

Child Diversion Application Policy that has a Conflict with Law to Make a Restorative Justice in Indonesia

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ABSTRACT -- *The inclusion of diversion and restorative justice in the Rules of the Juvenile Justice System in Indonesia is the development of formulation policies in providing legal protection for children in conflict with laws that pay attention to children's rights as mandated by constitutional law which determines that children are entitled to survival, growth and development as well as has the right to protection from violence and discrimination. Diversion is the transfer of case resolution from juvenile criminal justice to juvenile criminal justice. Restorative Justice is the settlement of criminal cases involving the perpetrators and their families, victims and families as well as the role of the community concerned to seek a fair settlement oriented to restoring the original state, and not retaliation. After 6 (six) years of enforcement of the juvenile justice system, it is necessary to find out the application policy. Therefore the problem discussed is "How is the Child Diversity Application Policy in Conflict with the Law to Create Restorative Justice in Indonesia" Using normative juridical methods, research is conducted on secondary data form of Juvenile Justice System regulations and documents obtained from research sites, namely Big City Semarang City Police Department, Central Java Province, Republic of Indonesia. The results found are: That the sub-subsystems in the Juvenile Justice System in Indonesia which have the authority and obligation to seek diversion in order to realize restorative justice are the Police, Attorney's Office and District Court. Of the three subsystems, which have the most success rate in making diversion efforts to realize restorative justice is the Police subsystem, which is carried out by the Child Investigator. Therefore, it is necessary to find out why at the level of the Police subsystem that has the highest level of success.*

Keywords: *success, diversity and restorative justice*

I. INTRODUCTION

In Indonesia, special protection for handling children in conflict with the law has been regulated since the entry into force of the Criminal Code Law on January 1, 1918. Furthermore, it is regulated separately by Law Number 3 of 1997 concerning Juvenile Court. Currently governed by laws and regulations issued on 30 July 2012, namely Law Number 11 of 2012 concerning the Juvenile Justice System Replacement of these regulations because the old regulations are not in accordance with the development needs.

In the Criminal Code, protection for children in special conflict with the law provide in Articles 45, 46, and 47. However, these articles have been removed and declared no longer valid by the Law Number 3 of 1997 concerning Juvenile Court. The abolition of these articles was caused by the problems regulated in these articles.

Inadequate, it was still limited to the maximum age limit for children who could be prosecuted criminal, namely children who were not old enough (*minderjarig*) without a minimum limit, so the child age under 12 (twelve) years can be prosecuted criminal. Although it has set the types of sanctions that are criminal (*straf*) and those that are action, but its application has not been adequate.

With the passage of time, although this Act has set the maximum and minimum age limit of children that can be submitted in the juvenile criminal justice process and also regulates the types of sanctions that are criminal (*straf*) and action, and has set procedures the juvenile criminal justice process, but it is felt that it is still not enough to provide protection that takes into account children's rights as mandated by constitutional law which determines that children are entitled to survival, growth and development and are entitled to protection from violence and discrimination. thus issuing Law Number 11 of 2012 concerning the Juvenile Criminal System. This law specifically regulates the handling of children in conflict with the law.

Even though this Law has specifically regulated the Juvenile Justice System, the implementation is not carried out by a special judicial body for children, but is carried out by a body within the general court.

Pursuant to Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it is determined that judicial power is exercised by a Supreme Court and the judicial body underneath it within the general court, religious court environment, military court environment, state administrative court environment, and the Constitutional Court. In this provision there is no juvenile justice body.

Therefore, juvenile justice is within the general court. This understanding is also emphasized by Article 5 of the Law Number 11 of 2012 concerning the Juvenile Justice System, which determines that the Juvenile Justice System which obliged to prioritize a restorative justice approach, which determines the Juvenile Justice System which prioritizes requesting restorative justice, the Child trial is conducted by the General Courts.

Because the juvenile justice system is held by the judiciary in the General Court, the procedural law used is the criminal procedure code which applies in the general court. This is confirmed by its provisions in Article 16 of the juvenile justice system law which determines the following: The Criminal Procedure Code also applies to juvenile criminal justice proceedings, unless otherwise specified in this Act.

The legal substance in the policy formulation of the Juvenile Justice System in Indonesia, there are provisions

of diversion and restorative justice. This provision makes there are legal differences in the applicable Criminal Procedure Law. This is because the Child Investigator, Child Prosecutor and Child Judge in handling children in conflict with the law have an obligation to seek diversion using the restorative justice approach.

In the Juvenile Justice System Law in Indonesia, the diversion is divided into 2 (two), namely the diversion of in child conflict with the law whose age is not 12 (twelve) years old and the diversion in child conflict with the law whose age has reached 12 (twelve) years but have not reach 18 (eighteen) years.

Those who have the authority to diversify children who are in conflict with the law who are not yet 12 (twelve) years of age are Child Investigators, without having to realize restorative justice. This is due to the fact that the age of 12 (twelve) years is the minimum limit for a child to be submitted to the criminal justice process, the minimum age limit for a child can be held liable for criminal liability. So, a child who is in conflict with a law that is not yet 12 (twelve) years old, he cannot be submitted to the criminal justice process. That is why, the authority to diversion of children in conflict with the law whose age has not reach 12 (twelve) years, only belongs to the Child Investigator. The Child Prosecutor General and Child Judge do not have the authority to conduct diversion.

Diversification of children who are in conflict with the law whose age has reached 12 (twelve) years but has not reached 18 (eighteen) years, must realize restorative justice. Except criminal acts without victims, criminal offenses, minor offenses and criminal offenses with a maximum threat of the local Province minimum wage. As for those who have the obligation to conduct diversion efforts are Child Investigators who are in the Police subsystem, Child Prosecutors who are in the Prosecutors subsystem, and Judges who are in the District Court subsystem.

Law enforcement officers who are in the sub-subsystem have the same obligation, namely to try to do diversion. Diversion is carried out by way of deliberation, which is called diversion deliberation. Whereas the diversion consultative guide is called the "diversion facilitator". If at the level of the Police the Child Investigator as the diversion facilitator fails to attempt diversion, the case is delegated at the Prosecutor's level. At this level, if the Public Prosecutor as a diversion facilitator fails to attempt diversion, the case will be delegated at the District Court level. If at this level, the Child Judge as the diversion facilitator also fails to try the diversion, then the case will proceed to the trial process. Thus, in Indonesia there are 3 (three) subsystems of juvenile justice which have the obligation to seek diversification.

In Indonesia, not all cases of children in conflict with the law have reached 12 (twelve) years of age but have not reached 18 (eighteen) years of diversion. This is because the diversionary effort can only be done if conditions are met, namely: a criminal offense that is threatened with imprisonment for under 7 (seven) years

and does not constitute a repeat of the crime. (Article 7 paragraph 2). While the objectives of diversion are: achieving peace between victims and children, resolving cases of children outside the judicial process, avoiding children from deprivation of liberty, encouraging people to participate and instilling a sense of responsibility to the child.

Understanding Restorative Justice in the Law on the Juvenile Justice System, which is the settlement of criminal cases involving the perpetrators, victims, the families of the perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation. (Article 1 number 7).

In the sense of restorative justice, there is forgiveness from the victim for apologizing from the perpetrator, resulting in the recovery of the damaged relationship, and restoration to its original state. The problem of forgiveness contained in the notion of restorative justice, raised by Zamroni Thoif Jamal, as follows:

In broad understanding, forgiving or forgiving has many meanings. Forgiveness can be interpreted as sowing peace and reconciliation, that is, a willingness to accept mistakes in the past and readiness to look into a brighter future. As Zamroni Thoif Jamal said, apologizing and forgiving verbally is easy to do, but it is often hard to do it with sincerity. Forgiveness is not a trivial matter or just shaking hands. Likewise making peace, not just holding a meeting of two parties who had a dispute and making peace while saying that we have peace.

As stated in this opinion, regulations in Indonesia stipulate that forgiveness between the victim and the perpetrator can be followed by compensation or compensation is not followed. If compensation is followed, then how much compensation should be given, this depends on the agreement between the perpetrator and the victim. Herein lies the sincerity of forgiveness. With the agreement reached, diversion can be carried out.

Apology by victims of criminal acts as a counterpart to apologies from perpetrators of crime is one of the most important elements of the restorative justice process. Within the framework of a restorative justice, forgiveness as a sign of the completion of a case is always accompanied or preceded by various agreements, the basis of thought and the ongoing process cannot be separated from the philosophy of life of the local community.

From the notion of restorative justice it can be said that, restorative justice is a form of a type of justice that can be used for diversion. Thus, criminal law regulations in Indonesia recognize a new type of justice in the settlement of criminal cases, namely restorative justice, which adds retributive justice and rehabilitative justice.

As noted by Natangsa Surbakti, that: Restorative justice of a type of quality of justice is generated through implementation of restorative justice, the state has been the restoration of material loss and/or immaterial caused by criminal acts through the responsibility of the perpetrators criminal or his family.[3]

Restorative justice, according to Natangsa Surbakti, is a product of a type of quality of justice, namely the recovery of material and/or immaterial losses resulting from the occurrence of a criminal offense through direct accountability of the criminal or their perpetrators. While the quality of justice referred to as restorative justice, is produced through the implementation of restorative justice. In this case. Restorative justice is a process.[3]

The rule of law of the juvenile justice system in Indonesia does not use the term Restorative Justice. To realize restorative justice, it is carried out using a diversion deliberation facilitated by law enforcement officials, both Child Investigators, Child Prosecutors and Child Judges. How the results depend on the law enforcement officers. Therefore, the problem chosen to be investigated is How is the Policy on Application of Diversity of Children in Conflict with the Law to Realize Restorative Justice in Indonesia?

II. RESEARCH METHOD

Methods used is normative juridical, which examines secondary data in the form of regulations on the Juvenile Justice System in Indonesia and documents obtained from the research location, namely the Big City Police Resort Semarang, Central Java Province, Republic of Indonesia, and the opinions of scholars.. By using qualitative analysis, which explains the existing data with words or statements, not with numbers.

III. FINDINGS AND DISCUSSION

Under the Juvenile Justice System Law which has the authority to carry out diversion in order to realize restorative justice is the Child Investigator, Child Prosecutor and Child Judge. They work in their respective institutions. The existence of 3 (three) institutions or subsystems has the same authority, which is to do diversion. This has the potential for repeated diversion.

As time goes by the Criminal Justice System Act of the Child, data obtained from the Big City Police Resort Semarang, Central Java Province which shows that diversionary efforts to realize restorative justice has been successfully carried out at the Police level facilitated by child investigators. This secondary data is displayed as attached.

The game is a data of children in conflict with the law that entered into the Sub-District Police Station of the City of Semarang, Central Java Province of the Republic of Indonesia from 2014 to 2018. While the Law on the Juvenile Justice System only began to take effect on 30 July 2014. Thus the data is data that enters the Police subsystem for 4 (four) years of law.

Although the data is new data that was compiled for 4 (four) years after the issuance of the Law on the Juvenile Justice System, the data has been able to show the existence of application policies made by law enforcement officials who work on the Police subsystem. The data shows that the implementation of diversion efforts towards children who are in conflict with the law

with the most success rates is in the Police subsystem. The number of cases that have been successfully diversified at the Police level is 60%.

This is indicated by the number of cases of children in conflict with the law that enter the Police subsystem. The cases that entered into this subsystem totaled 33 cases, and those that were successfully carried out diversified amounted to 20 cases, consisting of 6 cases completed by diversion and 14 cases completed by letter of agreement. What is meant by a case that has finished diversion is a case that is sought diversion at the investigation stage. At this stage, the child has been named as a suspect. Whereas what is meant by completion of the agreement, is the diversion that was successfully carried out at the investigation stage, so that the Child has not been named as a suspect.

Of the many successes of diversion efforts undertaken by Child Investigators, appreciation must be given to Child Investigators, for successfully diversifying in order to realize restorative justice. Child Investigators act as good facilitators. It can also be said that Child Investigators animate their duties and functions, and understand the values contained in the notion of restorative justice.

Furthermore, the data shows that cases that went to the Court amounted to 8 (eight) cases or 24%.. This number consisted of several possibilities, namely completion of diversion at the Prosecutor's level, or completion of diversion at the District Court level, or there was a possibility of unsuccessful diversion is carried out both the Prosecutor's level at the District Court level, so that the settlement must proceed to the trial process.

Of these 33 there are 16% cases. Which consists of 4 (four) cases are still under investigation and 1 (one) case is terminated with SP3. Number 4 (four) cases that are still in the process of investigation, there is still the possibility of successfully diversifying at the Police level.

With the amount of data reaching 60% successfully diversified at the Police level, and there are only 24% of cases that did not succeed at diversifying at the Police level, it can be said that the success rate of diversion at the Police level is more numerous than the number of successful attempts at diversion conducted at the level of the Prosecutor's Office and the District Court. The data also shows that the Police subsystem in the juvenile justice system is the subsystem that has the most success in diversifying, compared to other sub-systems of the juvenile criminal justice (the Prosecutors and District Court sub systems).

This is also supported by the position of the Police subsystem in the juvenile justice system, which is at the first level. The stages of the juvenile justice process begin with the Police subsystem, continued at the Prosecutor's level, and then at the Court level. At the Police level, Due to the existence of the Police subsystem at the first level, the opportunity to diversify earlier than other subsystems, so that what the Police failed to do is only a few.

In the raga also found data that shows that the requirements to be able to do diversion as stipulated in the

Juvenile Justice System is not used as a provision of diversion. The requirement for diversion in the law is that a crime committed is threatened with a criminal sanction of less than 7 (seven) years in prison and does not constitute a repeat of the crime. The requirement is not used as a determination of diversion.

The basis for diversion by the Child Investigator is the realization of restorative justice. In the event of forgiveness between the perpetrator and the victim and an agreement has been reached between the two parties, the Child Investigator conducts diversion.

In the demonstration, there are data of children who are in conflict with the law who commit or are suspected of committing criminal offenses with a criminal threat of 7 (seven) years in prison or more, successfully diversion. This shows that the provision of conditions for diversion cannot be used as a guide for diversion. This shows that there is an application policy at the Police level conducted by the Investigator that is not in accordance with the policy formulation specified in the Criminal Justice System.

IV. CONCLUSION

Study of secondary data from the office of the City Police in Semarang in Central Java Province of the Republic of Indonesia, can be summed up as follows:

The highest success rate of diversion efforts in order to achieve restorative justice are in the subsystem Police, conducted by investigators Children. Whereas at the District Attorney and District Court levels there are fewer. The high levels of success indicate that the Child Investigator understands the values contained in the notion of restorative justice in addition to the opportunity to undertake diversion at the first level of conducting a criminal justice process.

In addition to the level of success, in terms of the requirements that must be met for diversification efforts, the application policy at the Police level carried out by the Investigator is not in accordance with the formulation policy specified in the Criminal Justice System. Thus, further research needs to be done on what problems are the causes and how to overcome them.

THE NUMBER OF CRIMINAL TREATMENTS DONE BY HANDLED CHILDREN PPA UNIT SAT RESKRIM POLRESTABES SEMARANG 2014-2018

No	Types Of Criminal	Article That Is Sued	YEAR				
			2014	2015	2016	2017	2018
1	Physical violence against children	76 C jo 80 UUPA	3 (done) 1 (P21) 1 (Investigate)	1 (done) 1 (Investigate)	1 (P21)	1 (diversion)	2 (diversion)
2	Persecution	351 KUHP					
3	Sex with children	76 D jo 81 UUPA	1 (done)	3 (2 done)	3 (P21)		1
4	Child abuse	76 E jo 82 UUPA	1 (Investigate)	1 (SP3)	1 (P21)		
5	Beatings	170 KUHP	1 (P21)			2 (done)	
6	Inault	310 KUHP					
7	Theft	362/363 KUHP		2 (diversion)	1 (done)	1 (done)	
8	Carrying a child running	332 KUHP	3 2 (done) 1 (Investigate)		1 (done)		
9	Bring sharp	2 UU Darurat 1991					
10	Participate	55 KUHP	1 (diversion)				
Amount			12	7	7	4	3

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- [3] Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Pasal 28B ayat (2) (Amandemen ke-2, 18 Agustus 2000) mengatur dengan jelas hak-hak anak yang salah satunya adalah berhak atas kelangsungan hidup, tumbuh dan berkembang serta berhak atas perlindungan dari kekerasan dan diskriminasi.
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