



Application of Diversion for Children in conflict with the Law: How is the Criminal Justice system

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ABSTRACT

Child law issues have many dynamics and challenges that are contrary to the constitution and human rights, but in the process, criminal acts involving minors have their own way of solving them and one of them is through diversion or protection based on values and rights. In addition to lightening the legal settlement process, diversion also avoids a process that will have a very bad impact on children's development, through diversion it is also hoped that the justice system that is very burdensome to children can be immediately changed and replaced with a process that is very burdensome. It is deliberative, more humane and far from acts of violence that will give a bad stigma to the image of Indonesia's judiciary, this study uses a qualitative method approach by examining several literature studies related to the research objectives, namely to find out how diversion is applied. for children related to law and how the justice system is for the Indonesian people.

1. Introduction

Legal settlement regarding crimes against children in the country of Indonesia is still a problem that has not been resolved to date. In fact, in Indonesia cases against children are still classified as very high, even though in principle the settlement of crimes against children has been determined and formulated in the Child Criminal Law (UU.No.11 of 2012), namely the implementation of solving problems of children who are faced with the law is resolved with the application of restorative justice through a diversion system (Yunus, 2013). Diversion is one of the best ways in solving child criminal cases (Hambali, 2019). Likewise with the international world system that regulates the protection of children around the world as stated in article, (1) 1959 UN General Assembly Declaration on the Rights of the Child; (2) 1966 International Covenant on Civil and Rights of the Child; (3) 1966 International Covenant on Economic, Social & Cultural Right; (4) 1989 UN Convention on the Rights of the Child with one of its formulations is that every human being is born free and equal in dignity and rights (Harefa, 2015). Thus, children are guaranteed their rights to live and develop according to their abilities and must be protected.

Protection of children's rights that exist throughout the Indonesian nation is part of a legal instrument and human rights, in which there is a measure that is the most comprehensive and one of the ways to promote the protection of freedom for children of all the possibilities that will endanger their future, so that children are people who really need protection (Afandi, 2016). And Indonesia itself is one of the countries that has ratified the Convention on the Rights of the Child (CRC) in 1990 which was approved by the UN Council of Ulema on November 20, 1989, convention on the rights of the child (Priamsari, 2019). Which was ratified by the Indonesian government through Presidential Decree Number 37 of 1990, then outlined in Law Number 4 of 1979 concerning Child Welfare, Law Number 35 of 2014 concerning Child Protection, Law Number 11 of 2012 concerning the Child Criminal Justice System all of which state the general principles of child protection, namely non-discrimination in the best interests of the child,

However, in reality, criminal acts involving children still frequently occur in Indonesia and have increasingly varied forms, ranging from theft, drug abuse, sexual harassment, fighting, murder, and perhaps crimes that mostly involve young people today. motorcycle gangs that eventually end up with robbery on the streets, looking at the data and facts above shows that children with various criminal cases, afterwards must be ready to be responsible for the actions they have committed, in other words, any actions that are detrimental and cause harm. whether in the form of material or life, it must be ready to face the law even if it happens to minors, By referring to the laws and regulations that have been regulated and ratified by Indonesian state institutions, regardless of the number of legal cases involving children in them, there should be a special policy that can alleviate the sentence.

Behind the acts of violence perpetrated by minors, of course there are many factors that cause the child to dare to take actions that are against the law, and one of them is the child as a victim of violent treatment, whether physical, psychological, or violent. sexual harassment and violence of neglect, of course, with a diversion system for children concerned with legal crimes, at least it will ease the psychological burden and psychological burden for those who have been caught in the circle of crime cases. The aim of diversion is with the concept of restorative justice where the handling always prioritizes being carried out by calculating the broader influence on victims, perpetrators and society (Prasetyo, 2015).

The aim of holding legal relief for minors who are caught in criminal acts is the result of the development of legislation regarding the juvenile justice system because there are so many abuses and acts of fraud committed by legal officers in handling various legal cases that ensnare children under age, with the following background, First, the failure of the juvenile criminal justice system to produce justice; Second, the rate of child crime and recidivism has not decreased; Third, the judicial process failed to treat children; fourth, the courts have made more use of the punishment of deprivation of liberty (imprisonment). The government through its law has regulated the diversion system based on law and human rights, According to Hidayat (2019) Diversion is a form of diversion or side handling of juvenile delinquency from conventional juvenile justice processes, towards handling children that are more of a social service in nature, and diversion is carried out to prevent child offenders from the negative impact of juvenile justice practices.

With various mechanisms and referring to the existing statutory system, one of the most important parts of the birth of a law using the diversion method is to provide opportunities for those who have violated the law, including minors, so that after going through various judicial processes a person can return to being a better human being, honest and wise in making various decisions (Setiawan, 2017).

The policies that have been issued by the government regarding crimes against minors are carried out as a form of persuasive action and provide protection and a sense of security as

an effort to prevent children from becoming adult criminals, because they refer to the attitudes of children who still need them. proper guidance and direction in the best interests of the child and taking justice into account for the victim (Eleanora, 2016). The Criminal Code includes several articles which regulate if a child commits a criminal act, namely Articles 45, 46, and 47, the three articles state that if a person who is not yet 16 years old commits a criminal act then there are three alternative punishments can be dropped, namely returning the child to his parents,

By involving various roles of society and related institutions, the protection of child criminal acts is an obligation that must always be strived for and strived for by all elements of the state, the real form of action towards protection for children is to provide guidance from an early age starting from the most basic stages, one of which is in the scope of the family, because the best character formation of children is created thanks to the guidance and encouragement of parents, after that, social control of children's interactions, and proper handling through good rules made by a country. As stated in the Law in Article 64 paragraph (2) of Law no. (Sakti, 2018):

- a. Humane treatment of children according to the dignity and rights of the child.
- b. Provision of assisting officers for children from an early age.
- c. Provision of special facilities and infrastructure.
- d. Imposing appropriate sanctions in the best interests of the child.
- e. Continuous monitoring and recording of the development of children in conflict with the law.
- f. Guarantee to maintain relationships with parents or family.
- g. Protection and coverage of identity through mass media and to avoid labeling.

A good legal settlement process, of course, is based on norms and state regulations, including legal guarantees for minors and legal certainty must always be endeavored to prevent forms of fraud that will have a negative impact on every implementation of protection activities related to children. . Various efforts have been made to reduce the crime rate involving minors, this purpose is solely done so that children are provided with an early understanding of the impact and effects that will arise if someone tries to commit a legal crime, but there are many factors. others that cause a child to commit crimes, ranging from low levels of education, economic pressure, and lack of family supervision, The age limit of a child is a grouping of the maximum age as a form of the child's ability to be under legal status, so that the child changes the status to adulthood or becomes a legal subject who can be independently responsible for the actions and legal actions taken (Mayasari, 2018) .

The aims and objectives of this research are to find out how the application of diversion for children related to law.

As for some references and also previous research that researchers used in the preparation of this study are:

- a. Application of Diversion Against Children in the Indonesian Criminal Law System
This research was compiled by (Sekhroni, 2016) By using a qualitative descriptive research method, and the results of this previous study explain that, the application of the concept of diversion to children is punishable by imprisonment of under 7 years and is not a repetition of a crime (residive) in terms of detention, diversion is carried out with the exception of children who are fourteen years old or more and is suspected of committing a criminal offense punishable by imprisonment of seven years or more.
- b. Implementation of Diversion as a Form of Settlement of Cases Against Children Perpetrators of Crimes
This research was compiled by (Sianturi, 2017) by using the empirical legal research method or also known as sociological legal research, and the results of this previous research explain that the implementation of legal diversion against children must be

pursued starting from the Police level, the Attorney General's Office level to the District Court level. This diversion itself is the settlement of cases of children dealing with the law that are carried out outside the formal court with the aim of preventing the negative influence of subsequent legal actions that can lead to stigmatization.

c. **Diversion as an Alternative for the Settlement of Criminal Cases by Children in the Perspective of the Juvenile Criminal Justice System**

This research was compiled by (Frederica, 2017) using research methods normative and the results of this previous research explain that diversion is the best form of penal mediation to overcome the problem of child offenders of criminal offenses, because it pays more attention to human rights issues with a restorative justice approach.

2. Method

In this study, the researcher wanted to examine a phenomenon that discusses how to apply diversion for children related to law. In this study, researchers used a qualitative descriptive approach by reviewing several journals or articles related to the topic of applying diversion for children related to criminal acts. There are two sources of data used in this study, where the data includes primary data as well as secondary data, what is meant by secondary data is the main data related to the topic and also research that is being studied, where researchers get these sources from journals and also references related to child diversion (Qamar, 2017).

Meanwhile, primary data is data that researchers find from observations and findings in the field. The data collection method that researchers use in this study is to collect research data to determine the success or failure of a study. The data collection technique in this study is to use the observation method. Observation is a step taken by the researcher by observing directly the symptoms in the field, making an observation and the most important thing from this observation stage is taking notes that are considered important so that it makes it easier for researchers to choose the information to be used. in the study (Diantha, 2016).

At the next stage in the qualitative research method the main objective of doing data analysis techniques is to lighten the data and facts that have been found in the field in a form that is easier to understand or the data is summarized and summarized more easily to interpret. so that the relationship problems that occur between the research that is being done can be studied easily.

3. Analysis and Results

Based on the results of the research that has been done, using the observation method of several articles related to the topic of discussion of the application of diversion for children related to law and by evaluating and also analyzing data on findings in the field can conclude some results and also careful discussion found, namely:

3.1 Application of the Diversion Law System in Indonesia

As a sovereign legal state, Indonesia has a legal system based on the 1945 Constitution, and Pancasila as the legal umbrella and also the ideology of the nation, in the process of forming a sovereign state that is obedient and obedient to applicable laws, the Indonesian people should always maintain national unity and unity that upholds the existing legal process, of course all of that has been listed and contained in the articles of legislation that have been approved by the president and also various ministerial institutions in Indonesia, as well as the diversion legal system adopted by the state. Indonesia, as an integral part in the effort to uphold a just law for all existing societies, formally the idea of diversion has not been included in Law no.3 of 1997 and only included in Law No. 11 of 2012. In Law No. 11 of 2012 the provisions for diversion are contained in articles 6 to 14. As for article 15 it stipulates that the guidelines for

implementing the diversion process, procedures, and coordination of the implementation of diversion further regulated by Government Regulation.

As a series of laws applied in Indonesia, the diversion system is the best way to determine the settlement of crimes against minors, which has the objective and concept of handling based on law and human rights that highly upholds the value of morality on the rights and obligations of a person. child. However, seeing several cases of children that have occurred in Indonesia, the handling process always focuses on psychological burdens and actions that can endanger the child's mental and personal development.(Hasan, 2013). The concept of diversion is based on the fact that the criminal justice process against a child who is a criminal offender through the criminal justice system causes more harm than good, the basic reason is that the court will stigmatize children for their actions as if they are considered evil, so it is better to avoid getting out. criminal justice system (Sinaga, 2016).

Referring to several articles of the Indonesian constitution, the settlement of diversion laws must prioritize the restoration of the rights that minors must receive, so that the existing judicial process does not disturb the psyche and psychology of a child, furthermore the judicial process can disturb the psyche and mentality of minors, for that it is necessary to have a settlement process that prioritizes adequate forms of protection between perpetrators of crime and victims, the Indonesian diversion system itself has improved a lot every year, because the main purpose of diversion law in Indonesia is to seek trial which will later be decided in court proceedings,As for the case offenses that must be handed down to minors as stipulated in state law, among others, the threat of imprisonment for a maximum of less than seven years, is not classified as a serious crime such as the death penalty or life imprisonment, and which The main objective of the diversion law is to instill a sense of responsibility to children not to repeat acts in the form of criminal acts (Faith, 2018).

As one of the ideologies of the nation State laws have a very high and sacred position for every formulation of existing legal solutions, therefore every law that exists must of course be in accordance with the content of articles and legal rules that are in accordance with the sound of state laws, as well as Regarding the contents of the diversion article contained in article 6 of the Juvenile Criminal Justice System Law, it is mentioned that the purpose of diversion is to achieve peace between the victim and the child, then resolve children's cases outside the judicial process, prevent children from being deprived of freedom and the most important thing is to encourage children to participate instill a sense of responsibility and promise not to repeat it again (Muhdar, 2018).

Therefore, the law of diversion requires a solution that will not be burdensome to any party, but if in the criminal case it causes a loss, it will still get an appropriate form of compensation to the victim, meaning that there will be an appropriate form of protection between the perpetrators. and the victim's party, through efforts that are in the form of family deliberation, the point is that not all cases involving minors are resolved by criminal law and tried in the prosecutor's office, but the best process is to make a mitigating decision. , taking into account the fairness of justice for minors.

3.2 The view of the constitution of the state on the establishment of diversion laws in Indonesia

As a state of law that is just and prosperous, of course the Indonesian state has a legal system that is very tolerant of all its people, the criminal law system in the Indonesian state itself adheres to two kinds, namely, laws that are against the law, are included in the category of written law, and those that are against the law. second is unwritten law which means that the law is only against the prevailing norms within the general public Criminal action is a basic definition in criminal law, criminal action is a juridical definition, it is different from the term action or crime which is interpreted juridically or criminologically (Komariah, 2016).

In Indonesia itself, there are several criminal acts that are binding only a handful of groups, and one of them is the trial of minors, which is regulated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Since the enactment of Law Number 11 of 2012, the procedure for trials and convictions has been carried out based on this law. In general, the justice system against minors has its own concept and in practice it is called the law of diversion, where the law is based on a judicial process against crimes committed by children. Diversion seeks to provide justice to cases of children who have already committed criminal acts up to law enforcement officials as law enforcers (Ritonga, et al, 2019).

As a form of law that does guarantee justice for minors, diversion should provide rights and obligations that cover various legal aspects including customary law, civil law, and criminal law, legal settlement using The diversion system has produced many alternatives or legal solutions that occur in minors, where this method is starting to be seen by various groups as the best solution in handling various legal cases involving children's rights, diversion does provide a lot relief for the perpetrators because the legal system provided does not use interference that is of a general nature, namely using the judicial system and the prosecutor's office, because if it refers to the existing judicial legal system, then the system is deemed inappropriate to apply to criminal acts of minors, the court process is very long and tiring and has various stages in it that will be very risky for the psychology and mentality of children, putting children in prison is also not a solution that is appropriate in taking legal cases against minors, because this will make the child worse off and add to the psychological burden that must be faced by them, because the presence of this diversion system will actually try to lighten the burden and also the mind, so that the judicial process can run in balance, by continuing to carry out procedures related to the constitution and Pancasila as the ideology of the Indonesian state.

4. Conclusion

Based on the research that the researchers conducted on, the application of diversion for children related to law in Indonesia, the researchers can conclude several main points that can be drawn conclusions, the results of various observations that the researchers found in the field, namely:

- a. Diversion systems provide many benefits to legal proceedings involving minors.
- b. Diversion actually provides relief to the criminal process related to the children in it, but still prioritizes legal values based on the constitution of the Indonesian state.
- c. By law, criminal acts using a diversion system have provided many solutions and the handling of judicial cases has been changed according to the existing mechanism, where in practice legal settlement is lighter and the process is carried out outside the prosecutor's trial.
- d. The implementation of diversion against the child offender of a criminal offense will provide a new understanding to investigators without having to take away their independence so that the settlement of the case of a child who has committed a criminal act for the first time by emphasizing the recovery of the victim becomes an alternative in the juvenile justice system in Indonesia.
- e. The diversion process is actually very much needed for a country that handles a lot of criminal cases involving minors, including in Indonesia, because using this system will provide protection and guarantees for children's rights, which really need legal certainty and protection. law right.
- f. As an effort to compare the law, the diversion method does seek crimes that are lighter and less burdensome to the rights of children, as far as possible the child is prevented from being arrested, detained and Imprisonment for this system is considered very burdensome to the mental and psychological aspects of the child.

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