

The Implementation of Diversion for Child Perpetrator in Magelang

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Abstract

The increasingly high and diverse level of child delinquency is motivated by factors that making regulations of Children in Conflict with the Law must develop. One form of its development is the emergence of diversion, regulated in the Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Diversion must be pursued in 3 stages of justice: Investigation Stage, Prosecution Stage, and Examination Stage. The implementation of Diversion also exists in Magelang City. The objective of research is to find out how the implementation of Diversion in Children as Perpetrators in the City of Magelang and to find out the obstacles during the implementation. This research used normative-empirical legal method. The results show that the implementation of Diversion at each stage according to the data in the last 5 years is dominated by successful Diversion in accordance with the Juvenile Criminal Justice System, but it cannot be separated from obstacles that happen. These obstacles are the difficulty of forgiveness from both parties, the existence of an unfavorable relationship between the Victim and the Perpetrator, the compensation request are too high, and parents who do not want to be the guarantor of their child.

Keywords: diversion; children as perpetrator; juvenile criminal justice system

I. Introduction

The development of Science and Technology makes children's behavior more complex which has an impact, both in negative and positive terms. The positive impact is that science and technology can become a communication media, data exchange media, and media to search for new information, business media, social relations media, and also entertainment. The negative impact is that increasing crisis of moral values in society which has the potential to increase the number of people against criminal law in various forms.¹

It should be noted that the problem of criminal acts is not only done by adults, but also by the children.² Child crime is referred as one of a social disease.³ It is undeniable that social conditions can encourage children to commit crimes. Living environment and association followed by imitating a group will greatly affect a person's personality and behavior.⁴ In addition, the condition of the COVID-19 pandemic has made teaching and learning activities carried out at home, so that the potential for children to do crime with the excuse of being bored is greater.

Facts that happened, such as in Solo, during the COVID-19 pandemic, child delinquency showed indications of increasing.⁵ The shift in the implementation of the learning process from offline to be online is often misused with unproductive activities even in a negative direction. The pandemic period has forced all work to be shifted online, so even parents cannot fully supervise their children. The lack in supervision becomes an opportunity for children to do crime, such as abusing their laptops or smartphones to watch

¹ Marlina. (2009) *Peradilan Pidana Anak di Indonesia; Pengembangan Konsep Diversi dan Restorative Justice*. Bandung: Refika Aditama, p. 2.

² Soetodjo, W. (2010) *Hukum Pidana Anak*. Bandung: Refika Aditama, p. 5.

³ Kartono, K. (1986) *Patologi Sosial 2; Kenakalan Remaja*. Jakarta: Rajawali Pers, p. 4.

⁴ Ihsan, K. (2016) Factors Cause of Children Criminal Action (case study of prisons pekanbaru class II B). *JOM FISIP* 3(2), p. 11.

⁵ Suwanto, Tok. (2020) Selama Pandemi Covid-19 Potensi Kenakalan Anak Meningkat. Accessed May 14th, 2022, <https://galamedia.pikiran-rakyat.com/news/pr-35677808/selama-pandemi-covid-19-potensi-kenakalan-anak-meningkat>

things that are not good and playing unnecessary things with their friends in the environment during study hours.

In Magelang, based on news written by detiknews, the Magelang Police noted that in 2020 there were 31 cases involving children, while throughout 2021 there were 47 cases.⁶ The data shows that there has been cases increase in the past year, the cases of child delinquency cannot be separated from the influence of the COVID-19 pandemic which has limited community mobility, especially when schools are conducted online. This can be the cause of children committing crimes or other delinquency by reason of being bored with activities that are repeated during this period of social restriction. Lack of parental supervision and environmental factors also make children vulnerable to delinquency.

Child delinquency that occurs causes children to be responsible for their actions. This makes children also have to get protection in the law, especially in the criminal justice system. One form of legal protection for children is contained in Law Number 11 of 2012 concerning the Child Criminal Justice System (UU SPPA). Protection which become focus of the SPPA Law is implementation of punishment to children as much as possible to avoid deprivation of liberty which can reduce interests, talents, innovations and hinder the growth and development of children. The implementation of the crime prioritizes a sense of responsibility to the child so that he does not return to his actions again.

The right of children to avoid deprivation of liberty is very considered in the whole process of resolving cases of children in conflict with the law, starting from the stage of investigation, prosecution, examination until the stage of guidance after serving a conviction. If we look at the imprisonment that we know so far, it will separate children from their parents, which is included in the deprivation of liberty which should be a measure of the last resort or the last attempt of punishment. Article 71 of the SPPA Law states that imprisonment is the last principal of crime. Imprisonment or in Article 79 of the SPPA Law is called a limitation of freedom, it is only applied in the event that the child commits a serious crime accompanied by violence, and the punishment for limiting freedom imposed on the child is no longer than of the maximum imprisonment that is threatened against adults.

This goes back again to the rights of children according to Article 3 (g) of the SPPA Law that children have the right not to be arrested, detained, or imprisoned, except as a last resort and in a short time. The SPPA law does not only regulate punishment but also regulates the ideal settlement of criminal acts for children. Actually, the SPPA Law prioritizes a Restorative Justice approach in the diversion as an effort to resolve crimes committed by children. Restorative Justice is the settlement of criminal cases involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to deliberate and find an agreement to restore the situation as before, not retaliation.

The application of Restorative Justice will offer answers to important issues in the settlement of criminal cases. First, criticism of the criminal justice system that does not provide opportunities, especially for victims (criminal justice system that disempowers individuals). Second, eliminating conflicts, especially between perpetrators and victims and the community (taking away the conflict from them). Third, the fact that the feelings of powerlessness experienced as a result of the crime must be overcome to achieve improvement.⁷ Restorative justice can also reduce the impact of stigmatization for perpetrators, can be carried out in line with traditional mechanisms that are still maintained, prioritize problem solving and at the same time find the roots of conflicts, restorative justice also pays attention to the losses and needs of victims, encourages perpetrators to look deeper into the causes and consequences of their actions, aware of it and take responsibility for the loss.⁸

Meanwhile, Diversion in the sense of SPPA Law is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system. If the child commits a crime, in accordance with the provisions in the SPPA Law, diversion must be sought, starting from the investigation stage, prosecution stage, and the final examination stage. Diversion can also be described as

⁶ Susanto, E. (2021). Kasus Anak di Magelang Sepanjang Tahun 2021 Mayoritas Persetubuhan. Accessed January 15th, 2022 <https://news.detik.com/berita-jawa-tengah/d-5879178/47-kasus-anak-di-magelang-sepanjang-2021-mayoritas-persetubuhan>

⁷ Aertsen, I, et al. (2011) Restorative Justice and The Active Victim: Exploring the Concept of Empowerment. *Journal Temida*, 14(1), p. 8.

⁸ Agustiani S, Kristina. (2016) Perwujudan Keadilan Restoratif dalam Sistem Peradilan Pidana Anak. *De Lega Lata Jurnal Ilmu Hukum*, 1(1), p. 194-195.

a system in which became facilitator manages the process of resolving the conflict to reach a solution as restorative justice.⁹

The criminal justice system in Indonesia in resolving crimes involving children has prioritized the diversion process. However, there are requirements to be able to do the Diversion. In accordance with the provisions in Article 7 of the SPPA Law, Diversion is carried out in the case of:

- a. Threatened with imprisonment under 7 (seven) years;
- b. It is not a repetition of crime.

The city of Magelang is one of the cities which the criminal justice system has implemented the Diversion process in resolving crimes involve children. At the end of 2020, the Magelang Penitentiary (BAPAS) noted 15 children were the perpetrators in the chaos during the demonstration of the Cipta Kerja Law, the 15 perpetrators were then agreed to be resolved using the diversion. The chaos that occurred violated the provisions of Article 216 and Article 218 of the Criminal Code with a maximum penalty of 4 months 2 weeks or a maximum fine of 9 thousand rupiah. The punishment included in the requirements for conducting the Diversion, then law enforcement officers are obliged to seek settlement of cases with the Diversion process.

The implementation of Diversion in accordance with the restorative justice approach has several indicators that must be considered. These indicators are the basis for seeing the success or failure of the implementation of Diversion. Some of these indicators such as:

- a. achieving peace between the perpetrator and the victim;
- b. settlement of cases outside the court;
- c. prevent children from deprivation of liberty;
- d. involve the community to participate; and
- e. instill a sense of responsibility in children.

In accordance with the principles of Restorative Justice, the indicators used when the diversion is successful in protecting children's rights include: achieving peace between the two parties, returning children to their parents as they were before, making children understand to not repeat the crime again, and so on. Looking at these indicators, it turns out that there are still many cases involve children and meet the diversion requirements but not resolved through diversion, even though if the case can be resolved by diversion, children's rights can be protected, peace between the two parties can be achieved, children are returned to their parents, making children understand to not repeat their crimes again, and so on.

Based on the introduction above, the authors are interested in discussing more about how the implementation of the Diversion process in Magelang City is in accordance with SPPA Law in realizing restorative justice, as well as how the obstacles that are often encountered in the implementation of diversion.

II. Research Method

The research method carried out normative-empirical legal research or also known as applied law research. This research examines the implementation or implementation of positive legal provisions (laws) and factual contracts in every particular legal event that occurs in society in order to achieve the predetermined goals.¹⁰ The types of data used in this research are primary data and secondary data. Legal materials of primary data in legal research comes from direct research in the community, while legal materials of secondary data come from data obtained from a review of various literatures.¹¹ Therefore, this article used case approach and statute approach with the data collection techniques separately or together through direct interviews. The interviews were conducted in 4 places; Magelang City Police Resort,

⁹ Wijayanti, I. dkk. (2021) *Penyelesaian Tindak Pidana Penganiayaan dengan Pelaku Anak Menurut Undang-Undang Nomor 11 Tahun 2012*. *Pattimura Magister Law Review* 1(2), p. 87.

¹⁰ Muhaimin. (2020) *Metode Penelitian Hukum*. Nusa Tenggara Barat: University Press, p. 29.

¹¹ Fajar, M and Yulianto Ahmad, (2005) *Dualisme Penelitian Hukum: Normatif & Empiris*. Yogyakarta: Faculty of Law Universitas Muhammadiyah Yogyakarta Publisher, p. 113-114.

Magelang City District Attorney, Magelang City District Court, and Magelang Penitentiary. All the data information collected from year of 2017 until year of 2021.

III. Result and Discussion

Criminal liability between adults and children is certainly different. This because the conditions faced by children when committing a crime are also different from adults. So that the juvenile criminal justice system must be distinguished from adults and imprisonment is the last option in the threat of punishment for children.

The restorative justice approach can be used to avoid negative things that arise in the juvenile criminal justice process which can be implemented through diversion efforts. To be able to apply Diversion, a case must meet the following requirements: the criminal penalty is under 7 years and is not a repetition of a criminal act by the perpetrator. The conditions for fulfilling the implementation of the Diversion do not necessarily guarantee that the Diversion will be successful, there is a possibility that the Diversion will fail at every stage.

Cases of Children in Conflict with the Law through Diversion also occur in the jurisdiction of Magelang City. Law enforcement officials in carrying out Diversion certainly have their own indicators to determine whether the Diversion process is successful or not. The indicators that become the reference for the success of Diversion are certainly not far from the goals of Diversion in Article 6 of the SPPA Law, namely: achieving peace between victims and children, resolving cases outside of the courts, preventing children from deprivation of liberty, inviting the community to participate, and understanding a sense of responsibility.

3.1. The Implementation of Diversion Process in Magelang

3.1.1. Diversion at The Investigation Stage

The investigation stage in accordance with the flow of implementation in the criminal justice system, diversion will be sought from the beginning of the issuance of a notification letter from the start of the investigation to the end. The process in detail:

1. Investigators submit a Notice of Investigation Commencement (SPDP) within 1 x 24 hours;
2. Investigators coordinate the announcement of Diversion to the Kasi Pidum;
3. Notify the diversion to the prosecutor with the notification letter;
4. Investigators submit a request letter to start the investigation for Community Advisors (PK) to conduct research known as Litmas and request letter for Social Workers (Peksos) to conduct social reports known as Lapsos;
5. Community Advisors (PK) submits Litmas;
6. Social Workers (Peksos) submits Lapsos;
7. Investigators offer and invite all the parties in the diversion through Summons Letter of Diversion after 7 days of Litmas and Lapsos that has been made;
8. If all the parties agree to conduct diversion then investigators manage time to deliberation, if diversion rejected by the parties or one of the party then diversion cannot be conducted;
9. Deliberation conducted 7 days after the agreement of diversion, if diversion reach the agreement to solving case then investigators publish the Diversion Agreement Letter and Diversion Investigation Report that submitted to head of the district court. In case the diversion not reach the agreement, so investigators publish the Diversion Investigation Report and case files to the prosecutors to proceed to the next process.

According to the interview that has been made with Mr. Agus Setyawan as Children Investigator in Magelang City Police, the diversion attempted in the last 5 years from 2017-2021 it always been successful at the investigation stage. Mr. Agus Setyawan as the Head of the Criminal Investigation Unit of the Magelang City Police explained that the successful Diversion data in 2017 was 2 cases, in 2018 there were 3 cases, in 2019 there were 7 cases, in 2020 there were 2 cases, and in 2021 there is 1 case.¹² Total of 15 diversion cases, the majority of crimes committed by children are in the crime of theft in Article 362 of the Criminal Code, and the second majority is in the crime of beating or torture in Article 76C jo. Article 80 paragraph (1) of Law no. 35 of 2014. The two majority crimes referred to in the summary of the Diversion case in Magelang City have also been described by Jensen in various theories of child delinquency. Jensen stated

¹² Agus Setyawan, Interview with the author, March 7, 2022.

that crime of theft is included in delinquency that causes material casualties, while beating or torture is included in delinquency that causes physical victims to other people.¹³ Internal and external factors can also be the cause of children committing crimes of theft and beatings/tortures. In the crime of beating or torture, as explained by Imroatus in the theory of child delinquency, when a child feels uncomfortable or disturbed by his environment, physical violence against others can be the cause of releasing his uncomfortable emotions.¹⁴

3.1.2. Diversion at The Prosecution Stage

The diversion procedure at the prosecution stage is not different with investigation stage, it only repeats the offer that has been submitted in the investigation following the recommendation of the same agreement as the result of the Litmas from Petentiary (BAPAS). In the implementation of Diversion, the prosecutor has guidelines which are summarized in the Regulation of the Attorney General of the Republic of Indonesia Number: PER-006/A/J.A/04/2015 concerning Guidelines for Implementing Diversion at the Prosecution Stage. In Chapter II point 2 of that regulation, explained that when the SPDP is received, the prosecutor must have appointed a Prosecutor to follow the development of Diversion at the investigation stage. When it known that the Diversion at the investigation stage failed, the prosecutor's office will accept responsibility for the child and the evidence (phase II) and the Head of the District Attorney will issue the appointment of a Prosecutor to resolve the case.

This article conducted interviews with the prosecutor at the Magelang City Attorney General's Office named Ambar Susilowati. Prosecutor Ambar explained that in the Diversion effort, the procedure is almost the same as the investigation stage, the parties participating in the Diversion Deliberation are almost the same as those stated in PERJA Number: PER-006/A/J.A/04/2015, CHAPTER III point 4, namely Child and/or parent/guardian, Victim or Child Victim and/or parent/guardian, Community Counselor (PK); and Professional Social Workers. In the event that the Child and/or parent/guardian wants it, the implementation of the Diversion Deliberation may involve the community which includes; religious leaders, teachers, community leaders, companions, and advocate or Legal Aid Provider.

Prosecutor Ambar also explained that in Magelang City in the last 5 years, no child case files were submitted and diversion must be sought at the prosecution stage. Even if there is a diversion, it is usually completed at the investigation stage, or transferred to the court. In this case means that the diversion carried out at the prosecution stage in Magelang City has so far not been successful so it must go up to the examination stage.

The Magelang District Attorney's Office in the implementation of Diversion has its own room and is separate from other rooms. This because the Diversion deliberations that are carried out can create a sense of security and kinship for the child and the parties in it. In accordance with the provisions in Chapter III PERJA Number: PER-006/A/J.A/04/2015 point 4 (b) that the Diversion Deliberation is carried out in the Special Children's Room or in bahasa named RKA, located at each Attorney General's Office or in other places that have been agreed by the parties.

3.1.3. Diversion at The Examination Stage

The jurisdiction of the Magelang District Court that includes the Magelang District Attorney, North Magelang Police, Central Magelang Police, South Magelang Police, and Magelang Police. Diversion at the examination stage is a last resort that can be done by law enforcement officials. When the Diversion at the prosecution stage is still unsuccessful, then the Public Prosecutor reports the unsuccessful Diversion Letter to the Head of the Court to proceed the case at the examination stage.

A judge that has been interviewed in this article, Mrs. Dewi Kurniasari explained diversion at the Magelang District Court is the same as the explanation in the law which is after the case file enters the Court then the Panel of Judges/Judges will examine the file and determine the Diversion schedule in accordance with the provisions in the SPPA Law and Supreme Court Regulation Number 4 of 2014 concerning Guidelines for Implementing Diversion in the System Juvenile Criminal Justice.¹⁵

There are 4 cases of child attempted by Diversion at the examination stage Magelang District Court within the last 5 years; 3 cases successful and 1 case failed. In 2017 there were no cases with Diversion

¹³ W Sarwono, Sarlito. (2012) *Psikologi Remaja*. Jakarta: Rajawali Pers, p. 200.

¹⁴ Imroatus, S. (2014) *Anak yang Berhadapan dengan Hukum dalam Kasus Tindakan Kekerasan di Lembaga pemsyarakatan Anak Kelas IIA Blitar* (Thesis). Universitas Muhammadiyah Malang, Malang, Indonesia, p. 3-4.

¹⁵ Dewi Kurniasari, Interview with the author, April 4, 2022.

efforts, 2018 there were 1 case and it failed, 2019 there was 1 case that was successful, 2020 did not exist and 2021 there were 2 cases and all were successful. In 2018, a fraud case that violate Article 378 of the Criminal Code with the threat of imprisonment for a maximum of 4 years was attempted with Diversion but did not reach an agreement or failed, so the case went to the court. In 2019, the narcotics abuse case that violence Article 112 Paragraph (1) of Law No. 35 of 2009 concerning Narcotics. Diversion attempted the case with the agreement that the child underwent rehabilitation at the Antasena BRSAMPK Magelang and at the Soerojo Magelang Psychiatric Hospital, the child remained in school on condition that parental supervision was tightened and more intensive, such as pick-up and drop-off at school. In 2021, the Magelang District Court seeks Diversion in 2 cases of beatings that violence Article 170 of the Criminal Code. The results of the diversion are the achievement of peace between the perpetrator and the victim, the perpetrator pays the fee for the treatment of the victim's wound, and the case is terminated.

3.1.4. Community Advisor (PK) as Companion for Children in Conflict with The Law

Penitentiary or known as BAPAS, an institution that carries out guidance and supervision of children as perpetrators has a very important role in the Diversion process in accordance with the SPPA Law. Through Community Advisors (PK) who accompany children as perpetrators conducting Community Research (Litmas) as a form of recommendation for Diversion agreements, if there are no results of Litmas, Diversion will not be able to be pursued. In the interviewed that has been conducted with one of the Community Advisor (PK) in Magelang, Mr. Mutiyono, he explained the function of Community Advisor (PK) in addition to being a companion for children in conflict with the law is also to provide guidance and supervision and most importantly conduct community research.¹⁶ In making the Litmas report, the Community Advisor (PK) has several contents that must be investigated more deeply, such as: Child Identity; Background of family, education, and social environment; Cause of the child committing a crime; The circumstances that make a delinquency; Motive of the crime; The child abilities, interest, and talents; The best recommendation to prevent children from crime repetition; and recommendation of parties who would presented in the deliberations of diversion.¹⁷

The role of the Community Advisor (PK) when he became a deputy facilitator in the deliberation of Diversion is:

- a) Community Advisor (PK) explains to both parties what happens if Diversion agrees and disagrees, so that both parties can describe their respective conditions;
- b) Community Advisor (PK) supervise the results of the agreement if it is successful. The results of the agreement are so that the victim also gets his rights if for example there must be compensation;
- c) Community Advisor (PK) and investigators only act as facilitators, the deputy facilitators only give the best advice, not being coercive and just accompanying children. The decision to agree or not has fully right the parties.

3.2. The Obstacles of The Implementation of Diversion

The obstacles in Diversion according to Erwinda Dekaria and Pudji Astuti in their scientific articles, is the lack of a settlement agreement between the two disputing parties.¹⁸ Meanwhile, according to Abdul Hakim, Diversion barriers can occur internally, such as a lack of understanding of the guidelines in the applicable regulations regarding the implementation of diversion between disputing actors and external obstacles, such as the minimal role of the community, and cooperation between agencies that has not been going well.¹⁹

The resolution of child crimes with diversion is not fully understood by all elements of society. Diversion is also not clearly explained for everyone to know. In fact, in legal scientific books, diversion is not always mentioned except for those that do explain juvenile criminal justice. Of course, it is very natural if there is ignorance or misunderstanding by the community that must be included in the Diversion deliberation process. There are also many opinions that Diversion is unfair and even harms the victims who

¹⁶ Mutiyono, Interview with the author, March 11, 2022.

¹⁷ *Ibid.*

¹⁸ Dekaria, Erwinda, and Pudji Astuti. (2020) Faktor Penghambat Diversi bagi Anak yang Berkonflik dengan Hukum di Pengadilan Negeri Blitar. *Novum: Jurnal Hukum*, 7(1), p. 182.

¹⁹ Hakim, A. (2016). *Analisis Hukum Penerapan Diversi Terhadap Anak Pelaku Tindak Pidana Pencurian Motor* (Thesis). Universitas Medan Area, Medan, Indonesia.

should be the most protected. In fact, if community know the intent and purpose for the child's future, this Diversion is a good step.

Obstacles that influence the passage of Diversion are divided into 2, namely internal and external obstacles. Internal obstacles come from the two disputing parties. The internal obstacles encountered in the implementation of Diversion at the stage of investigation, prosecution, and examination in Magelang City is: the severity of the violation, the relationship between the perpetrator and the victim, a sense of forgiveness, demands for compensation that are too large.

Factors that become obstacles in the success of the Diversion process can also come from external factors which factors came outside of the perpetrators and victims. External factors that occur in Magelang are: parents/guardians do not want to provide supervision guarantees; parenting patterns and the relationship between children and their parents/guardians; community factors that lack education about the completion of the diversion path; and different understandings of the meaning of justice between all parties involved in the diversion deliberations.

IV. Conclusion

Indonesia needs to consider deeply and seriously several issues that involving children in Conflict with The Law. The implementation of Diversion carried out in Magelang City refers to the data for the last 5 years which has always been successful in all three stages of the juvenile criminal justice system which is investigation, prosecution, and examination, although not all of them have been successful. not all were successful, because there were still many internal and external obstacles from the implementation of diversion. In an effort to reduce or overcome the obstacles that occur, there is a need for greater deepening and socialization about settlements with diversion in the juvenile criminal justice system in the city of Magelang. The socialization is thorough in all elements of society, including children, parents, teachers, and parties who are often involved in resolving child cases.

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