

## Implementation of Diversion Towards Children in Connection With The Law in The Juvenile Criminal Justice System

Wiwit Kristin Anggraeni<sup>1</sup>, Arista Candra Irawati<sup>2</sup>  
Universitas Ngudi Waluyo<sup>1,2</sup>

Email Correspondence: wiwitkristin371@gmail.com

**Abstract.** Handling children who are in conflict with the law is often equated with handling adults who commit criminal acts. In this research the author uses a normative juridical approach. Research Specifications, this research is analytical descriptive. Type of data, namely secondary data. Data collection was carried out through library research. The data obtained were analyzed using qualitative normative methods. The results of this research are. Firstly, the implementation of diversion against children at both the Investigation, Prosecution and Judicial levels can be implemented as long as it meets the requirements, as stated in Article 7 point 2 of the Juvenile Criminal Justice System Law and in accordance with Perma Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Criminal Justice System Child.

**Keywords:** Children In Conflict With The Law, Diversion, Criminal Justice.

### Introduction

Children are a nation's assets, as part of the young generation, children play a very strategic role as successors to a nation. In the Indonesian context, children are the successors of the ideals of a nation's struggle. Apart from that, children are the hope of parents, the hope of the nation and state who will continue the baton of development and have a strategic role, have special characteristics or qualities that will ensure the continued existence of the nation and state in the future. Therefore, every child must receive guidance from an early age, children need to have the widest possible opportunities to be able to grow and develop optimally, both physically, mentally and socially. Moreover, childhood is a period of formation of a human being's character, personality and self-character, so that in their life they have strength and ability and stand strong in pursuing life. (Irawati, 2021)

One of the efforts to prevent children who are in conflict with the law today is through the implementation of the Juvenile Criminal Justice System (SPPA). The purpose of organizing the criminal justice system is not only to impose criminal sanctions, but to focus more on accountability for criminals, which is usually called a restorative justice approach. The aim of restorative justice is for the welfare of the child concerned, without reducing the interests of the victims and society. (Irawati, 2021)

In the Indonesian context, Law Number 11 of 2012 concerning SPPA which came into effect in July 2014 has permanent legal force to be implemented after being ratified. In the law as referred to in Articles 6 to 15 there are transfer provisions which constitute a reform in the juvenile criminal justice system. Diversion is an action or treatment that moves a case from a formal to an informal process, or removes a child perpetrator from formal court. This means that not all children's problems that are in conflict with the law must be resolved through the formal justice system and provide alternative solutions using a restorative justice approach for the best interests of the child and considering justice for the victims and society. but if you look at the child protection framework, of course it is not wise if the treatment of children is the same as the treatment of adults because physically and mentally. Psychologically, the condition of children is still unstable compared to adults. This is where the importance of diversion is applied to children. Children who violate legal norms in society and commit a crime are called children in conflict with the law. Article 1 number 1 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that a child in conflict with the law, hereinafter referred to as a Child, is a child who is 12 (twelve) years old, but is not yet 18 (eighteen) years old. commit a criminal act. Children who are in conflict with the law may be subject to punishment or sanctions in the form of actions or crimes if they are proven to have violated criminal law legislation.

Diversion for child offenders is to provide a better alternative to the official procedures in court, the public prosecutor is one of the law enforcement officers who implements diversion, apart from the police and judges. Implementation of Diversion based on the SPPA Law in Article 7 Paragraph (2): "Diversion as referred to in Paragraph (1) is carried out in the event of a criminal act

being committed: a. Threatened with imprisonment for less than 7 (seven) years, b. It is not a repetition of a criminal act.

The main principle of implementing Diversion is persuasive action or also known as a non-penal approach by giving someone the opportunity to correct mistakes. So that all decisions made must always take into consideration the good and growth and development of the child through coaching and guidance in the right direction, especially regarding matters that affect the child's life. Implementation with a persuasive approach in the Diversion concept so that in implementing the criminal justice system children's rights are the main concern, but can be excluded if other efforts cannot be made or circumstances are forced to ensure the continuity of case resolution. The concept of diversion is based on the fact that the criminal justice process for children who commit crimes through the criminal justice system has more negative impacts than positive impacts. For the reason that after the formal legal process is completed it will give a bad assessment of the child for the actions he has committed, such as the child being considered evil, a criminal child, so it is better to keep him out of the criminal justice system. Diversion is implemented starting at the level of investigation, prosecution and examination of children's cases at the District Court, stated in Article 7 Paragraph (1) "At the level of investigation, prosecution and examination of children's cases at the District Court, diversion must be attempted." The most basic thing in the SPPA Law is the strict regulation of Restorative Justice and Diversion which is intended to avoid and distance children from the justice process so as to avoid stigmatization of children in conflict with the law and it is hoped that children can return to a normal social environment.

#### **Formulation Of The Problem**

To find out more deeply about the application of diversion to children in conflict with the law, the formulation of the problem raised in this research is "How is the application of diversion to children in conflict with the law in the juvenile criminal justice system based on Supreme Court Regulation Number 4 of 2014 concerning Guidelines for the Implementation of Diversion In the Juvenile Criminal Justice System".

#### **Research methods**

In this research the author uses a normative juridical approach. Research Specifications, this research is analytical descriptive. Descriptive analytical means describing and illustrating something as an object of research critically through qualitative analysis within the scope of legal science, so the normative approach includes legal principles, synchronization of statutory regulations, including inconcreto legal discovery efforts. Type of data, namely secondary data. Data collection was carried out through library research. The data obtained were analyzed using qualitative normative methods.

#### **Discussion**

##### **Implementation of Diversion for Children in Conflict with the Law in the Juvenile Criminal Justice System based on Supreme Court Regulation Number 4 of 2014**

Implementing diversion efforts is a form of protection for children who are in conflict with the law. Settlement of the case is interpreted as a diversionary step from the judicial process to an alternative process. Prevention of negative effects on children seeks to avoid legal treatment from sanctions applied based on restorative justice. The operation of diversion cannot be separated from the authority of investigators, public prosecutors or judges as stated in Article 7 of the SPPA Law which is adjusted to the provisions in the examination process.

If it cannot be resolved through mediation, then the judicial process must still uphold due process of law, namely not injuring children's rights contained in Human Rights (HAM)(Irawati, 2023). Even though they have been guilty of committing a criminal act. Implementation of diversion is carried out through deliberation by presenting children and their parents/guardians, victims and/or their parents/guardians, community counselors, and professional social workers using a restorative justice approach. As stated in Article 6 of the SPPA Law, diversion is solely about achieving peace between the victim and the child as the perpetrator outside of the trial process in order to maintain the welfare and responsibility of the child, while at the same time involving the community to contribute in resolving the problem. Resolving conflicts resulting from criminal acts committed will reconcile both parties, at the same time also avoiding the perpetrator's feeling of guilt because the victim has forgiven. During the examination process by the police, prosecutors, judges and other

officials, they do not fail to fulfill the principles in the interests of children, namely by determining the best treatment for the child concerned in obtaining their welfare.

Regarding legal instruments related to diversion efforts in the trial process, there is Supreme Court Regulation Number 4 of 2014 which is a mandate from the provisions of Article 15 of the SPPA Law, which seeks to fill the void in procedural law regarding the implementation of diversion, coordination and procedures. One of the PERMA emphasizes the authority of judges in implementing diversion efforts, namely that juvenile judges are obliged to seek diversion in the event that a child is accused of committing a criminal offense which is punishable by a prison sentence of 7 (seven) years and is also charged with a crime which is punishable by a prison sentence of 7 (seven) years or more in the form of subsidiary, alternative, cumulative or combination indictments.

Child protection according to Article 1 number 2 of Law Number 23 of 2002 concerning Child Protection (hereinafter written UUPA) is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate, optimally in accordance with their dignity and human dignity, and receive protection from violence and discrimination. In protecting children who are in conflict with the law, the solution can be done by prioritizing restorative justice. Restorative justice based on Article 1 number 6 of the SPPA Law is the resolution of criminal cases involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to the original state, and not retaliation.

Resolving juvenile crimes by means of diversion and restorative justice clearly contradicts the principles of legality and legal certainty (*rechtzakerheid*). This is because the end result of restorative justice is not punishment or imprisonment, but restorative justice focuses on improving and restoring the victim's condition after a crime has occurred. In exchange for legal sanctions, perpetrators of criminal acts can compensate by paying compensation, social work, or other actions that are within reasonable limits ordered by law enforcement or the court.

After the enactment of Law Number 11 of 2012, there was a clear legal basis regarding the implementation of Diversion. This regulation stipulates that the implementation of diversion can be carried out at all levels of the judicial process from investigations to children's cases in court. (Article 7 paragraph (1) Law No. 11 of 2012) The criminal acts that can be carried out by diversion are:

- a. Threatened with imprisonment for less than 7 (seven) years; And
- b. It is not a repetition of a criminal act.

As for the results of the implementation of Diversion, a Diversion agreement is made which must obtain the consent of the victim and/or the victim's child's family as well as the willingness of the child and his family. There are exceptions to:

- a. Criminal acts in the form of violations;
- b. Minor criminal offenses;
- c. Victimless crime; or
- d. The value of the victim's losses is no more than the local provincial minimum wage.

A legal breakthrough was made by the Attorney General, namely by issuing a Circular Letter from the Attorney General of the Republic of Indonesia Number: SE002/j.a/4/1989 concerning the Prosecution of Children. In the circular letter, the prosecution department stated that once the suspect's age can be known with certainty based on valid evidence, then:

1. If the suspect is 10 years old, then the research prosecutor (prospective public prosecutor) approaches the investigator not to continue the investigation but simply provides wise guidance/information to the suspect and to his parents/guardians so that the case does not need to be sent to the prosecutor's office;
2. If a suspect is detained, it should be recommended that he be immediately released through a suspension/transfer of detention procedure, while if it is still deemed necessary to carry out detention, it is recommended that the place of detention in a detention center/institution not be combined with adult detention. This circular reflects the spirit of protecting children from the negative impacts of the justice system by stopping prosecutions and providing guidance for children and their parents.

Diversion in the juvenile criminal justice system Article 1 number 1 of the SPPA Law states that "The Juvenile Criminal Justice System is the entire process of resolving cases of children in conflict with the law, starting from the investigation stage to the guidance stage after serving the sentence." (Irawati, 2019)

Implementation of the idea of diversion in handling criminal acts committed by children in conflict with the law by prioritizing restorative justice. In the Juvenile Criminal Justice System, law

enforcement agencies involved in handling juvenile criminal acts can take diversion measures, such as the Police, Prosecutor's Office and the Court, provided that the threat of a sentence is less than 7 (seven) years and is not a repeat criminal act, as regulated in Article 7 point 2 of the SPPA Law, which states that "Diversion as intended in paragraph (1) is carried out in the event of a criminal act committed:

- a. Threatened with imprisonment for less than 7 (seven) years; And
- b. It is not a repetition of a criminal act.

The purpose of diversion as regulated in Article 6 of the SPPA Law, Diversion aims to:

- a. Achieve peace between victims and children;
- b. Resolving children's cases outside the judicial process;
- c. Prevent children from deprivation of liberty;
- d. Encourage the public to participate; And
- e. Instill a sense of responsibility in children.

Based on the explanation of the Perma Diversion regarding Article 7 paragraph (2) of the SPPA Law, the threat of criminal punishment under 7 (seven) years which refers to criminal law has a benchmark direction for diversion based on the type and severity of the criminal act committed. Meanwhile, the legal principle adopted by the provisions of Article 3 of the Perma, replacement money is a criminal provision that fulfills and does not meet the diversion requirements based on the model of charges that the public prosecutor charges against children.

In relation to this diversion, through the implementation of Article 3 of the Perma Diversion, in principle it is not in line with the objectives of pursuing diversion as regulated in Article 6 of the SPPA Law. In point b, the purpose of diversion, as explained above, is that the purpose of diversion is to prevent children from the justice process by resolving children's cases outside the court process. The presence of the provisions of Article 3 of Perma Diversi shows that the criminal justice process has been underway and is being implemented by investigators and public prosecutors, as a result of actions taken by children in conflict with the law who are punishable by a sentence of more than 7 years. If the implementing regulations of the SPPA Law only refer to Perma Diversion, then the application of diversion to crimes that carry a sentence of more than 7 years, such as narcotics crimes, will not only create legal uncertainty, but will also be contrary to the purpose of diversion mandated by the SPPA Law.

According to Supreme Court Regulation no. 4 of 2014 (hereinafter referred to as Perma No. 4 of 2014), Diversion deliberations are deliberations between parties involving children and parents/guardians, victims and/or parents/guardians, community counselors, professional social workers, representatives and other parties. other involved parties to reach an agreement through a restorative justice approach. Meanwhile, the facilitator is a judge appointed by the head of the court to handle the child's case in question. In Article 2 of Perma no. 4 of 2014, it is explained that diversion applies to children who are 12 (years old) but not yet 18 (years old) or 12 (years old) even though they have been married but are not yet 18 (years old).

This PERMA also regulates the stages of diversion deliberations, where the facilitator appointed by the Chief Justice is obliged to provide opportunities for:

1. The child must hear information regarding the charges.
2. Parents/guardians to convey matters relating to the child's actions and the expected form of resolution.
3. Victims/Children/Parents/Guardians to provide responses and forms of expected resolution.

If deemed necessary, the diversion facilitator can call community representatives or other parties to provide information to support the resolution and/or can hold a separate meeting (caucus). A caucus is a separate meeting between the Diversion Facilitator and one party that is known to the other party.

With the enactment of Law Number 11 of 2012 concerning the Juvenile Justice System in Article 6 concerning Diversion, it will provide a new understanding that can be a solution to the problem of child crime in Indonesia, where law enforcement officers are required to be wiser in understanding and interpreting cases of naughty children. . One solution that can be used is the implementation of diversion or restorative justice, where the police are at the forefront of implementation through their discretionary authority.

Currently, almost all crimes handled by the Indonesian Criminal Justice System always end in prison. However, prison is not the best solution for solving crime problems, especially crimes where the damage caused to victims and society can still be restored so that conditions that have

been damaged can be returned to their original state, as well as eliminating the negative effects of prison. In responding to crimes that are considered to be able to be restored, there is a punishment paradigm known as restorative justice, where the perpetrator is encouraged to repair the losses he has caused to the victim, his family and also the community. For this reason, the main program is "a meeting place for people" to find solutions to repair relations and damage caused by crime (peace).

Implementation of Restorative Justice can be carried out through activities such as restitution; mediation between victims and perpetrators/offenders; family group deliberation; community services that are restorative for both victims and perpetrators; victim services; community restoration; or restorative fines. (Irawati & Wijaya, 2023). Restorative Justice is a way of imposing sanctions on delinquent children by giving victims the right to participate actively in the justice process. Indicators of achieving the goal of imposing sanctions in implementing Restorative Justice can be seen from whether the victim has been restored, the victim's satisfaction, the amount of compensation, the perpetrator's awareness of his actions, the number of repair agreements made, the quality of work services and the overall process that occurred. A diversion program can be a form of Restorative Justice if:

- a. Encourage children to be responsible for their actions;
- b. Provide opportunities for children to compensate for the mistakes made by doing good for the victim.
- c. Provide opportunities for the victim to participate in the process;
- d. Provide opportunities for children to maintain relationships with family;
- e. Provide opportunities for reconciliation and healing in communities harmed by criminal acts.

If it is in the public interest, then legal proceedings must be carried out. Diversion can be implemented in several forms. Broadly speaking, there are three forms of diversion, namely:

- a. Diversion is in the form of a warning, this will be given to the police for minor offences. As part of the warning, the perpetrator will apologize to the victim. Warnings like this have been made frequently.
- b. Informal diversion, which is applied to minor offenses where it is felt that it is inappropriate to simply give a warning to the perpetrator, and the perpetrator requires a more comprehensive intervention plan. Victims should be invited to determine their views on informal diversion and what they want in the plan. Informal diversion must have a positive impact on victims, families and children. That is, it is ensured that child offenders will be suitable for informal diversion. In this informal diversion plan, the child will be responsible, recognizing the needs of the victim and child, and if possible the parents will be held responsible for the incident.
- c. Formal diversion, which is carried out if informal diversion cannot be carried out, but does not require court intervention. Some victims will feel the need to tell the child how angry and hurt they are, or they will want to hear it directly from the child. Because the problem arises from within the child's family, it is a good idea to have other family members present to discuss and develop a good diversion plan for all parties affected by the act.

This formal diversion process, where the perpetrator and victim meet face to face, is internationally referred to as "Restorative Justice". Conceptually, the idea of diversion would be more appropriate in carrying out efforts to take action and impose sanctions on naughty children within the framework of protecting children against stigma (bad label) when a child commits a crime or violates the law. However, in the juvenile criminal justice system in Indonesia, the idea of diversion is not easy to implement.

## **Conclusion**

The application of diversion to children at both the Investigation, Prosecution and Judicial levels can be carried out as long as it meets the requirements, as stated in Article 7 point 2 of the Juvenile Criminal Justice System Law and in accordance with Perma Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System which states that diversion can be carried out in the event that a criminal act is committed which is punishable by imprisonment for less than 7 (seven) years and is not a repetition of a criminal act.

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