

FORMS OF JUSTICE AND CRIMINAL LEGAL PROTECTION FOR CHILDREN THROUGH DIVERSION IN THE FUTURE

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Abstract

Children are a gift from God Almighty, potentially as the next generation to continue the ideals of the struggle of the Indonesian nation, so that they have the right to survive, grow and develop. For this reason, children are considered to need to be given physical and spiritual protection, because every child who is in conflict with the law is always sentenced to imprisonment, even though imprisonment has not gained the trust of the community, thus causing problems. The background underlying this writing is the application of diversion in resolving cases involving children as perpetrators of criminal acts who are sentenced to more than 7 years. Concretely, the problem raised in this writing is how the form of child justice protection through diversion and how the legal regulations on diversion in Indonesia are just. This writing uses a normative research method with a statute approach. Through analysis with this method, it can be seen that the provisions of diversion which are legally regulated in the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Justice System have been able to be carried out starting from the investigation stage and the results of the diversion agreement are issued in the form of a Court Decision, and there is an expansion of several articles in the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Justice System which is further regulated in the Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System. However, in the continuation regulated by Perma Number 4 of 2004, it does not explicitly regulate the maximum criminal limit for juvenile criminals set above 7 (seven) years.

Keywords: *Diversion, Child Protection.*

INTRODUCTION

The Republic of Indonesia is a legal state based on the 1945 Constitution of the Republic of Indonesia and Pancasila. In its life, the Republic of Indonesia uses laws in the form of statutory regulations in implementing its policies. The policies of the Republic of Indonesia are aimed at prospering and advancing the State as one of the objectives of the law itself based on its philosophy. One of the policies of the Republic of Indonesia in advancing and prospering the State is to regulate acts that are detrimental to the State or detrimental to its people. One form of state loss and loss between its people is criminal acts (crime). Criminal acts in the current era are very rampant in this country. Because of the rampant, perpetrators of criminal acts are not only from the adult and elderly groups but also from children who are still very young. Children are part of the citizens who must be protected because they are the generation of the nation who in the future will continue the leadership of the Indonesian nation. Every child, in addition to being required to receive formal education such as school, is also required to receive moral education so that they can grow into figures who are useful for the nation and state. Children are a mandate and a gift from God Almighty who have dignity as whole human beings. In addition, children are the next generation of the nation in the context of the next generation advancing the State of Indonesia. That in order to maintain their dignity and protect the next generation of this nation, children have the right to

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receive legal protection in the justice system. The principle of legal protection for children must be in accordance with the Convention on the Rights of the Child as ratified by the government of the Republic of Indonesia with Presidential Decree Number 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child. Nowadays, the increasing number of crimes committed by children has made many people restless and worried about the growth and development of the nation's next generation. The establishment of a juvenile criminal justice system is expected to be able to help prevent and overcome crimes by children as stated in the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Justice System (Juvenile Justice System Law). The Juvenile Criminal Justice System is a *lex specialis* of the general Criminal Justice System in Indonesia. The process in the Juvenile Criminal Justice System is based on the goal of creating Restorative Justice which is carried out with diversion, which is the transfer of the settlement of Juvenile cases from the criminal justice process to a process outside the criminal justice system. The implementation of diversion by law enforcement based on their authority is known as discretion.

Diversion is the granting of authority to law enforcement officers to take discretionary actions in handling or resolving child violations without taking formal steps, including stopping or continuing/releasing from the criminal justice process or returning/handing over to the community and other forms of social service activities. The application of diversion can be carried out at all levels of examination, intended to reduce the negative impact of the involvement of children in the judicial process. Diversion is the transfer of the settlement of a child's case from the criminal justice process to a process outside the criminal justice process. Etymologically, the word diversion has an equivalent meaning with the same word "divert", in English which means: "the act of changing the direction that somebody or something is following, or what something is used for". Diversion is very important for the continuity of the juvenile justice process, where through diversion it can facilitate the resolution of the case process which results in there being no backlog of cases in the court. Lack of public knowledge and lack of deepening of knowledge from law enforcers, causes restorative justice to not be able to regulate perfectly which causes children who have been sentenced to 7 (seven) years or more of imprisonment to have a greater tendency not to get facilities, namely the policy of protecting children's criminal law through diversion. Departing from the background above, the author is then interested in conducting legal research by raising the formulation of the problem in the form of legal regulations on diversion in Indonesia that are just and legal protection.

METHODS OF RESEARCH

The research method used in this study is to use empirical juridical approach to find how the relationship of law with society and factors influence the implementation of law in society, as the primary data. The second Data was obtained indirectly through library research. The specification of this study describes the analysis to describe the applicable law related to the concept of law and positive law on the main research problem. Based on primary and secondary data, identification, classification, and validation, qualitative data analysis is performed, and the results are displayed in the research report.

RESULT AND DISCUSSION

1. Forms of Child Justice Protection Through Diversion

Legal diversion is regulated in the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and the Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Justice System. Diversion is an effort made by law enforcement to resolve cases of children in conflict with the law, to keep children away from the litigation process in court. Diversion can be attempted as long as the case has not yet had permanent legal force (*inkracht van gewijsde*) and has been attempted at the investigation level. Legal protection for children in the criminal justice system in Indonesia can be seen from the entire legal process, starting from the investigation stage, arrest and detention, prosecution, trial and guidance. The entire process must be carried out based on the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and must prioritize the needs, development and growth of children, both mentally, physically, and socially, and the interests of society. Investigations into children's cases are conducted by investigators. Article 29 of Law Number 11 of 2012 concerning the Child Criminal Justice System states that investigators are required to attempt diversion within a maximum of 7 (seven) days after the investigation begins. Investigators make reports on children's cases, the child's background and the reasons for committing delinquency, through gentle and patient interviews. Arrest of a child for the purpose of investigation is a maximum of 24 (twenty four) hours and the child must

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be placed in a special child service room. Arrest of a child must be carried out humanely as per the objectives of Human Rights regulated in the Constitution of this country. After arrest, detention can be carried out. Detention can be carried out means that the child does not have to be detained, detention is basically carried out for the purpose of investigation and the detention must show the interests of the child. The place of detention for children must be separated from the place of detention for adults. This is intended to prevent children from bad influences that can be absorbed through the cultural context with other prisoners. Detention as referred to in Article 32 of the Law on the Juvenile Criminal Justice System for the purpose of investigation is carried out for a maximum of 7 (seven) days. The period of time at the request of the Investigator can be extended by the Public Prosecutor for a maximum of 8 (eight) days and if the period of time ends, the child must be released by law.

Next, after detention, prosecution is carried out. Prosecution in juvenile cases is carried out by the Public Prosecutor who is appointed based on the Decision of the Attorney General or other officials appointed by the Attorney General. Article 42 of the Law on the Juvenile Criminal Justice System states that the Public Prosecutor is required to seek diversion no later than 7 (seven) days after receiving the case files from the Investigator. In the trial, the judge examines and decides the child's case in the first instance with a single judge. The judge is required to seek diversion no later than 7 (seven) days after being determined by the head of the district court as Judge. In fostering, children sentenced to imprisonment are placed in the Special Child Fostering Institution (LPKA). The child has the right to receive fostering, guidance, supervision, assistance, education and training, as well as other rights in accordance with the provisions of laws and regulations. LPKA is required to organize education, skills training, fostering, and fulfillment of other rights in accordance with the provisions of laws and regulations. Community counselors conduct community research to determine the implementation of the education and fostering program. The Correctional Center (Bapas) is required to supervise the implementation of the program.

Child protection can not only be resolved through the judicial process, but can also be resolved through the criminal justice process or what is known as diversion, where the resolution involves the perpetrator, victim, the perpetrator/victim's family and related parties to jointly seek a fair resolution by emphasizing restoration to the original state, and not retaliation which is known as the restorative justice approach. Diversion according to Article 1 number 7 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is the transfer of the settlement of a child's case from the criminal justice process to a process outside the criminal justice system. Diversion must be attempted at the level of investigation, prosecution and examination of child cases in the District Court. Even in Article 3 of the Supreme Court Regulation Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System, the Juvenile Judge is obliged to attempt diversion in cases where the crime committed is threatened with imprisonment of less than 7 (seven) years and is also charged with a crime that is threatened with imprisonment of 7 (seven) years or more in the form of a subsidiary, alternative, cumulative, or combination (combined) indictment. In relation to the form of child justice protection through diversion, then based on Article 1 number 7 of the Law on the Juvenile Criminal Justice System and Article 3 of the Supreme Court Regulation Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System, children in conflict with the law are required to have their justice resolved through diversion by setting aside imprisonment.

2. Equitable Diversion Legal Arrangements

Talking about law is talking about goals. Because in its philosophy, law is a means to something. Something in the goal of law is the fairest justice. Based on its periodization, law develops in its existence. The faith of existence is justice in essence. Jeremy Bentham in his ideas helps in realizing the existence of law, namely for the benefit of the wider community. Likewise, the ideas of other philosophers ignore the existence of law in their thinking. In the following century, law found its place initiated by the great philosopher Hans Kelsen through pure theory. Law becomes real law in its form, namely positive law (legislation). The formation of positive law actually has the same ideal goal. Nowadays, law has become a lot of assessment of its existence due to the dynamics of life. Where law is always left behind by the rapid movement of dynamics due to factors that cannot be anticipated accurately. But in its delay due to the dynamics of change that are so fast, law is always accompanied by its facilities to improve its slow movement. Referring to the protection of juvenile justice through diversion which reaps the principles of certainty and justice in its values, then Perma Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System, especially Article 3, must clearly regulate the minimum and maximum limits for children in conflict with the law who are required and not required to receive the diversion policy. By explicitly limiting, the purpose of the law is

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created based on its ideals. The formulation that the author offers for Article 3 of Perma Number 4 of 2014 reads "Children's Judges are required to seek Diversion in cases where Children are charged with committing a crime that is threatened with imprisonment of less than 7 (seven) years and are also charged with a crime that is threatened with imprisonment of a maximum of 15 (fifteen) years in the form of a subsidiary, alternative, cumulative or combination (combined) indictment. So with this, children who are charged with 7 years and above up to 15 years still get diversion. With this, justice and certainty along with benefits will be created for the protection of the rights of children, the next generation of the nation.

The maximum limitation in the norm on the protection of child justice through diversion based on justice, this concept of justice refers to Aristotle's thoughts or views on justice. Aristotle's views on justice can be found in his works *Nicomachean ethics*, *politics*, and *rhetoric*. Specifically seen in the book *Nicomachean ethics*, the book is entirely devoted to justice, which, based on Aristotle's legal philosophy, must be considered the core of his legal philosophy, "because law can only be established in relation to justice". In essence, this view of justice is as a granting of equal rights but not equality. Aristotle distinguishes his equal rights according to proportional rights. Equality of rights is seen by humans as a unit or the same container. This is what can be understood that all people or every citizen is equal before the law. Proportional equality gives each person what is his right according to his abilities and achievements. In this regard, it is appropriate if the diversion policy limits the criminal acts of children in their criminal acts. Thus, there is a limit to criminal acts committed by children through a maximum limit of 15 years of criminal threat.

CONCLUSION

The establishment of Perma Number 4 of 2014 after the issuance of the Child Criminal Justice System Law aims to complement the shortcomings in the Law itself. The expansion and filling of the empty space regulated in Perma Number 4 of 2014 is solely to maximally distance children from the formal litigation process in court and provide protection for children. However, in the concept of justice from Aristotle's perspective, Perma Number 4 of 2014, especially Article 3, still does not provide legal protection for the rights of children in conflict with the law who are charged with more than 7 years. So that the regulation of child criminal justice through diversion does not fulfill the concept of distributive justice. This problem is only one of the many problems related to crimes committed by children. Various efforts and regulations have regulated child protection, now is the time for the entire community and law enforcement to jointly heed the existing regulations and jointly supervise the association of children around them so that they do not get into trouble that results in children having to face the law. As time goes by and the development of existing crime motives will have an impact on the regulation of child protection in conflict with the law towards a more efficient direction to protect and guarantee the best rights for children. It is hoped that in the future, consistent child protection regulations can be created to protect children's rights and reduce cases of children in conflict with the law.

REFERENCES

- Dahlan Sinaga, 2017, *Penegakan Hukum Dengan Pendekatan Diversi (Perspektif Teori Keadilan Bermartabat)*, Nusa Media, Yogyakarta.
- Maidin Gultom, 2010, *Perlindungan Hukum Terhadap Anak*, Cet. II, P.T.Refika Aditama, Bandung.
- Kemal Dermawan, 2015, *Sosiologi Peradilan Pidana*, Obor, Jakarta.
- Barda Nawawi Arief, 2005, *Beberapa Aspek Kebijakan Penegakan dan Pengembang. Hukum Pidana*, PT. Citra Aditya Bakti, Bandung.
- Sally Wehmeier, 2000, *Ed.Oxford Advanced Learner's Dictionary*, Oxford University Press, Oxford.
- Peter Mahmud Marzuki, 2005, *Penelitian Hukum*, Kencana Prenada Media, Jakarta.
- Andi Hamzah, 2016, *Hukum Acara Pidana Indonesia*, Sinar Grafika, Jakarta.
- Nazir Djamil, 2013, *Anak Bukan Untuk Di Hukum*, Sinar Grafika, Jakarta.
- Suri Ratnapala, *Jurisprudence*, Cambridge University Press, United States Of America, New York, 2009.
- Prof. Dr. Achmad Ali, S.H., M.H., *Menguak Teori Hukum (legal theory) dan Teori Peradilan (Judicialprudence) Termasuk Intepretasi Undang – Undang (Legisprudence) Volume 1*, Prenadamedia, Jakarta, 2009.
- L. J. Van Apeldoorn, 1996. "Pengantar Ilmu Hukum", cetakan kedua puluh enam Pradnya Paramita, Jakarta.