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Diversion As A Crime Solution Towards Child Crime Prepertrator

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Abstract

Diversion efforts is an alternative solution for the sake of realizing children's interests and protecting the future of children from the destructive effects of imprisonment, which stigmatize criminals in the eyes of the community, but all of these have not been maximally realized because there is a court decision in the Lampung region itself which still applies sanctions punishment as an effective method of providing a deterrent effect on children. Based on this, this research's main problem focuses on implementing diversion for children as a criminal solution for juvenile offenders and whether diversion is an instrument in realizing the best interests of children. This research uses a juridical empirical, and normative juridical approach. The results of the discussion are in this research, namely that in the principle of the best interests of children as a criminal solution for child offenders, diversion is one of the instruments in realizing the best interests of the child considering that diversion instruments for children can improve the child's image from the impression of a criminal. The advice that can be given is that law enforcers should prioritize the principle of the child's best interests in every legal process rather than prioritizing repressive actions that lead to imprisonment sanctions and eliminating children's rights such as protection of their future.



A. Introduction

Children are the next generation of the nation's ideals to create quality human resources. Children need continuous guidance for their survival, growth, physical and mental, social development, and protection from all possibilities that will endanger their future. So that the child is a human being who needs protection. Children who are vulnerable to bad environmental influences are often trapped and caught up in juvenile delinquency. What is even worse, when they commit a criminal act, imprisonment becomes an instrument for law enforcement in solving the case so that it is contrary to the child's guaranteed rights by law.¹ Children must receive protection to not become direct or indirect actions by individuals/groups, private or government organizations.²

Problems that arise when faced with a case where the perpetrator is a child is a challenge for law enforcers because there are specificities in handling it, such as not easy to implement the policy considering the complexity of the requirements that must be met, such as there must be peace between the two parties and also compensation. Charged the perpetrator against the victim. In practice, the victim rarely forgives the perpetrator. An egocentric attitude emerges for the victim's family, who will continue the case to the law, plus the perpetrator who has no money to compensate the victim. The impact is that if the process and conditions are not carried out, the restorative justice policy will not be able to be applied by law enforcers to neglect the principle of the child's best interests.

In principle, the mandate of regulations governing the juvenile criminal justice system emphasizes that in dealing with child cases, law enforcers are obliged to pay attention to the concept of restorative justice, which aims to prioritize the best interests of children, not retaliation. This is also to protect children's privacy and promote the child's welfare so that the effects of criminal penalties do not adversely affect their mental development.³ Children's mental development is very likely to be influenced by negative things in them, starting from the influence of the environment, viewing, and the influence of the internet media. It cannot be denied that a child can also potentially commit a criminal act like an adult. Therefore it is imperative to prevent children from negative things to avoid committing criminal acts.⁴ The moral crisis is one of the essential things in mobilizing a crime when it happens. There will be many crimes committed.⁵

The principle of child protection must adhere to 4 (four) elements. Namely: anti-discrimination, interests for children, the sustainability of life, child development, high appreciation for children's ideas.⁶ By applying these four elements, children are protected from the criminal process, depriving them of freedom and freedom, affecting their growth and development. The concept of punishment is only for adults who have committed a criminal act. There is no reason for children who commit delinquency to be deprived of their liberty

¹ Bamabang Waluyo, *Pidana dan Pemidanaan*, Sinar Grafika, Jakarta, 2004, pg. 105

² Tini Rusmini Gorda, *Hukum Perlindungan Anak Korban Pedofilia Perspektif Viktimologi Dalam Formulasi Kebijakan dan Cita Hukum Pidana*, Malang, Setara Press, 2017, pg 21

³ Arif Gosita, *Masalah Perlindungan Anak*, Jakarta, Akademi Pressindo, 1989, pg. 35.

⁴ Beby Suryani Fithri, "ASAS ULTIMUM REMEDIUM TERHADAP ANAK YANG BERKONFLIK DENGAN HUKUM DALAM RANGKA PERLINDUNGAN ANAK," *JURNAL MERCATORIA* 10, no. 1 (June 1, 2017): 74, <https://doi.org/10.31289/mercatoria.v10i1.733>.

⁵ Aditya and Lucky Elza, "PERAN PENYIDIK ANAK DALAM PERLINDUNGAN TERHADAP ANAK SEBAGAI PELAKU TINDAK PIDANA PERDAGANGAN ORANG PADA TAHAP PENYIDIKAN (STUDI DI POLRESTABES SURABAYA)," *Jurnal Mahasiswa Fakultas Hukum UB* 1, no. 1 (2014), <http://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/495>.

⁶ Nikmah Rosidah dan Rini Fatonah, *Hukum Peradilan Anak*, Zam-Zam Tower, Bandar Lampung, 2017, pg. 9.

through iron bars.⁷ The international community has also considered the importance of child protection as an asset of the nation and the next generation, therefore in 1990, Indonesia joined in ratifying Convention on the Right of the Child, which is implemented in the Presidential Decree No. 36 of 1990 regarding the ratification of Convention on the Rights of the Child, which is one of the grounds for the birth or promulgation of Law 11 of 2012 on Juvenile Criminal Justice System.⁸ In essence, the juvenile criminal justice system emphasizes the youthful offender's rehabilitation, which means that the child must always be in the form of protection both physically and psychologically and compensation for material and immaterial losses suffered as a victim. Children also need protection from the state and society in the long term.⁹

The problems and challenges faced in law enforcement are that many previously used the conventional method, now taken by using the restorative justice system method through diversion. This method is a priority in solving children's cases.¹⁰ At the level of investigation, prosecution, and examination of juvenile cases in district courts, it is obligatory to seek diversion. The diversion process is carried out through deliberation involving children and their parents/guardians, and victims. Community Advisors and professional social workers based on a restorative justice approach. Child protection is an effort to realize the average growth and development of children physically, mentally, and socially. Protection of children must be carried out in various aspects of state and social life because child protection is a manifestation of justice in society.¹¹ Law Number 35 of 2014 concerning Child Protection outlines article by article regarding child protection which is basically to guarantee children's rights.¹² Legal child protection has become a severe problem that must be resolved, considering that children are a national asset that must receive comprehensive protection.¹³ Talking about child protection does involve a comprehensive aspect because there are several crucial elements considering that children have a future that must be saved for this nation's sake.¹⁴

Muladi, in his book *Romli Atmasasmita*, defines criminal justice as a network to realize formal and material criminal law.¹⁵ Muladi, in his book *Romli Atmasasmita*, defines criminal justice as a network to realize formal and material criminal law.¹⁶ As a child criminal offender, he must be seen as a child who does nothing more than just committing delinquency, so he must get special attention in this case.¹⁷ Besides, children are also entitled to protection from all forms of torture and sanctions that can deprive children's rights and the right to legal assistance, considering that children as part of the younger generation are the

⁷*Ibid*, pg. 9.

⁸ Wiyono, *Sistem Peradilan Pidana Anak Di Indonesia*, Jakarta, SinarGrafika, 2016, pg. 13

⁹ Afni Zahra and RB Sularto, "PENERAPAN ASAS ULTIMUM REMEDIUM DALAM RANGKA PERLINDUNGAN ANAK PECANDU NARKOTIKA," *LAW REFORM* 13, no. 1 (March 31, 2017): 18, <https://doi.org/10.14710/lr.v13i1.15948>.

¹⁰Nandang Sambas, *Pembaruan Sistem Pemidanaan Anak di Indonesia*, Graha Ilmu, Yogyakarta, 2010, pg. 25.

¹¹ Mashuril Anwar and M Ridho Wijaya, "Fungsionalisasi Dan Implikasi Asas Kepentingan Terbaik Bagi Anak Yang Berkonflik Dengan Hukum: Studi Putusan Pengadilan Tinggi Tanjung Karang," *Undang: Jurnal Hukum* 2, no. 2 (March 24, 2020): 265–92, <https://doi.org/10.22437/ujh.2.2.265-292>.

¹² Muhadar, Abdullah, Husni Thamrin, *Perlindungan Saksi dan Korban dalam Sistem Peradilan Pidana*, Cv Putra Media Nusantara, Surabaya, 2009, pg. 74.

¹³ *Ibid*, pg. 76.

¹⁴ Waluyadi, *Hukum Perlindungan Anak*, Mandar Maju, Bandung, 2009, pg. 1.

¹⁵Romli Atmasasmita, *Sistem Peradilan Pidana*, Bandung, BinaCipta, 1996, pg. 17.

¹⁶Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*, Jakarta, Kencana, 2010, pg.6.

¹⁷Nur Hidayati, "Peradilan Pidana Anak Dengan Pendekatan Keadilan Restorative Dan Kepentingan Terbaik Bagi Anak," *Jurnal Pengembangan Humaniora* 13, no. 2 (2013): 144–51, [www.jurnal.polines.ac.id > index.php > ragam > article > view](http://www.jurnal.polines.ac.id/index.php/ragam/article/view).

successor to the ideals of the nation's struggle and are a human resource for future national development.¹⁸

Concerning the application of the principle of best interest to children who commit juvenile delinquency to lead to a criminal act, a verdict from the Gunung Sugih District Court number: 11/Pid.Sus-Anak/2016/PN Gns with the child defendant, Rusdy Als Rusadi Als Di Bin Sapryudin Als Apdal Als Udin proven to have misused narcotics class 1 consisting 1 (one) methamphetamine/bong suction device made of a Tripanca brand mineral water bottle; 1 (one) gas lighter; (one) syringe; 1 (one) piece of glass pipe; 1 (one) clear plastic wrap containing white crystals (weighing approximately 0.0393 (zero point zero three nine three) grams whose actions have violated Article 127 Paragraph (1) letter an of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. In this case, the defendant was sentenced to imprisonment for 11 (eleven) months by the judge even though if he saw the violation, the sanction was only four years and could also be subject to rehabilitation efforts, but in fact, the judge prefers to imprison the defendant with 11 (eleven) months imprisonment. In this case, the judge does not apply the principle of interest for the child. Therefore, this principle's application needs special attention to protect the child from imprisonment and ensure the child's future. Judges are not only oriented in giving criminal sanctions to perpetrators or victims who are satisfied with the judge's verdict, but also perpetrators must have the opportunity to improve themselves, and society is satisfied with the judge's decisions.¹⁹

Based on the case above, law enforcers in carrying out the legal process must pay attention to the concept of restorative justice, which in this concept requires that the delinquency committed by children is considered to be resolved in a familial manner to obtain the best solution for both parties, both the perpetrator and the victim, Therefore, the implementation of diversion to the offender's child is carried out to provide protection and rehabilitation to the offender as an effort to prevent children from becoming criminals continuously until adulthood. The apparatus carrying out the legal process must pay special attention to the child's interests, not injure the concept of juvenile justice itself.²⁰ This particular treatment is different from the treatment of adult criminals. However, it is challenging to apply Restorative Justice because the criminal process has not provided justice to the victim.²¹ Restorative justice places a crime as a symptom of social action and not just a violation of criminal law or crimes seen as destroying social relations.²²

Based on the description in this background, this research's main problem is how to implement diversion for children as a criminal solution for child offenders and whether

¹⁸ Teguh Prasetyo, "PENERAPAN DIVERSI TERHADAP TINDAK PIDANA ANAK DALAM SISTEM PERADILAN PIDANA ANAK," *Refleksi Hukum: Jurnal Ilmu Hukum* 9, no. 1 (April 8, 2015): 1, <https://doi.org/10.24246/jrh.2015.v9.i1.p1-14>.

¹⁹ Triana Ohoiwutun and Samsudi, "PENERAPAN PRINSIP 'KEPENTINGAN TERBAIK BAGI ANAK' DALAM KASUS TINDAK PIDANA NARKOTIKA," *Jurnal Ilmiah Dosen UNEJ* 1, no. 1 (June 20, 2017), <http://repository.unej.ac.id/handle/123456789/80244>.

²⁰ Bambang Sukoco, "PROSPEK DAN DILEMA PENERAPAN RESTORATIF JUSTICE SYSTEM DALAM KASUS PIDANA ANAK," *Jurnal Publikasi Ilmiah* 14, no. 2 (2011), <http://publikasiilmiah.ums.ac.id/handle/11617/4193>.

²¹ Ulang Mangun Sosiawan, "PERSPEKTIF RESTORATIVE JUSTICE SEBAGAI WUJUD PERLINDUNGAN ANAK YANG BERHADAPAN DENGAN HUKUM (Perspective of Restorative Justice as a Children Protection Against The Law)," *Jurnal Penelitian Hukum De Jure* 19, no. 10 (2019): 517–38, <https://doi.org/http://dx.doi.org/10.30641/dejure.2016.V16.425-438>.

²² Reyner Timothy Danielt, "Penerapan Restorative Justice Terhadap Tindak Pidana Anak Pencurian Oleh Anak Di Bawah Umur," *Lex et Societatis*, 2, no. 7 (2014): 61–71, <http://www.ejournal.unsrat.ac.id/lexetsocietatis/article/download/0A>.

diversion is an instrument in realizing children's best interests. The approach to the problem used is normative and juridical empirical. Normative research uses a source approach that includes literature and law. The approach to the problem used is normative and juridical empirical. Normative research uses a source approach that includes literature and law.

B. Discussion

1. Implementation Children Diversion as a Criminal Solution for Perpetrators of Child Crime

The essential thing for Indonesia as the rule of law is how to realize legal certainty itself. Law is formed to aim that law can become a means of society's progress and welfare as aspired by society, nation, and state.²³ As a large country, law enforcement that benefits and justice are needed, including fulfilling children's rights involved in criminal acts. There are several basic principles instilled in the childreConventionion. Namely, to protect children from getting their rights, one of which is prioritizing the principle of the child's best interests. This principle explains that protecting children as much as possible is well optimized and must be considered to obtain the highest priority concerning children's rights in every decision making.

Law enforcers who ignore children's fundamental rights are tantamount to neglect and neglect of children in obtaining their rights.²⁴ Talking about the context in the principle of the best interests of the child, why is it crucial to discuss it considering how important it is for children to be protected and the process of being differentiated legally does not let the law enforcer misapplication the law, let alone ignore the best interests of the child, which later creates prisoner children. For this reason, the implementation of diversion against the child offender of a criminal offense will provide a new understanding to the investigator without having to take away freedom so that the settlement of the case of a child who has committed a criminal act for the first time by emphasizing the reinstatement of the victim becomes an alternative in the juvenile justice system in Indonesia.

Court decisions are the final mouth in determining the truth and seeking justice. Of course, in this case, the judge's role is very decisive in determining what sanctions are appropriate for children when talking about legal certainty. Of course, the judge will give sanctions to children who commit criminal acts because they have fulfilled the elements. On the contrary, when talking about justice, of course, the judge must be careful to determine a balanced proportion between the interests of the child and also the interests of the victim, on the contrary, when talking about the context of benefit, of course, the judge will consider the interests for the future of the child, and obviously, this is not necessarily following the interests of the victim. Therefore, the regulations that regulate children provide the best option for the child and provide options for law enforcers with discretionary policies. Of course, they can make the right decision considering that the juvenile criminal justice system uses the double-track system concept.

Whereas in this double-track system, law enforcers can wisely set aside punishment and choose other options included in the law in promoting the principle of the best interests of children. In the implementation of diversion in Indonesia, some conditions are used as guidelines by law enforcement officials. The requirements for diversion are listed in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The juvenile justice system in Indonesia has received particular attention, starting from the law of procedure, types

²³ Fetri A. R. Tarigan, "UPAYA DIVERSI BAGI ANAK DALAM PROSES PERADILAN," *LEX CRIMEN*, vol. 4, August 10, 2015, <http://hukum.ub.ac.id/wp->

²⁴ *Ibid.*

of punishment, legal officers who are required to have dedication in children's field, and the imposition of sanctions that can be carried out by restorative justice. This means that from that all do not let the law enforcement apparatus fail to carry out the mandate of the law, which commands that children's rights must be put forward in the child's future and development interests.

2. Diversion as an Instrument in Realizing the Best Interest for Children

The implementation of diversion by the police agency, in this case, child investigators in the juvenile criminal justice system, namely by prioritizing deliberation, both in the diversion at the stage of investigation attended by the child and the child's parents. Therefore, law enforcers are emphasized to think progressively to provide the best sanctions for children.²⁵ This progressive point of view is seen as useful in dealing with cases that are considered not too detrimental in the eyes of the community where the nature of this crime can be overcome by a familial approach to produce the best for both parties, namely the perpetrator and the victim using a method known as diversion.²⁶

The diversion will be expected to prioritize cultural values that prioritize the principle of solving problems in a family manner through deliberation to reach a consensus.²⁷ The diversion itself can be considered useful in providing the best means for the interests of both parties. This can be seen from the mechanism itself, namely prioritizing a persuasive approach, bringing together perpetrators and victims by discussing steps that will benefit, such as determining compensation, peace agreements, and determination. The best penalty for the child if diversion is successful.²⁸ Diversion instruments for children can improve children's image from the perpetrator of the crime, as a form of eliminating stigmatization of children from a bad image because of being punished. Therefore the government issued Law Number 11 of 2012 concerning SSPA. This law implements the concept of restorative justice where this concept is essential to save children's future. As a manifestation of its implementation, a diversion program is formed. This is very important for children who commit criminal acts to avoid the destructive powers of imprisonment, which will neglect children's rights as regulated by law.

The risk of applying this diversion certainly provides benefits for the child's future, and of course, the child's rights will be legally protected. Then they can continue their future, avoid the bad influence both materially and morally due to being subject to the imprisonment penalty.²⁹ The waiver of criminal sanctions is not merely that children are immune to the law (immunity). Of course, this is a wrong perception because the diversion is a form of problem-solving in a non-litigation manner by bringing together the two parties between the perpetrator and the victim to find a way to mediate for the sake of common interest.

As associated with the theory of legal protection put forward by Phillipus M. Hadjon, the government must first protect its people's interests, both preventive and repressive, where

²⁵ Hadibah Zachra Wadjo et al., "Penyelesaian Perkara Anak Sebagai Pelaku Dan Korban Ditinjau Dari Asas Kepentingan Terbaik Bagi Anak," *SASI* 26, no. 2 (June 4, 2020): 201, <https://doi.org/10.47268/sasi.v26i2.306>.

²⁶ Maroni, *Pengantar Politik Hukum Pidana*, CV Anugerah Utama Raharja, Bandar Lampung, 2016 pg. 81

²⁷ Azwad Rachmat Hambali, "Penerapan Diversi Terhadap Anak Yang Berhadapan Dengan Hukum Dalam Sistem Peradilan Pidana," *Jurnal Ilmiah Kebijakan Hukum* 13, no. 1 (March 27, 2019): 15, <https://doi.org/10.30641/kebijakan.2019.v13.15-30>.

²⁸ Nikmah Rosidah, "PEMBAHARUAN IDE DEVERSI DALAM IMPLEMENTASI SISTEM PERADILAN ANAK DI INDONESIA," *JURNAL KOMPILASI* 1, no. 1 (October 13, 2014), <https://jurnal.fh.unila.ac.id/index.php/kompilasi/article/view/228>.

²⁹ Achmad Ratomi, "KONSEP PROSEDUR PELAKSANAAN DIVERSI PADA TAHAP PENYIDIKAN DALAM PENYELESAIAN TINDAK PIDANA YANG DILAKUKAN OLEH ANAK," *Arena Hukum* 6, no. 3 (December 1, 2013): 394–407, <https://doi.org/10.21776/ub.arenahukum.2013.00603.6>.

both protection is intended to protect the community from harmful actions.³⁰ Based on the research, the researchers found that diversion positively impacts children, especially on their life, protection, and future. This is because this concept focuses more on recovering losses both materially and immaterially and suppresses prison overcapacity. The application of this diversion also provides understanding to the public, of course, considering that the qualifications of criminal acts are divided into two categories, namely criminal acts committed by adults, course the sanctions must be overcome by implementing criminal sanctions and second, criminal acts committed by children called juvenile delinquency, of course, the sanctions are not may be subject to criminal sanctions. However, they must be done with a restorative justice approach utilizing diversion programs.

C. Closing

1. Conclusion

The principle of the best interests of children as a criminal solution for child offenders is fundamental. In this case, diversion is one of the instruments in realizing the best interests of the child. This is because the diversion instrument for children can improve the child's image from the criminal's impression. As a form to eliminate stigmatization of children from a bad image because of being punished. Making diversion certainly provides benefits for the child's future, and of course, the child's rights are legally protected. By diversifying, it will provide justice to cases of children who have already committed criminal acts up to law enforcement officers as law enforcers.

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³⁰ Phillipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, PT. Bina Ilmu, Surabaya: 1987. pg.29.

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- Law Number 2 of 2002 concerning the Indonesian Police;
- Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia;
- Law Number 48 of 2009 concerning the Judicial Power of the Republic of Indonesia;
- Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection;
- Law Number 11 of 2012 concerning the Juvenile Justice System;
- Government Regulation Number 27 of 1983 Jo Government Regulation Number 58 of 2010 in conjunction with Government Regulation Number 92 of 2015 concerning the implementation of the Criminal Procedure Code;

