

## MODEL OF DIVERSION AND ITS IMPLEMENTATION IN THE CRIMINAL JUSTICE SYSTEM

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### ABSTRACT

*Diversion in juvenile justice is done to prevent children from the formal criminal justice system which have negative impacts to children. This study aimed to analyze the implementation of the system of diversion with "musyawarah" or consensus method, its effectivity and how to civilized it at the level of investigation in the resolution of cases of children in conflict with the law in the region of Central Java. This study use empirical and juridical by using three approaches., i.e statute approach, the concept approach, and cases approach. The results of this study indicates that the implementation of diversion at the level of investigation is involving the parties both the victim and the perpetrator, while investigators act as a facilitator in the settlement is determined by the victim and the perpetrator and if necessary is also involving the community or religious leaders. Implementation of diversion with "musyawarah" method at the level of investigation more effective and efficient. Furthermore, the model of civilizing the diversion by consensus at the level of investigation carried out by the community development unit or police community through awareness in the community and schools.*

Keywords: Children in conflict with the law, diversion, consultation, criminal justice

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### A. Introduction

The criminal justice system of children prefer the protection and rehabilitation of child offenders (emphasized the rehabilitation of youthful Offender) as those who still have limitations compared to adults. Children need protection from the state and society in the period ahead is still long. (Nicholas MC, 2002: 5) For children who already become perpetrators of criminal acts necessary strategy criminal justice system that is seeking minimal intervention of the criminal justice system. (Kevin Haines, 1998: 73). Diversion is an action or treatment to divert the settlement outside sisitem criminal justice, as stated by Jack E. Bynum (in his book A Sociological Approach Juvenile delinquency, in Kenneht Folk (2003: 14), namely: Divertion is "an attempt to divert, or channel out, youthful offenders from the juvenile justice system".

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), point 6 and 11 contained statements regarding the diversion that is, as the process of devolution of children in conflict with the law of the criminal justice system to the informal process as returning to civil society organizations both government or non-governmental. States such as Victoria, New South Wales and Queensland dare to reform its legal system is there to support the implementation of the program is the perfect diversion. Wundersitz call diversion implementation in such countries as the "principle of the frugality of punishment (the principle of modesty in punishing)" (Folk, 2003: 6).

Children in conflict with the law should receive special approach, special services and special care and special protection in accordance with what has been set out in international instruments Beijing Rules, the Law No.11 of 2012 on the Criminal Justice System and the Children's Act 35 of 2014 on Protection Kids (Mardiah, 2012).

Alternative dispute resolution outside of court / criminal justice system in Indonesia is a habit of the Indonesian nation itself, rooted in various aspects of social life and become a culture in solving any problem both in traditional as well as the state ideology of Pancasila which is known as deliberation , In short, the alternative settlement out of court problems both concerning issues that could dikategorikan entered in the field of civil and in criminal field has been grounded / entrenched in Indonesian society.

In connection with cases involving minors, the police had also been trying to promote the completion of the ways ADR (Alternative Dispute Resolution) that is an alternative solution, without any consultation or through legal channels so that the settlement of these problems would be more equitable and beneficial. To overcome the various cases involving children and as a form of protection for children involved in criminal cases, the government has issued Law No.11 of 2012 on the Criminal Justice System Children in which strictly regulates the diversion for children.

### B. Method

This type of research is qualitative research, with a combination of normative-empirical approach, the approach taken is the statute approach, the conceptual approach, and cases approach (Marzuki 2005 and Ibrahim, 2005). Data used in this research are primary and secondary data. Respondents interviewed using snow ball technique and purposive sampling, they are: Resort Rembang police officers, Police officers Resort Blora; and Police officers Resort Tegal and Public figures in the Territory Police Resosort. Data were analyzed by descriptive qualitative, so found the relationship between the dimensions of the question in this study (Moleong, 2001).

### C. Result and Discussion

#### 1. Implementation of Diversion model with Deliberation System

Over 2015 cases involving children are relatively small compared to other general criminal cases, cases using diversion forum in the Police Resort Blora there are four cases, most types of the crime is theft and brawling. In the technical implementation of the requirements of the diversion diversion seen as stipulated in Article 7 of Law No. 11 of 2012 on the Criminal Justice System Child, among others, that the child committed the criminal penalties punishable under 7 years old and the child is not a recidivist (repetition of criminal acts). Technically diversion process is done through consultations involving Children and parents / guardians, victims and / or parent / guardian, Supervisor of Community and Professional Social Worker based approach Restorative Justice, Social Welfare Workers may involve, and / or community. Police Resort Tegal implementation in the investigation of diversion percentage of criminal cases involving children who use the forum selection diversion compared with the legal process in general, is about 50% (half) of the cases. In technical diversion process is done, if the child offender case which is liable to a penalty under 7 years, not a repetition of the offense and a child offender aged 14 years, through the following process:

1. Upon the parties is complete, sit facing each other and investigators menyamakan provisions versioned
2. Investigators communicate to both parties whether each is willing to do versioned
3. Investigators memberikankesempatan for parties to express an opinion on his case / case.
4. Then it was agreed that the diversion of the form:
  - a) peace with or without compensation;
  - b) the deposit back to the parents / Guardian;
  - c) participation in education or training in an educational institution or LPKS later than 3 (three) months of community service.
  - d) Parties involved, among others; Investigators child, social worker, BPMKB Tegal, PPT Puspa Tegal, Pekalongan BAPAS, Community leaders: RT, RW, Village Head

In general, the initiative came from the diversion forum, the investigator in this case shall be related provision in the undng number 11 of 2012 Article 7. The position of investigator in diversi forum as a mediator in this case as a facilitator: Investigators child, social worker, BPMKB Tegal , PPT Puspa Tegal, Pekalongan BAPAS.

In Rembang, criminal cases involving children as perpetrators as from January 2016 until July 2016 a total of 5 cases, and 1 case to the court retributions. All cases in the investigation process to the extent the court was requested diversion because the procedures contained in the law on juvenile justice system requires the diversion procedure in accordance with the terms and conditions that apply. But most cases of children that occur because of a complaint-based offense, then children as perpetrators and victims there is no agreement before signing on the investigation process. But after going through various efforts and in accordance dengan terms and conditions stipulated in Law No.11 of 2012 on the Criminal Justice system, only one criminal case has been completed through diversion forum.

At the level of this investigation, because the nature of the complaint, the case is then examined all witnesses for questioning, then from the reported party also held keterangan.Setelah held his case then the case was finally brought to the level of investigation that was published a police report. Because the perpetrators of this case is a child, then do the process of diversion. The police invited the first assistance from parents or a lawyer to menampingi offender / suspect, then pemberitahuan on the Bapas Children, Orphanages, Social Institutes and subsequent meetings were held (diversion). Then the result of the agreement set forth in the form of Minutes Diversion. Following an agreement and documents etc., the investigator ask the diversion of the agreement letter to the District Court to request confirmation. Versioned approval is received or not depending on further investigation, eg rejected then the investigation will proceed, if the proposal is accepted then the diversion of cases were dismissed, on the basis of a letter of diversion results and determination of the district court.

Previous forums of diversion done by children as a perpetrator, diversion initiatives mostly came from the suspect (child) as the perpetrators. The position of the investigator in the diversion process is neutral, ie as organizers or people who facilitate the diversion process. The existence of the forum versioned views of criminal justice is a diversion is the process of completion of new cases in the criminal justice system, it is good for both the perpetrator or the victim's conduct deliberations in order to reach an agreement an agreement by both parties and the agreement must be executed by the perpetrators of the demand victim. Excess diversion by the investigator is to fulfill the purpose of the law of its own, namely by promoting fairness from both parties, the offender and the victim and of the psychological condition of the child, the child if summoned by police psychological conditions have been influenced especially hearing in court instead of psychic children become depressed, therefore the process this diversion is put forward for the happiness and welfare of children.

In contrast to the acts committed by adults in general have been realized in full, both in the judgment of conscience and intellect so if it happens as a result of legal acts committed by the / conflict with the law (crime) it may be reasonable for him to be held legally accountable for the actions it does tersebut.dan act is commonly referred to as criminal / kejahatan.Berbeda if the act was committed by a child or adolescent when they do so without realizing it fully, because logically children / adolescents have not been able to consider carefully the legal consequences for perbuatannya. The deeds done by the child / adolescent can not be classified as a crime, but only digolongan as a violation or delinquency. Juvenile / child commonly referred to as Juvenile comes from the Latin Juvenile, which means that children, young people, the characteristic features of the youth, distinctive properties in adolescence, while delinquent comes from the Latin "delinquere" which means neglected , neglect, which was later expanded it mean to be nasty, naughty, anti-social, criminal, fleas and so forth. Juvenile delinquency or juvenile / child is evil behavior or

delinquency of young children, a symptom of illness (pathological) socially in children and adolescents due to a form of social neglect, so they developed a form of deviant behavior. The term juvenile / child refers to a broad range, from the behavior unacceptable social community. Can be affirmed that the tendency of juvenile / child is the tendency of adolescents / children to commit acts that violate the rules could result in loss and damage both to themselves and others by adolescents / children under the age of 17 years. While the factors that influence the tendency of juvenile / child, among other problems caused by identity / identities and escort themselves performed or experienced by the children themselves.

Issues of identity, age teens / children there was a time at the stage where teens / children have identity problems. Changes in biological and social enable the two forms of integration in keperibadian teenagers: one, the formation of a sense of consistency in his life and two, the achievement of the identities of the role, more or less by combining motivations, values, abilities and style that belongs to young people with role demanded of teens.

In search of identity, teenagers sometimes make the wrong choice. While the problem of self convoy, juvenile delinquency can also be described as a failure to develop escort self sufficient in terms of their behavior. Some youths fail to develop self convoy essential that already belongs to someone else during the growth process. Most teens have to learn the difference between acceptable behavior and behavior that is not acceptable, but teens who do not recognize this delinquency. They may fail to distinguish between behavior that is acceptable and unacceptable, or maybe they actually know the difference between the two but failed to develop an adequate escort themselves in using those differences to guide their behavior.

According to our analysis of the research results in three of the police, the police Resort Rembang, Blora and Police Resort Tegal can be affirmed that the actual process of the settlement of children in conflict with the law as stipulated in Law No.11 of 2012 on the System of Juvenile Justice has been done in accordance with the applicable provisions, meaning that investigators procedure level to continue the case or not when the criminal act must first be put forward through the diversion / non litigation in a way to bring the two sides, both the victim and pelaku. And if required to facilitate the achievement of the process of diversion or agreement, the new investigator invite other parties such as community leaders and religious leaders, teachers, etc., done by deliberation mufakat. Karena diversion process that is based on fraternal and deliberation and consensus is in fact already a culture of Indonesia since the first.

## 2. *Effectiveness of Implementation Diversion Model with Deliberation System*

Diversi as a mandate implementation of Law No.11 of 2012 on the Criminal Justice System Children proved to have a lot of progress or advantages compared with the previous law. Excess diversion by the investigator in the police as a sample to mention that in order to meet the goals of the law itself, namely by promoting fairness from both sides, offenders and victims as well as to maintain the psychological condition of the child, the child will feel scared even dipresi if summoned by the police, so psychically children are affected mentally and adverse effects on children, especially when it comes before the court there is a tendency of psychic children become depressed, therefore the diversion process is put forward for the sake of the child kebagikan. Sigi time of the implementation process of diversion is shorter than the litigation process could take a long time, not to mention the prosecution and the trial process is quite time consuming long. So when versioned at the level of investigation may be more than 2 times to reach an agreement of the parties, but it is still reasonable does not take a relatively long time.

Factors affecting the implementation of the diversion of the parties themselves whether the parties in the process of deliberation (diversion) went well, as the demand of the victims met by actors that have been outlined in a letter of agreement from the diversion of those or otherwise request the victim is not biased met by actors causing kegagalanproses diversion. Viewed in terms of diversion of interest, the legal certainty of the parties, in fact emphasizes the aspect of justice and kemanfaatan more than the legal certainty, since it is the purpose of the diversion itself expediency fulfilled in order to recover the victim's condition.

This diversion process will have a positive impact, because not all actions (criminal offenses) should be resolved through court proceedings that led to the punishment, especially for children who still have their future goals and the future is high. Settled amicably will be a positive impact on the victim or the perpetrator when the victim demands have been met by the offender. Benefits of the parties gained from the forum's discretion, from the offender, for example, most of the discretionary application of the initiative made them feel / mem shadow will be in jail / in prisons.

Through diversion between the parties become more comfortable and sincere in accordance with the agreement between the victim and the perpetrator. Of the victims for their loss could be returned by the perpetrator / recovery by the perpetrator. Concept Diversi done with a reason to give an opportunity for offenders to become a good person back through non-formal pathways involving community resources. Diversion attempts to provide justice to the cases of children who have already committed a criminal act until the law enforcement officers as law enforcement authorities. Both equity is presented through a study of the circumstances and situations to obtain appropriate sanctions or measures (Appropriate treatment).

According to our analysis, that the implementation of the diversion in 3 regions of sufficient sample illustrates that through a diversion by consensus proved to be more efficient and effective and has a lot to do at the level of investigation from the police Resort Rembang, Blora and Resort Tegal. As stipulated in the provisions of Article 7 of Law No.11 of 2012 on the Criminal Justice System in which the Son of diversion can be done at this stage of the investigation, prosecution and court actually contains some logical consequence of the psychological of children who in turn also affect the child's behavior selanjutnya. It consequence can be argued that when the child fails in case of diversion in the level of investigation, or has entered the prosecution and trial level, then the process so it brings negative impact children psychiatric. Because it has established a process of stigmatization of children who are difficult to remove.

3. *Civilizing of Diversion Model in the Council at the level of Investigation in Central Java Areas*

In 1970 two major forms of diversion in Australia focused not to make a diversion to an alternative program, but a diversion to pull out of the justice system. One main thing of this kind that prudence of the police, where young people have been handled by the police only given verbal and written warnings, after which the child will be removed and the end of the problems exception if the child is in violation subsequent (repeat) it will conducted advanced processes.

Forms are versioned over start implementing in the state of Victoria in 1959, Queensland in 1963 and New South Wales 1985 Australia all located in the State. The second form is held in Australia in 1964 and the southern part of western Australia in 1972 involving a perpetrator meeting the child and his parents with the police and a social worker state. The purpose of the meeting was a diversion before entering into formal court. In it there is a warning and counseling in a relatively informal atmosphere. The diversion process that took aim eject children from the criminal justice system if the child does not repeat the crime, but if the child committed a crime has been repeatedly (recidivists) subjected to the next process. Cressey and Mc Dermott in his book considers what to do in Australia as a true diversion ".

States such as Victoria, New South Wales and Queensland dare to reform its legal system is there to support the implementation of the program is the perfect diversion. Wundersitz call diversion implementation in such countries as the "principle of the frugality of punishment (Kenneht Folk, 2003: 6).

Family group conferencing models that have been developed in Australia and New Zealand, which involves community participation in the SPP (criminal justice system). Not only involves victims and perpetrators of criminal acts, but also the perpetrator's family and other community members, elected officials (such as police and judges child) and supporters of the victim. The perpetrator and his family are expected to produce a comprehensive deal and satisfy the victim and can help to keep out of trouble sipelaku / next problem.

Based on the research results obtained from each region of the sample can be obtained from the data that when the police arrest criminals or the child received a report of the public does not necessarily proceed through litigation track / pengadilan. Namun will be the background for acts committed anak. Kemudian problems involving the child carried in meetings involving both parties, formal leaders, village leaders / religious and carried diversion, when not come to fruition then processed through the sort inisudah hukum. Hal often dilkukan to cases involving child offenders , which effectively handled special officer from the Women and Children Protection Unit (UPPA) in each jurisdiction Police Resort in Central Java, including in third Resort as a sample in this study.

Police Jurisdiction Resort in Rembang, diversion committed against children cases involving various parties, among other things: 1) figures formal village chief, 2) community leaders / religious, 3) Families of both parties and 4) local police officers. They work together to find a way of solving cases that child .. While the consensus in the jurisdiction of Police Resort Tegal, when the police catch or receive reports of crimes committed by children are not directly processed through legal channels but do versioned settlement .At the beginning dipertemukannya process is carried out both parties to mediation / settlement cases with the kinship system, but reverted again to the victim / complainant to the path of peace with the offender / suspect or continue the case to the court level (interview with Police UPPA Tegal).

The mediation process is carried out in the territory of the Police Law Resort Jepara involving several parties, namely: victim / complainant, the offender / suspect, the parents of both parties, the police and masyarakat. Model figure reached by way of mediation which brought together both parties (the offender and victims), and community leaders to seek a win win solution, facilitated and dipertengahi police officers with the results of the MoU between the two sides and the affidavit did not repeat his actions and repeated actions when ready to be processed by officers sitting collectively. They are equal to consensus looking for a way out / the best solution for both parties.

As for the Police Resort Blora area, when there are cases where the perpetrator is the child is not necessarily legally dipross through mungkin pengadilan. Kedua sides so far brought together to find ways amicably settlement through mediation mediasi. Proses done by presenting several parties, among lian: victim and perpetrator, community leaders, religious leaders and police officers sitting together doing it sendiri. Mereka deliberation for the sake of settling disputes between them for the mutual benefit of both parties as well for the sake of public tranquility.

Based on data of the third Jurisdiction Police Resort in Central Java, both of Police Resort Rembang, Resort Tegal and Resort Blora data showed that all three jurisdictions resort police as far as possible in the resolution of cases of children who commit crimes / is dealing with the law sought by diversi. Ketika through the diversion is not got a chance of parties berpekara then pursued through the courts / litigation. In addition, also data showed that in the third Jurisdiction Police Resort Rembang, Resort Tegal and Police Resort Blora in the process of diversion involving the parties are the same, namely: families of both parties (victims and perpetrators), community leaders, religious leaders and the local police for a consensus in resolving the case of children who commit criminal acts. The settlement sought as far as possible in the interests of both parties, primarily the best interest of the child and more broadly for the welfare of society.

According to our analysis, the results of research data in the three jurisdictions of the police district there is still a possibility for the child reached the settlement through litigation / litigation if an agreement for versioned not tercapai. Dan settlement through the diversion process is performed only on case-criminal cases the criminal threat to a maximum of seven (7) years in prison, which is carried by such anak. Dengan diversion models currently implemented in some jurisdictions police (at the level of investigation) unless consideration of the severity of the criminal offense committed by the child but should refer consistent with

the Law on Criminal Justice System child by promoting keadilan restoratif, a greater emphasis on the welfare of children and the best future for anak. Jadi be wider range of cases of children who can be resolved through diversion.

In addition to his case which can be expanded to do with the diversion lines should also versioned models needs to be reinforced with emphasis on deliberation as prevalent taken society since ancient times as a cultural heritage which must be preserved kelestariannya. Forum this diversion brings a positive influence because basically whenever possible for any criminal case should not be up to the court proceedings, the forum this diversion be one way or the option taken, let alone especially in criminal cases involving children as perpetrators.

Investigators as the spearhead for criminal proceedings rests on the rule of law in force which require a diversion path for cases of children in accordance with the provisions of this diversion UU. Forum is the mandate of the law that must be executed. Nothing is difficult from this diversion forum for investigators because of all the procedures and terms of implementation of diversion clearly and expressly governed by Law Child Criminal Justice System. Investigators through forums for diversion or not there is actually no problem nor halangan. Penyidik duty in accordance with the provisions of existing law .. Because before 2012 also do things that are similar to the diversion through mediation to judge actions involving minor children.

On the one hand, law enforcement officers, police officers, prosecutors and judges who do not carry out / deviate from the provisions of the Law on Criminal Justice System Child, will get its own sanctions. Diversion conducted at the level of investigation through deliberation pursued by means of disseminating to the villages and schools said that the first of the laws protecting children, then the acts committed by children and children as victims and it is the judicial system, so is the mechanism upon discovery of children as perpetrators and children as victims of the diversion path in the juvenile justice system. But that is put forward is about the protection of children. Sometimes such a system if socialized out will weaken to the position of children as perpetrators. Because of the diversion is uplifting, sometimes people respond differently, some have argued that the diversion as if invited to do a criminal offender. So socialization of the diversion camouflaged and truly done wisely so as not to cause multi-interpreted in the community.

#### D. Conclusion

Based on the research results that have been achieved, then finally some conclusions can be drawn as follows. First, the implementation of diversion models with system level consultation involving all components of investigation, both the victim, offender and community leaders and leaders is to facilitate investigator. Second, the diversion system with consensus at the level of investigation runs effectively (time) and efficient (cost) and each party can accept with satisfaction, and the third, the model of law cultivation by consensus diversion is done by the police through socialization in the community and in schools through bagian Binmas and community policing.

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