

DIVERSION IS A WAY OF DEFENSE ON CHILDREN'S DEVELOPMENT IN A REGIME OF CRIMINAL JURISDICTION IN OF INDONESIA

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ABSTRACT

Diversion is a recent rule laid down in Indonesia's Juvenile Criminal Justice System Statute, which involves the relocation of child cases from the criminal justice process to outside the criminal justice process. The aim of diversion is specifically defined, namely to achieve reconciliation between the victim and the child; to settle children's cases outside the judicial process; to prevent the child from being deprived of liberty; to promote involvement by the community; and. They instill in children a sense of duty. The principles used as the basis for the application of the provisions set out in the Juvenile Criminal Justice System, including the principles of security and the principles of survival and growth of children, are also laid down. The rights of the child are these two values. The Legislation on the Juvenile Justice System in Indonesia, however, gives the power to pursue diversion to three (three) agencies (investigators, prosecutors, judges) with the risk of multiple attempts at diversion. This ability may have a detrimental effect, contributing to the disruption of the growth of children. This condition should not be permitted to happen, so the laws need to be changed. The amendments are: granting power to 1 (one) organization which is obliged to conduct diversion efforts.

Keywords: Diversion, protection of child development.

INTRODUCTION

In Indonesia, since 2014, two years after the issuance of the Law of the Republic of Indonesia No 11 of 2012 relating to the Juvenile Criminal Justice System, the word diversion has been known to the public. New provisions, namely the specifications relating to diversion, have never been controlled in this Act before. Since 1985, the word diversion has been recognized internationally, especially since the basic concept of recreation was included in the United Nations Assembly Resolution. The integration of the fundamental principle of diversion into the international instrument of juvenile criminal justice is explained by Barda Nawawi Arief in Setya Wahyudi.

Believing that the international instrument of the juvenile justice system can help it further regulate the issue of juvenile delinquency, the Indonesian state ratified the procedure of international law and now a member of the UN has regulated this issue within its own system for the betterment of the juvenile justice system. How does the Indonesian state handle recreation as a matter for the legislative body, which has the authority to make policy formulations? We need to understand the substance as a whole as well as from a legal perspective, as well as from a community standpoint. However, thinking of a substance as illegal is not the only thing that needs to be considered. In addition to the content of the law, the issue of values of the law needs to be understood. Along with the good things it has, it also allows for diversion and it is understood the both loss and the benefits for it. An understanding of the purpose and design behind the regulations on diversion is necessary for making the assessment of whether the government's regs can accurately gauge the whole purpose of the issue of criminal diversion is. Within the Criminal Law for Children Law, the purpose of recreation is written in Part 6, which includes, e.g. , b) "a positive, life-saving deterrence effect" in Section 2. Achieve peace among victims and allowing child victims to deal with their cases outside the judicial process. Ensure that children are not deprived of their liberty; d. And encourage the community to take part, and then. We want our children to be encouraged to take ownership of their choices.

Some states (not just Arkansas) believe they can better guarantee the proper protection of children's rights by focusing on the purposes of diversion instead of the ultimate objectives of diversion. Questions need to be asked for rich, meaningful discussions.

PROBLEMS

Based on the background above, he will discuss the following issues (which include the development of children in the Juvenile Criminal Justice System in Indonesia): Is the Criminal Justice System is a way of stopping the development of children in the Juvenile Criminal Justice System in Indonesia? How is it being implemented? After all, the judgement problem was treated in a juridical manner, namely it was analyzed through the provisions stipulated in the law on the criminal justice system for children in Indonesia. This was because it is an objective of providing protection for children's development.

RESULTS

1. The significance of children's presence in the family, nation, and country

The involvement of children has an important significance for the survival of the family, society, and country itself in family, national, and state life. The value of children in life is not irrational, but the priority of children in life needs to be recognized. If we understand it or not, children are human resources that need to be nurtured, directed, and preserved because children are the nation's roots, the next generation of the nation's combat values, who have strategic positions and potential and have specific features and characteristics that ensure the longevity of the country and state's life. He must have the broadest opportunity to grow and develop naturally, both spiritually and physically and socially, for any child to be able to accept this responsibility. Each child has the right to live naturally, to create well, to obtain education, guidance, and protection in order to fulfill these duties.

Without any barriers, every child has the hope to grow and develop well. However, in order to follow the criminal justice process, there are occasions where a child faces obstacles due to committing or suspected of committing a criminal act; however, whether all children facing these barriers must face the criminal justice process and be given punishment in the form of crimes.

Given the importance of children's presence in a family, national, and state life, the juvenile court in Indonesia regulates the handling of protection for children who face legal proceedings. This is so that children can still grow and develop properly. What kind of security is needed for children who face legal proceedings?

2. Diversion implementation in the Indonesia Juvenile Criminal Justice System

Diversion is a relatively new concept used in criminal law, which is protected by either formal criminal law or criminal procedural law regulations. As described in Setya Wahyudi by Barda Nawawi Arief, who refers to the problem of the basic concept of diversion, the diversion is the granting of authority to law enforcement officials to take policy measures to deal with or address child offender issues by not taking formal means, including stopping or not continuing/releasing the criminal justice process or returning/handing over to the commu to the commu. The implementation of diversion should be carried out at all levels of scrutiny, with the goal of reducing the detrimental effects of the participation of children in the judicial process.¹

From the explanation of the principle of diversion, it is understood that what is meant by pursuit is the ability of law enforcement officers to take discretionary steps outside the criminal justice process in dealing with or addressing issues of criminal acts committed by children. Diversion is also a technique that can be used outside the criminal justice process by law enforcement officers who are granted the power to deal with or address concerns with children who have committed crimes. Actions that should be done can be in the form of stopping a child from the criminal justice process or not continuing/releasing it. It is not monitored, however, and then released, however there are still other acts, including returning to the community and other activities of social service.

Apong Herlina and friends, as described in the Police Training Manual Document used for the implementation of diversion, also shared an awareness of the principle of diversion. The concept of diversion contained in the material, meanwhile, is the transition, with or without conditions, of the handling of cases of children suspected of having committed a criminal offense from the formal process.² Furthermore, Setya Wahyudi said, the idea of diversion is the idea of transferring the formal process of examining children's cases to an informal process in the form of diversion programs, if they meet certain conditions.³

While the usage of terms in defining the nature of divers is different, there is a general understanding that the transition of the criminal justice process beyond the criminal justice process is essentially what diversion entails. There are various reasons when it comes to the problem of process transition specifications. The issue of conditions was not stated by Barda Nawawi Arief. Unlike Apong Herlina and friends, who said that diversion was performed "with or without conditions" and Setya Wahyudi said that "if it met certain conditions" diversion was performed. It must be known that the issue is that there are situations that must or must not be met. In the implementation of diversion, there are requirements that must be met, and the determination of this depends on the policies of each government. Similarly, the question of the targets to be accomplished in relation to the diversion provisions in - country often depends on the individual countries concerned.

In Indonesia, in the Juvenile Criminal Justice System Statute, the concept of diversion is specifically formulated. The concept of diversion, namely the settlement of children's cases from the criminal justice process to proceedings outside the criminal court, is formulated in Article 1(7). This description indicates that diversion is a criminal justice method for the care of children, which allows the removal of children beyond the criminal justice process from the criminal justice system. In the meantime, those granted the power to perform diversion are law enforcers who are at all levels of investigation, both at the level of the Police, the Office of the Attorney General, and at the level of court examination (Article 7).

¹Barda Nawawi Arief dalam Setya Wahyudi, 2011, *Implementasi Ide Diversi dalam Pembaharuan Sistem Peradilan Pidana Anak di Indonesia*, Genta Publishing, Yogyakarta, hlm. 56.

²Apong Herlinadkk, 2004, *Perlindungan Terhadap Anak yang berhadapan dengan hukum Manual Pelatihan untuk Polisi*, Jakarta: Polri – Unisef, hlm. 330 dalam Setya Wahyudi, 2011, *Implementasi ide diversifikasi dalam pembaharuan sistem Peradilan Pidana Anak di Indonesia*, Genta Publishing, hlm. 58.

³Setya Wahyudi, 2011, *Implementasi ide diversifikasi dalam pembaharuan sistem Peradilan Pidana Anak di Indonesia*, Genta Publishing, hlm. 58.

Thus, three organizations that are expected to conduct diversion efforts are approved by the Indonesian Juvenile Criminal Justice System Legislation. The presence of three entities which have this responsibility can theoretically be carried out repeatedly by attempts at diversion. It takes a longer time to include the child in the justice process in the event of multiple diversion attempts, so that it may have a detrimental effect on the child.

It is possible to characterize the potential for repeated diversion attempts as follows. If the diversion attempt fails at the first level (at the police level), then another diversion attempt is made at the second level (at the level of the prosecutor). If the second level fails, then a diversion attempt is also carried out at the next level (at the level of the Court), and if it fails, the case will be continued throughout the judicial phase. If this image is valid, then it is very likely that the negative effects of children's participation in the judicial process will continue for a long time. However, if only one level of inquiry, namely the first level (investigation level), has the authority to conduct diversion attempts, then the child will not be involved in the judicial process for long. The participation of children in the legal process would not take a long time, even though the diversion is effectively carried out at the first stage, so that the child will not suffer negative impacts.

Indonesia's diversion process starts with a deliberation on diversion supported by law enforcement officials (investigators, prosecutors, judges). Diversion negotiations are held between the defendant and his family and the victim and his family, which are officially conducted in a forum of deliberation mediated by a facilitator appointed to each point in the continuum of criminal justice.

Fear and anxiety are normal things that someone who faces a judicial process encounters. Likewise, during the deliberation phase of diversion, children and their families feel. The child and her family are nervous and scared. Not only fearful of the legal process, but also fearful and worried about the progress of the deliberations on diversion. This is because deliberations about diversion do not ensure that it will work. The perpetrator and his family are worried and depressed by this fear. If diversion deliberations are regularly conducted, then there will also be repeated fear, anxiety and stress. This scenario is a challenge faced in the diversion deliberation phase by child abusers and their families. Particularly though one of the core principles of diversion is to decrease the detrimental effect of the inclusion of children in criminal justice. Including the potential for repeated attempts at diversion, the potential detrimental effects of the inclusion of children in criminal justice would also arise. The detrimental influence that exists is the effect on the growth of children. Is this issue permitted to occur?

In order to continue to grow and develop properly, the treatment of children in the judicial process, including the implementation of diversion efforts, must pay attention to the preservation of children's rights. Article 28 b of the Constitution of 1945 specifies the right. In the clarification of Article 2(f) of the Law on the Criminal Justice System for Children, it is often stressed that what is meant by the 'child survival and development' concept is the most fundamental human right for children. The state, government, culture, family, and parents are covered.

If this issue is permitted to emerge, then it is likely that the goal of diversion to will the detrimental effects of the participation of children in the judicial process will not be accomplished. The cause and attempts to fix this issue need to be figured out. This requires debate or even research. Since the topic focuses on the study of child development protection, we must return to the issue of the negative effect of the participation of children in the process of criminal justice, especially involvement in the process of diversion.

CONCLUSION

In closing, the following interpretation was obtained from this discussion:

1. Diversion problems are governed by the Law on the Juvenile Criminal Justice System in Indonesia, the enforcement of which is provided to 3 (three) institutions of the criminal justice system, namely investigators, prosecutors and judges. This has the potential for repeated attempts at diversion.
2. The insertion process starts with conversations between the victim and the suspect (child), which are officially performed with law enforcement officer facilitators that are at each point of the criminal justice process. This causes fear, anxiety, and stress, which can influence the detrimental effects of the participation of children in criminal justice, which can disrupt the growth and development of children.
3. In the criminal justice process, *Duversi* is a way of protecting children's growth. Therefore, in order for it to be fully enforced, the terms of the diversion authority need to be amended. The move is to grant only one organization the diversion authority.

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