

## THE EFFECTIVENESS OF DIVERSION IN RESOLVING CHILD CRIMINAL CASES TO ACHIEVE RESTORATIVE JUSTICE IN THE CHILD CRIMINAL JUSTICE SYSTEM

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### ABSTRACT

The provisions of Article 1 point (6) of Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, states that restorative justice is the resolution of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties together. seek a fair solution by emphasizing restoration to the original state, and not retaliation. Therefore, the juvenile criminal justice system is obliged to prioritize a restorative justice approach. So that at every stage of the legal process in the juvenile criminal justice system a diversion policy must be pursued. The diversion policy is a transfer of the resolution of juvenile criminal cases from the criminal justice process to a process outside of criminal justice, so that restorative justice is achieved.

*Keywords: Diversion, Restorative Justice, Juvenile Crime, Juvenile Criminal Justice System.*

### A. INTRODUCTION

Indonesia is a legal country where all activities are carried out in accordance with applicable laws regarding child violence. Statement from Erlinda as Secretary of the Indonesian Child Protection Commission at the South Jakarta Metro Police Headquarters explained that the Indonesian Child Protection Commission applied a restorative justice approach to 5 (five) suspects. alleged abuse that killed Jakarta State High School (SMAN) 3 student Arfiand Caesar Al Irhami during an extracurricular activity for nature lovers on Mount Tangkuban Perahu, West Java in June 2020. Restorative justice is a mechanism for protecting children who have the status of perpetrators, so that they are given their rights in undergoing legal proceedings. The five suspects, who are seniors and mentors for the victims in the nature lover extracurricular, are still students, so they need assistance during the legal process. In the restorative justice approach, suspects have the right to receive psychological assistance. Apart from that, the five suspects were also given legal assistance from their families. A number of steps in the process of assisting children are intended to create comfort for children when attending court trials later, so that they can overcome various kinds of intimidation that they receive at certain times.

Providing restorative justice is not to free children from criminal punishment, but so that children are ready to face the future when they are free from punishment. Even though it uses a restorative justice approach, KPAI does not use this approach to encourage leniency in punishment for guilty children, so that in every case, KPAI will be neutral. Punishment for perpetrators of child crimes does not achieve justice for the victims, considering that on the other hand it still leaves its own problems unresolved even though the perpetrators have been punished. Looking at the principles of child protection, especially the principle of prioritizing the best interests of children, it is necessary to have a process for resolving children's cases outside of criminal mechanisms or what is usually called diversion. Punitive institutions are not a way to solve children's problems because they are prone to violations of children's rights. Therefore, legal certainty can be realized through good and clear norms in a law and its implementation will also be clear. Child protection through an approach carried out

through diversion policies at each level through a mediation process. Article 1 paragraph (7) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that diversion is a transfer from the criminal justice process to a process outside of criminal justice. Diversion was carried out for several days to reach an agreement between the two parties. Nirwana, as Deputy Chair of the Tangerang District Court, agrees with the Juvenile Criminal Justice System which prioritizes diversion. Because it is considered that the Juvenile Criminal Justice System in Indonesia is more appropriate to use mediation mechanisms to achieve legal objectives, using an approach as the basis for its application. However, this approach does not guarantee that children will be free from imprisonment. If diversion is unsuccessful, the case will go to court. It is hoped that whether the diversion agreement is unsuccessful, fails from the start or is not implemented, the enthusiasm and spirit must still be reflected in the juvenile judge's decision in order to fulfill the principles and objectives of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Harkristuti Harkrisnowo<sup>6</sup> added that there are rules for carrying out diversion. Diversion can only be carried out on children aged 12 years and over. This is because the age of responsibility for children has been changed from 8 years to 12 years. Then, criminal acts that can be punished with imprisonment are less than seven years and are not a repetition of a criminal act.

Deprivation of liberty is only intended as a last resort at all levels of examination, and only for children aged 14 years and over. Because of this, we need an event and procedure in the system that can accommodate case resolution, one of which is by using a restorative justice approach, through a legal reform that does not just change the law but also modifies the existing criminal justice system, so that all the desired goals are achieved. achieved by law. One form of restorative justice mechanism is dialogue which among the Indonesian people is better known as "deliberation for consensus". So that diversion, especially through the concept of restorative justice, becomes a very important consideration in resolving criminal cases committed by children.

In Indonesia, for approximately sixteen years, Law Number 3 of 1997 concerning Children's Courts has been used, which uses a formal juridical approach by highlighting punishment (retributive), which has the paradigm of arrest, detention and imprisonment of children. This will certainly have the potential to limit freedom and rob children of their independence and will have an impact on the future such as the best interests of the child. Facts show that the number of child prisoners is increasing from year to year. Where as of June 2013 there were 2,214 child prisoners. 8 Recently, the number of child problems in Indonesia has been quite diverse. The most frightening thing is Children in Conflict with the Law (ABH). From 2011 to 2017 there were 9,266 cases. From year to year, the highest number was in 2014. Where the number of ABH cases reached 2,208.

The Ministry of Women's Empowerment and Child Protection (Ministry of PPPA) stated that the number of violence against children was relatively high in the first half of 2020. The Ministry of PPPA recorded at least 4,116 cases of violence against children in the period 1 January to 31 July 2020, which also occurred during the Covid pandemic. -19. Based on the online information system for the protection of women and children (Simofa PPA), as of January 1 to July 31 2020, 3,296 girls and 1,319 boys were victims of violence.

## **B. FORMULATION OF THE PROBLEM**

1. How is the diversion policy implemented as penal mediation in resolving juvenile crimes?
2. What is the effectiveness of diversion in resolving juvenile crimes to achieve restorative justice in the juvenile criminal justice system?

### C. RESEARCH METHODS

In this legal research it is normative or usually called normative juridical research. Legal research is carried out by examining library materials or secondary data or research used to examine legal rules and principles. Bernard Arief Sidharta explained that normative legal research is a type of research that is commonly carried out in legal science development activities, which in the West is also usually called legal dogmatics (*rechtsdogmatiek*). In principle, research with a juridical approach uses primary sources in the form of secondary data or library materials.

The secondary data in question includes primary legal materials in the form of laws and court decisions, then secondary legal materials and tertiary legal materials. This research is a type of normative legal research, using a statutory approach, a conceptual approach and a case approach. The legal approach is carried out by examining all laws and regulations related to the legal issue being handled.

The data collection technique uses documentary studies, namely studies that examine various documents, both relating to statutory regulations and existing documents. The literature used to examine this research in order to avoid mistaken views is related to the application of diversion in resolving juvenile crimes in realizing restorative justice in the juvenile criminal justice system. Furthermore, the legal materials and literature are collected using systematic methods and provided with legal arguments, legal applications and efforts to solve legal problems

### D. DISCUSSION

#### 1. Implementation of Diversion Policy as Penal Mediation in Resolving Child Crimes

Settlement of juvenile crimes through mediation was carried out before the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, but it did not explicitly regulate restorative justice. Likewise, the police as law enforcement officers based on article 18 of Law Number 2 of 2002 concerning the Police, stipulate (1) In the public interest, Indonesian police officials in carrying out their duties and authority can act according to their own judgment. (2) Implementation of the provisions as intended in paragraph (1) can only be carried out in very necessary circumstances by paying attention to statutory regulations, as well as the police professional code of ethics. Explanation of article 18 paragraph (1) which is meant by "acting according to one's own judgment" The implementation of this provision is known as police discretion.

Investigators are obliged to attempt diversion, but based on the threat of criminal sanctions carried out by children who commit sexual abuse crimes over 7 (seven) years old, in this case diversion fails because one of the conditions for diversion contained in Article 7 point (2) is not fulfilled. ) Law Number 11 of 2012 on the Juvenile Criminal Justice System so that in this case investigators are obliged to continue and hand over cases of children who are perpetrators of criminal acts of sexual harassment to the public prosecutor. 16 Then with the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, justice restorative and diversion are strictly regulated, namely in more detail diversion is regulated in Chapter II articles 6 to Article 15 of Law no. 11 of 2012 and the procedures and stages of diversion are regulated in the Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System.

Diversion aims (Article 6 paragraphs (1) and (2) to: a) achieve peace between the victim and the child, b) resolve children's cases outside the judicial process, c) prevent children from being deprived of liberty, d) encourage the community to participate, and e) instilling a sense of responsibility in children. 17 Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is the only legal regulation that is clearest in

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implementing the resolution of criminal cases through a restorative justice approach. The a quo law regulates the mechanism for resolving children's criminal cases outside of court with provisions regarding diversion legal institutions. According to Article 1 point 7 of Law Number 11 of 2012, it is stated that diversion is the transfer of the resolution of children's cases from the criminal justice process to a process outside of criminal justice. The implementation of a diversion policy can be viewed as a concept for transferring a case from a formal process to an informal process.

The transfer process is intended to provide protection for children in conflict with the law. Furthermore, internally each institution discussed again the concept of diversion in providing protection for children who are perpetrators of criminal acts. Based on internal discussions carried out by each institution, each institution wishes to discuss the concept of diversion widely among law enforcement officers involved in criminal justice against children. In 2004 in Jakarta a discussion was held among law enforcers involved in the juvenile criminal justice system to discuss the best steps in dealing with juvenile offenders. Discussions held between law enforcement officers aim to find the best solution in order to provide protection for children. After this discussion, the judges in Bandung discussed internally the first steps that could be taken to provide protection for children who have problems with the law, namely by establishing a special courtroom for children and a special waiting room for children. The idea emerged of creating a special children's room and a children's waiting room to provide protection for children so that while waiting for the court process to take place and the process of detaining children separately from adult detainees. In an effort to create a children's courtroom and waiting room for children, the Chairman of the Bandung District Court held discussions with the Bandung City Government and observers of children's problems in Bandung, namely Ignatius Pohan, Rinni Sutiarny, Anton Yuliarto Sigit and the Child Protection Institute (LPA Bandung). The discussion was held to obtain responses regarding the Bandung District Court's desire to establish a special children's detention room and a children's waiting room. The discussions that took place resulted in an agreement and the desire and encouragement to realize the big dream of the Bandung District Court to have a special children's detention room and a children's waiting room. Finally, on August 13 2004, the two rooms were successfully built at the Bandung District Court. Attention to the protection of children in conflict with the law continues. Continuously at every discussion opportunity, the Bandung District Court judges discussed the development of the concept of diversion and restorative justice.

Seeing the serious attention of law enforcement officials in the criminal justice system in Bandung, UNICEF has designated the City of Bandung as a pilot project in implementing the concept of diversion and restorative justice in Indonesia. The Bandung District Court applies special procedures and diversion efforts in children's cases by paying careful attention to special procedures for handling or resolving children's cases which include:

- 1) Carry out control of special administrative processes in the course of juvenile justice by monitoring the time children's cases are transferred until the judge's verdict is recorded in the child case registration book.
- 2) Carrying out juvenile justice processes by providing special trial rooms and waiting rooms, as a form of integrated implementation of children's rights.
- 3) Placing criminal penalties (imprisonment) on children involved in juvenile crimes as the final step.
- 4) Supervise the performance of child judges through the discussion of children's matters in monthly meeting forums.

- 5) Supervision of the implementation of children's rights in the process or supervision of the implementation of decisions by the appointed supervisory judge at the correctional institution. To this day, the implementation of diversion in Indonesia is still experiencing obstacles because there are no legal regulations governing how to implement the diversion concept.

Therefore, while waiting for the formation of the law regarding the concept of diversion, the pillars of implementing criminal justice on 1-2 June 2005 in Jakarta held a Workshop on Diversion Guidelines for Law Enforcement Agencies on the Protection of Children who Come into Contact with the Law (Diversion Guidelines for the Protection of Children in Conflict with the Law).

Obstacles in implementing diversion lie in understanding the meaning of diversion, the policy limits of diversion implementing officials, and public trust in diversion regulations. In the case of children, diversion is a very important policy to implement to protect children from the formal justice process. But law enforcement officials are still hesitant to implement it. This condition is due to community demands which are taken into consideration by law enforcement officials. Thus, this does not mean that the implementation of diversion in an effort to legally protect the rights of victims and the rights of children who commit criminal acts can still be realized in the juvenile criminal justice system. There needs to be firmness from every leader of the law enforcement apparatus to resolve child criminal cases based on the provisions for implementing diversion as penal mediation for children, with support from the community, especially parents/guardians of children so that there is a guarantee that children who commit criminal acts will not repeat their criminal acts in the future. the period of growth and development from children to adults.

## **2. The Effectiveness of Diversion in Resolving Child Crimes to Achieve Restorative Justice in the Juvenile Criminal Justice System**

In view of the concept of restorative justice, handling crimes that occur is not only the responsibility of the state but also the responsibility of society. Therefore, the concept of restorative justice is built on the understanding that losses caused by crime will be restored, both losses suffered by victims and losses borne by society. The implementation of the concept of restorative justice has a framework of thinking in an effort to find alternative solutions to criminal cases committed by children without criminal punishment. Alternative solutions are carried out as an effort to create humane justice. The settlement is carried out while still providing the rights of each perpetrator and victim in mediation as central to the implementation of restorative justice.

Enforcement of criminal law at the peak point of material truth is actually in the hands of the Chief Judge when conducting an examination and ultimately passing a verdict. Therefore, resolving child criminal cases according to the concept of restorative justice, the role and involvement of community members is very useful and important to help correct mistakes and irregularities that occur in the community concerned.

It is hoped that a resolution using a restorative justice system will ensure that all parties who feel aggrieved will be restored and that there will be respect and respect for the victims of a criminal act. Respect is given to the victim by requiring the perpetrator to make restitution for the consequences of the criminal act they have committed. The recovery carried out by the perpetrator is in the form of compensation, social work, carrying out repairs or certain activities in accordance with the joint decision agreed upon by all parties in the meeting held.

Restorative Justice in its development cannot be separated from the development of criminal theory, starting from retributive theory or absolute theory, relative theory (deterrence), integration theory, especially the theory of treatment and social protection (social defense). According to the treatment theory put forward by the positive school,

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punishment is appropriate to be directed at the perpetrator of the crime, not at his actions. The aim of punishment according to treatment is to provide treatment and rehabilitation to criminals as a substitute for punishment. The rationale for the treatment of criminals is that they are sick people and therefore require treatment and rehabilitation. After World War II, the social defense theory of punishment developed, which was put forward by Filippo Gramatica, who in 1945 founded the Center for Community Protection Studies. Furthermore, the social defense flow split into 2 (two) schools, namely the radical (extreme) and the moderate (reformist) flow. The aim of punishment developed by social defense is towards a combination of penal policy and non-penal policy. This means that in dealing with crime, a social approach is taken as a preventive effort in society to minimize the occurrence of crime. Therefore, crime prevention efforts are carried out with integration between law enforcement and the community. Community involvement in crime prevention efforts is important because crimes that occur are not only the responsibility of law enforcement officers but also the community.

The realization of community involvement in crime prevention efforts by involving the community in the process of resolving criminal acts in the concept of restorative justice. The concept of restorative justice is applied directly to criminal acts that occurred before the perpetrator entered the criminal justice system and cases that entered the criminal justice system. Cases that enter the criminal justice system are carried out by officials in the criminal justice system using their discretionary rights to take diversionary action by transferring criminal cases that occur to informal processes.

Therefore, criminal statistics are needed which are compiled based on recorded crime. This crime consists of crimes that come to the attention of authorized officers, either due to reports from the public or because they are discovered during police patrols, and are then recorded by these officers. These recorded crimes are only a sample of all existing crimes. The total number of these crimes can never be known. This part of crime that is not known (either because the victim does not know or he knows but is not/reluctant to report it) is called hidden crime (hidden crime or dark number). Crime statistics are usually used, among other things, to measure the state of crime, for example by making comparisons according to time and/or place. This measurement can of course be carried out based on the assumption that the relationship between reported and unreported crime is always constant.

This assumption has never been proven. In fact, this assumption is still acceptable (while no one has been able to prove otherwise), as long as it is taken into account that the sample size depends on 2 (two) things, namely:

- a) The nature of the crime in question
- b) The seriousness of efforts to enforce the law. Law no. 3 of 1997 concerning Children's Courts. Protection in the criminal justice system process, namely:
  - 1) Special law enforcement officers such as child investigators, children's public prosecutors, children's judges, children's appeal judges, and children's cassation judges.
  - 2) Examinations of children's cases are carried out behind closed doors.
  - 3) The prison sentence, imprisonment, fine that will be imposed on delinquent children is a maximum of ½ (one half) of the maximum penalty of imprisonment for an adult. If the crime is punishable by death, then the prison sentence imposed is a maximum of 10 years.
  - 4) Supreme Court supervision of children's trials.
  - 5) Court decisions regarding cases of delinquent children that have obtained permanent legal force can be requested for review by the child or parent

- or guardian, foster parent or legal advisor to the Supreme Court in accordance with applicable law.
- 6) The forms of punishment that can be imposed on naughty children are criminal punishment and action. Criminal penalties are basic penalties such as imprisonment, imprisonment, fines or supervision penalties, while additional penalties are confiscation of certain goods or payment of compensation. Actions include: returning it to parents, guardians or foster parents, handing it over to the state to take part in education, coaching and job training or handing it over to the Department of Social Affairs which operates in the field of education, coaching and job training.
  - 7) The prison sentence imposed on delinquent children is a maximum of  $\frac{1}{2}$  of the maximum prison sentence for adults. If the crime committed is punishable by death or life imprisonment, then the maximum sentence imposed is 10 years. If a child who is not yet 12 years old does so, then only action will be imposed on him, including returning him to his parents, guardian or foster parent, handing him over to the state to attend education, development, training and work training or handing him over to the Ministry of Social Affairs, or a social organization that operates in the fields of education, coaching and job training.
  - 8) The examination of child suspects must be carried out in a family atmosphere, asking for consideration/suggestions from community counselors and mental health experts, religious experts or other community officials. During the process it was avoided from publication.
  - 9) Detention may be carried out taking into account the interests of the child and society, the place of detention must be separated from the place of adult detention and while in detention the police must continue to ensure the physical, spiritual and social needs of the child.
  - 10) Children who are arrested or detained have the right to receive legal assistance, and this must be notified by officials from the moment the child is arrested or detained to the suspect's parents/guardian or foster parents.
  - 11) Correctional students must be in juvenile correctional institutions, while in these institutions, children have the right to receive education and training in accordance with their talents and abilities.

A conditional sentence can be imposed by a judge if the prison sentence is imposed by the judge if the prison sentence is imposed for a maximum of 2 years and is supervised by the Correctional Center and has the status of a correctional client. The increase can be seen from the data on the decline in the number of children's cases, according to statistics in 2002 there were 83 (eighty three) children's cases, in 2003 there was a decrease of 52 (fifty two) children's cases. In 2004 there were 49 (forty-nine) children's cases and from 2005 to May there were 21 (twenty-one) children's cases. From these statistical data, it can be seen that there has been a decrease in the number of criminal perpetrators who have entered the court for processing. This happens because starting from the police level, the police select what criminal acts will be carried out for arrest and detention.

What criminal offenses will the child be prosecuted for? With the assessment of criminal cases that will be prosecuted in court, it causes criminal cases that go to court to be minor. The types of criminal acts committed are theft, drug consumption, immorality, murder, assault and others. According to

statistical data, the average age of children is between 12 (twelve) years to 18 (eighteen) years and all cases submitted by the prosecutor's office place child defendants in detention. In their decisions, on average, judges decide to acquit children after being sentenced. Yudi Handono 36 as Director of State Security, Public Order and Other General Crimes at the Deputy Attorney General for General Crimes at the Attorney General's Office of the Republic of Indonesia explained that Law no. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), its implementation has not been easy in the last 6 (six) years, many have experienced obstacles, especially Public Prosecutors from regional to central. These obstacles include:

- 1) the problem of understanding, there are Public Prosecutors who understand, there are those who don't understand, there are some who consider it an additional burden in implementing the SPPA Law, because those who don't react don't necessarily understand.
- 2) The problem of inconsistencies in Legislative Regulations, for example the provisions of Article 61 paragraph (2) of the SPPA Law, in practice does not keep the identity of children, child victims and/or child witnesses secret which should remain confidential by the mass media as intended in Article 19 by only using initials without pictures.
- 3) Problems with human resources, facilities and infrastructure d
- 4) The implementation problem is that children who commit criminal acts have different needs so that they realize their mistakes, take responsibility and change their behavior so that they become good children again. Extension staff are able to do this according to the child's needs. Unfortunately, the only available Extension workers are Social Workers, and even then there are not many, so sometimes children who just need to be told that their actions are wrong and need to be changed because God doesn't like those actions, are forced to be imprisoned.

The Public Prosecutor must look at the quality of the child's case and understand the child's growth and development. Therefore, punishment with conditions in the form of guidance outside the institution in the form of participating in a guidance and counseling program by a guidance officer is beneficial in reforming the behavior of children who commit criminal acts. As a guideline, in principle, diversion is only carried out or applied if the younger the child, the higher the priority for diversion; and the lower the criminal threat, the higher the priority for diversion. Then the solution to the problem in implementing the Republic of Indonesia Supreme Court Regulation no. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System, including

- a) The Public Prosecutor reviews the facts and actions in each alternative and subsidiarity charge
- b) In the event that the Court invites the Public Prosecutor for diversion and the fact that the action is more likely to result in a criminal threat of less than 7 (seven) years of prosecution of the case needs to be supported; and
- c) The Public Prosecutor submits the case with charges that each stand alone (*concorus realis*) even though there are charges that meet the diversion requirements. Therefore, various SPPA problems are caused by
  - 1) lack of facilities and infrastructure;
  - 2) problems in statutory regulations;
  - 3) Social Welfare Implementation Institution (LPKS) which conflicts with Law Number 23 of 2014 concerning Regional Government (Local Government



Law); d) Children over 18 years of age are in the coaching process but the Ministry of Law and Human Rights does not want to accept them.

Harkristuti Harkrisnowo 38 continues to explain that the initial emergence of SPPA was because:

- a) it did not include the principles in the Convention on the Rights of the Child; Has not incorporated the values and standards of the Beijing Rules;
- b) has not limited the deprivation of liberty for children (last resort);
- c) have not provided guarantees for the fulfillment and protection of children's rights; d) has not laid the foundation for APH's obligations for children. The purpose of the SPPA Law is that children in the SPPA are positioned as legal objects and transformed into legal subjects whose dignity is upheld.

In essence, special guidelines are needed for prosecutors to:

- a) provide criteria for prosecution of ABH cases because the law only determines sanctions in the form of imprisonment;
- b) for example, it is related to the seriousness of the criminal act, the losses caused, the child's attitude during the process, parental assistance and so on
- c) when are the types of crimes in Article 70 and the actions in Article 82 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA);
- d) Eliminate or at least reduce the prosecutor's doubts and concerns;
- e) provide legal certainty.

The implementation of the SPPA Law will be optimal if there is coordination between APH, because the Integrated Criminal Justice System requires cooperation between sub-systems. Based on the provisions of Article 3 PERMA No. 4 of 2014 that juvenile judges are obliged to make efforts in the event that a child is accused of committing a criminal offense which is punishable by imprisonment for less than 7 (seven) years and is also charged with a criminal offense which is punishable by imprisonment of 7 (seven) years or more in the form of a subsidiarity indictment, alternative, cumulative or combination (combined). Discuss discussions regarding PERMA No. 4 of 2014 to achieve a common view so that there are no disparities in handling children's cases in the field, accelerate the implementation of integrated training, and speed up the process and provide the best service to child perpetrators, victims and witnesses, and must be able to convince the public that cooperation is not it is necessary to worry about it becoming a 'conspiracy' (transparency and effective monitoring mechanisms are needed). Thus, the direction of policy and legal politics for handling ABH (Children in Conflict with the Law) is that the SPPA Law has changed retributive punishment to restorative, and handling must be adjusted. with infrastructure, infrastructure and coordination between law enforcers. Furthermore, Erasmus AT Napitupulu<sup>40</sup> as Executive Director of the Institute for Justice Reform (ICJR), explained that the results of the second ICJR research with the object of research were juvenile criminal decisions from 2018 to 2020 which made ICJR consider it as an initial disclaimer of the picture in the DKI Jakarta jurisdiction showing 254 decisions from 304 juvenile cases with a distribution of types of juvenile crimes committed by 296 boys and 8 girls, it appears that the rate of detention and imprisonment is still high. The findings of violations of the conditions for child detention were that 11 children (3.6%) were detained even though the threat of a criminal sentence of less than 7 (seven) years (Article 32 paragraph (2) of the SPPA Law); 22 children (7.2%) were detained even though detention guarantees were found (Article 32 paragraph (1); violation of detention time: fair trial in cases of children in conflict with the law. One example is East Jakarta District Court Decision Number: 06/PID. SUS.ANAK/2017/PN.Jkt.Tim. that the recommendation of the community litmas was rehabilitation but the judge's decision was

8 (eight) months in prison. This was planned by the Public Prosecutor during the trial did not present Social Workers and social institutions both private and government in relation to considering the placement of children in a rehabilitation and/or social institution as recommended by the Litmas. Then the North Jakarta District Court Decision No. 32/PID.SUS.Anak/2017/PN.Jkt.Utr. that the Litmas recommendation, placement in an orphanage was a decision but the judge imposed a prison sentence of 4 (four) months. Imprisonment at LPKA is needed to educate and provide a deterrent effect on children because what they have done is a criminal act. It appears that there is uncertainty regarding the implementation of measures in resolving child criminal cases and at the level of quality of human resources (HR), how many children's police officers are accredited (certified) and how many children's prosecutors are accredited. The most progressive and very instant SPPA law. When entering the juvenile criminal justice system, the judge's decision imposes a prison sentence with a maximum percentage of 80% and only 5% is sentenced to action, and only 15% of children are returned to their parents. Furthermore, the Supreme Court of the Republic of Indonesia stated that the District Court should cooperate with prayer institutions or It is also hoped that other similar institutions will increase their knowledge of the quality of juvenile justice. The opportunity for law enforcement officers (judges) to carry out acts of diversion has been given space with the punishment provisions stated in the law setting a maximum limit and there is no minimum sentence. Supervision efforts carried out in juvenile courts are:

- 1) Monitoring the resolution of juvenile cases through a forum for supervising case minutes in monthly meetings as part of the quality control system for the performance of judges and clerks.
- 2) Court leaders always remind juvenile judges to seriously pay attention to the provisions of Article 37 paragraph (2) of the Juvenile Court Law, namely that the imposition of a crime (imprisoning a child) involved in a criminal act is the final step and for the shortest possible time.
- 3) In the context of monitoring the performance of judges, it is emphasized to pay attention to children's rights to freely express their views and have their wishes heard in every judicial process, either directly or through their parents or representatives and companions.

Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity, as well as receive protection from violence and discrimination (Article 1 point 2 of Law no. 23 of 2002 concerning Child Protection which has been amended by Law No. 35 of 2014). So what is protected are all children without exception, including children in conflict with the law (ABH). 43 The special protection regulated in Article 59 is primarily for children in conflict with the law (ABH). Special protection for ABH includes children in conflict with the law and children who are victims of criminal acts.

1. For children in conflict with the law (ABH), special legal protection is implemented through (Article 64 paragraph (2)), namely:
  - a) Treating children humanely in accordance with the child's dignity and rights
  - b) Providing special child support officers from an early age;
  - c) Provision of special facilities and infrastructure;
  - d) Imposing appropriate sanctions in the best interests of the child;
  - e) Continuous monitoring and recording of the development of children in conflict with the law;
  - f) Providing guarantees to maintain relationships with parents or family
  - g) Protection from identity reporting through mass media and to avoid labeling.

2. Special protection for children who are victims of criminal acts is implemented through (Article 64 paragraph (3)), namely:
  - a) Rehabilitation efforts, both within institutions and outside institutions;
  - b) Efforts to protect against identity reporting through mass media and to avoid labeling.
  - c) Providing safety guarantees for victim witnesses and expert witnesses, both physically, mentally and socially;
  - d) Providing accessibility to obtain information regarding case developments. What is meant by "a child who is a victim of a criminal act is a child who has experienced physical/psychological/sexual/social suffering as a result of a violation of the law committed by a person/group of people/institution/state."

Based on Law no. 3 of 1997, the age limit for children who can be submitted to a juvenile court is at least 8 (eight) years but has not reached the age of 18 years and has never been married. Meanwhile, regarding the imposition of sanctions, there is an age limit for children aged 8 (eight) years to 12 years, who will be given the following actions:

- 1) returned to their parents;
- 2) placed in a social organization; or
- 3) handed over to the state. 46 Children who commit crimes must be handled carefully through a juvenile criminal justice system.

The system in question is something that consists of a number of elements or components that always influence and are related to each other by one or several principles consisting of:

- 1) Legal substance relating to the content/material of the law that regulates justice child.
- 2) The legal structure concerns the bodies/institutions that handle juvenile justice, consisting of the judiciary, prosecutor's office, police, correctional institutions, legal advisors, community counselors, community social institutions, and others.
- 3) Legal culture (legal structure), which is related to society's reception and appreciation of the law which is largely determined by the values, beliefs or social, political or economic systems that exist in society.

The role of juvenile judges as part of the structure in a juvenile criminal justice system cannot be separated from other parts of the system, therefore they must support each other, complement each other while still paying attention to children's rights to education, welfare, health and security so that children's social life in the future will be better and they will not repeat acts that violate the law and provide opportunities for children through coaching to become responsible human beings for themselves, their families, society, nation and state. Because of this, law enforcement officials involved in the criminal justice system are rethinking not to punish but to take other actions. According to The Beijing Rules, there are three actions imposed if the perpetrator of the violation is a child/teenager, namely:

- 1) Handing him back to his parents to receive education and guidance within the family. It is hoped that this action will provide goodness for children who commit violations without serving a sentence in a correctional institution.
- 2) Without imposing penalties, leave it to the government to place children in state children's education homes, hand over their education to individuals or bodies/foundations to be educated until they are 18 years old.
- 3) Imposing punishment with certain conditions, namely punishment that is educational and develops children so that they become good human beings for the

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future and avoid repeating the violations they have committed. The best punishment for children in criminal justice is not imprisonment, but compensation according to the seriousness of the crime.

The compensation (restitution) in question is a sanction given by the criminal justice system/court which requires the perpetrator to pay a certain amount of money or work (services), either directly or in lieu (of the crime victim's family). Criminal law for children is regulated in Law no. 3 of 1997 concerning Children's Courts is considered not to provide protection to children who are in conflict with the law. Therefore, changes and updates are needed. This is important considering the current development of child protection as a major issue internationally. In the concept of restorative justice, the process of resolving acts of legal violations that occur is carried out by bringing victims and perpetrators (suspects) together to sit in one meeting to talk together.

During the meeting, the mediator gave the perpetrator the opportunity to provide a clear picture of the actions they had taken. In Indonesia, the development of the concept of restorative justice is something new, with the city of Bandung being one of the places implementing the UNICEF pilot project regarding the development of the restorative concept justice in 2003. Therefore, restorative justice is a process of transferring from formal to informal criminal processes as the best alternative for handling children who are in conflict with the law by means of all parties involved with the law by means of all parties involved in certain criminal acts together solving problems to deal with the consequences of their actions children in the future. Criminal acts, especially criminal acts committed by children, are seen as a violation against humans, and relationships between humans that create an obligation to make things better by involving victims, perpetrators and the community in finding solutions for improvement, reconciliation and reassurance.

Restorative justice is an effort to support and implement the provisions of Article 16 paragraph (3) of Law no. 23 of 2002 concerning Child Protection, that arrest, detention or imprisonment for child crimes is only carried out if in accordance with applicable law and can only be done as a last resort. The existence of efforts to implement restorative justice does not mean that all children's cases must be handed down decisions in the form of action being returned to the parents, because the judge must of course pay attention to certain criteria, namely:

- 1) The child has committed a delinquency for the first time (first offender);
- 2) The child is still at school;
- 3) The criminal act committed is not a serious crime of morality, a criminal act that results in loss of life, serious injury or lifelong disability, or a criminal act that disturbs or harms the public interest;
- 4) The child's parents or guardians are still able to educate and supervise the child better.

Apart from that, penal mediation in resolving juvenile crime cases generally involves a neutral third party, usually trained volunteers or social workers who act as intermediaries in the dialogue between the victim and the perpetrator. The intermediary facilitates discussing how the crime occurred and what the impact is on all parties. This is done to exchange information and create a written agreement that takes into account all parties and the implementation plan. In the case of children, parents are present at the meeting.

The implementation of diversion and restorative justice provides support for the process of protecting children who are in conflict with the law. In accordance with the main principle of diversion and restorative justice, they have the same basis, namely preventing child criminals from entering the justice system. formal punishment and

giving children who have committed criminal acts the opportunity to carry out alternative sanctions without imprisonment. Barriers to restorative justice are:

- 1) Frequent re-offending or re-offending by perpetrators who have undergone restorative justice.
- 2) The success of the restorative justice process really depends on the family to which the child is returned.
- 3) It is difficult to prevent children from being punished by retributive justice if they commit very serious violations.
- 4) Public understanding of the restorative justice process and its objectives as well as trust in the implementing officers.
- 5) The mediator's ability greatly influences the success of the restorative justice process and officers who intervene too much in decisions.

The effectiveness of implementing diversion policies in the juvenile criminal justice system has actually been able to reduce the high rate of juvenile crime, although there are still many obstacles in its implementation. It will be more effective if there is a common understanding among law enforcement officials regarding diversion as an effort to resolve child crime cases which is supported by adequate facilities and better legal protection for children.

#### **E. CLOSING**

1. The application of the diversion policy as a penal mediation in resolving juvenile crimes is carried out wisely and appropriately for criminal acts of children under the age of 7 (seven) years.
2. The effectiveness of diversion in resolving juvenile criminal acts to achieve restorative justice in the juvenile criminal justice system, by placing children in the Juvenile Criminal Justice System (SPPA) from being legal objects to being transformed into legal subjects whose dignity is upheld.

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