ongoing case, whether at the police, court or prosecutor's stage, the agency will notify the complainant and the reported party to take their case through an out-of-court process, namely diversion. If the complainant, the reported party, and the party concerned agree or agree to take the case through the diversion route (there must be a mutual intention/faith for peace to achieve common interests), then the child who is in conflict with the law or the victim will receive assistance from the parents, father and son, and child psychology if needed. In the process of implementing the diversion, it takes 30 days to reach a final agreement according to with Article 29 paragraph 2 of the Juvenile Criminal Justice System Law no. 11 of 2012, the diversion process requires the role of many parties such as mentors or community leaders, professional social workers, and community social welfare workers if needed.

If the diversion process has been carried out and the final result is peace or successful diversion, the parties must request a diversion decision to the court and request a letter to terminate the prosecution, then the court will issue the results of the diversion agreement. And if the diversion process has been carried out but the final result is not amicable or the diversion is unsuccessful, then the case is continued through a court or legal process, and the case is transferred back to the court.

The Pekalongan District Court prioritizes diversion in the juvenile criminal process, because children are the hope of the nation and future leaders, whose morals, traits and character can be shaped for the better.

Based on the results of an interview on Tuesday, November 16, 2021 by Mrs. Elin Pujiastuti, SH. MH (Judge at the Pekalongan District Court as well as Diversion Facilitator) in the process of implementing diversion is in accordance with Law No. 11 of 2012 concerning the Juvenile Criminal Justice System and continues to prioritize the interests, rights, and comfort of children, carried out against children who are in conflict with the law.

In the diversion process of the Child case Number 16/Pid.Sus.Anak/2020/PN Pkl, a diversion agreement was reached with the following provisions: Party I admitted his mistake and apologized sincerely to party II and party II was willing to forgive sincerely, Party I is able and willing not to repeat their actions against party II or against other parties, Party I and party II are able to promise not to hold grudges in the future and are willing to live in harmony in the community, Party I has provided medical assistance to party II in the amount of Rp. 2,500,000,- (two million five hundred thousand rupiah), Party I is willing to provide Guidance and Supervision from Pekalongan BAPAS for 3 (three) months by carrying out mandatory reports to Pekalongan BAPAS every 1 (one) month, If this agreement is not fulfilled or violated by the parties, the examination process is continued in the trial process. This agreement was made by the parties without any element of coercion, error and fraud from any party.

The process of implementing diversion carried out at the Pekalongan District Court and the diversion agreement has fulfilled and is running in accordance with the provisions of the contents of the applicable law, the application of which prioritizes justice, the wishes and common interests of all parties concerned, especially and the main thing is children. who are in conflict with the law, so it is reasonable to be granted. Taking into account the provisions of article 12, article 52 paragraph 5 of Law No.11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 8 of 1981 concerning the Criminal Procedure Code and other relevant laws and regulations. The existence of the Law on the Juvenile Criminal Justice System has a significant effect, so it can be concluded that with the settlement of child cases through this diversion, the number of child offenders in prison decreases and allows children to grow and develop, and the process returns to prison. live in society. Thus, children's human rights are better protected and the implementation of diversion in children's cases has been implemented properly.

## **2. Implementation of Diversion Against Children Who Do Crimes When Seen From the Perspective of Protecting Children's Rights**

The Government of Indonesia signed the United Nations Convention on the Rights of the Child (UNCRC) as a result of the UN General Assembly which was

accepted on November 20, 1989. Indonesia has ratified the convention on the rights of the child by Presidential Decree No. 36/1990. children's rights in Indonesia, then the Indonesian government made it happen by issuing various laws and regulations, including Law No. 3 of 1997 on Juvenile Court and Law No. 23 of 2002 on Child Protection.

Indonesia has also provided protection for human rights and human freedoms without discrimination. Children have the right to be protected, especially for children who are in conflict with the law, which is one way to use diversion because diversion is a way to protect their human rights.

Based on the Convention on the Rights of the Child (CRC), the implementation of the juvenile justice process in conflict with the law needs to pay attention to four principles:

- a. Non discrimination, namely acting fairly and not discriminating against all children
- b. The best interests of the child, namely seeking all decisions, activities and support from influential parties solely for the best interests of the child
- c. Prioritizing children's rights to life, survival and growth and development, namely activities arranged to improve children's development based on their abilities and developmental tasks
- d. Respect the views of children, namely paying attention to and including the views of children in every process of discussion and decision making in each activity.

In Law Number 4 of 1979 concerning Child Welfare, it has also been explained indirectly that the concept of diversion is a concept that aims to fulfill human rights and children's rights. This is stated in Article 2 and Article 6 paragraphs (1) and (2) of Law no. 4 of 1979 which reads:

- a. Article 2: Children have the right to protection of the environment that can harm or hinder their growth and development properly
- b. 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.
- c. Article 6 paragraph (2): Services and care, as intended in paragraph (1), are also

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provided to children who have been found guilty of violating the law based on a judge's decision.

The implementation of diversion with the principle of the best interests of children is the fulfillment of human rights and children's rights that are sovereign and fair for all parties involved. By forgiving each other in the diversion process, children who are in conflict with the law can be freed from discrimination and a deterrent effect will arise in their hearts so as not to repeat their actions again. So that diversion and human rights are closely related to realizing diversion and actually as a guarantee, diversion is here to provide legal protection for children who are in conflict with the law, so that they avoid stigma and children can return to the social community.

#### **D. CONCLUSION**

1. Diversion is explicitly regulated in the SPPA Law, with the aim of avoiding and keeping children away from the judicial process so as to avoid stigmatization of children who are in conflict with the law and it is hoped that children can return to the social environment properly. The application of diversion in the juvenile criminal justice system cannot be carried out in all cases of children. If the child's case meets the requirements for diversion, the Pekalongan District Court will prioritize this child's case to take the diversion route, the Pekalongan District Court has implemented diversion and has run fully as regulated in Law No. 11 of 2012 UU SPPA and PERMA Number 4 of 2014 concerning guidelines for the implementation of diversion in the SPPA, the application of diversion which prioritizes justice, the common wishes and interests of all parties concerned, especially and the main thing is children who are in conflict with the law.
2. The obstacles faced in the process of implementing diversion at the Pekalongan District Court are internal factors such as differences in perceptions of the meaning of justice by the parties concerned in the process of implementing diversion and an in-depth understanding of the contents of PERMA Number 4 of 2014 concerning Guidelines for Implementing Diversion in the SPPA, and external factors such as understanding of the community and other law enforcement officers on diversion is still lacking, the role of the community is still and the cooperation of other agencies

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related to the implementation of diversion has not been going well.

3. Indonesia has ratified the convention on children's rights with Presidential Decree No. 36/1990. This ratification is intended as a concern for the Indonesian people in protecting the rights of children in Indonesia. The form of child protection in international relations has been regulated in the Convention on the Rights of the Child, in which children's rights must be protected and guaranteed in order to live, grow, develop, and excel in obtaining a decent and quality education. In order to realize the protection and welfare of children, there have been institutions and laws and regulations that can guarantee their implementation. The fulfillment of human rights and children's rights is very suitable to be applied to the process of implementing diversion, especially children who are in conflict with the law have the right to be protected, the obligation to implement diversion is the fulfillment of children's rights, the concept of diversion towards the fulfillment of human rights and children's rights has been accommodated so well by the Pekalongan District Court. The principle of the best interests of children is the fulfillment of human rights and children's rights that are sovereign and fair for all parties involved. In Law Number 4 of 1979 concerning Child Welfare, it has also been explained indirectly that the concept of diversion is a concept that aims to fulfill human rights and children's rights.

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