

Requirement Analysis for Diversion in Juvenile Criminal Justice Proceedings

Ayu Efridadewi¹, Heni Widiyani², Glory Yolanda Yahya³, Desri Gunawan⁴, Melisa Rahel⁵
{ayuefridadewi@umrah.ac.id¹, heni@umrah.ac.id²,
gloryyolanda@umrah.ac.id³,gunawandesri@umrah.ac.id⁴}

Department of Law, Universitas Maritim Raja Ali Haji, Indonesia^{1,2,3,4,5}

Abstract. Diversion transfers a child's case settlement from a criminal justice process to a process outside of criminal justice. The diversion process is helpful for children dealing with the law to avoid adverse effects on the child's growth and development in the future. The research used is empirical normative legal research. The data sources used are primary data sources and secondary data sources. The data collection technique in this writing uses several methods, namely interviews and literature reviews. The result and conclusion of this study are that the diversion requirement in the juvenile justice process in practice follows the mandate of the SPPA Law. If some of these criteria are not met, the diversion process proceeds to the trial, and the chief justice prepares a schedule for the proceedings. Suppose the Diversion can be carried out and has met the criteria of the predetermined conditions. In that case, the chief justice immediately determines the timetable for implementing the recreation of the child and the victim. In the diversion process, in this case, the parties are obliged to pay attention to the interests of the victim, the welfare and responsibility of the child, the avoidance of negative stigma, and the avoidance of retaliation. The suggestions in this study should be the existence of a Temporary Child Placement Institution, now abbreviated as LPAS, a temporary place for children during the judicial process.

Keywords: Requirements analysis; diversion; juvenile criminal justice

1 Introduction

Currently, up to 33 percent of children in Indonesia are involved with the legal system [1]. Based on these facts, it is necessary to address pertinent issues outlined in the applicable laws, namely the Juvenile Criminal Justice System Law and the SPPA (Law Number 11 of 2012). In the SPPA Law, problem-solving for children's conflict with the law is implemented through restorative justice and a diversion system. Article 1, number 7 of the SPPA Law defines Diversion as the transfer of the resolution of children's cases from the criminal justice system the operations outside the court system [2].

In the analysis of the Director of Laws and Regulations of Bappenas, Diani Sadia Wati explained why Law Number 3 of 1997 regarding Children's Courts to Law Number 11 of 2012 regarding the Juvenile Criminal Justice System (SPPA Law) for the following reasons: First,

the failure of the juvenile criminal justice system to produce justice; second, the rate of child crime and recidivism has not decreased; third, the judicial process fails to treat the child; fourth, courts use imprisonment more frequently than other forms of sanctions; and fifth. Referring to the understanding in the SPPA Law on Diversion, the process of resolving criminal justice for children facing the law through the family system, that is, picking up agreements between victims and offenders [3]. The Diversion has goals, including achieving peace between the victim and the child, resolving children's cases outside the court system, preventing the child from being deprived of liberty, encouraging public participation, and instilling a sense of responsibility in the child. From the perspective of the phrase "must be pursued," child law enforcement must ensure the diversion process is correct, beginning with investigators, prosecutors, and judges.

In addition to the goals mentioned above, Diversion must prioritize a restorative justice approach at the juvenile criminal justice process's investigation, prosecution, and court examination levels. The obligation to seek this Diversion begins with research, trial, and evaluation of children's issues in the district court in cases where a sentence of fewer than seven years in prison for criminal acts. Following Article 7 of the SPPA Law, the juvenile criminal justice process is subject to Diversion if a child commits a crime carrying a threat of more than seven years. A crucial part because of the threat of a sentence of more than seven (seven) years hard act, as well as if it is a repeat offense, which means that the child has done illegal things before, both similar and different, as well as unlawful things that through Diversion. The repetition of criminal acts by children can be evidence that the objective of Diversion is not, namely, instilling a sense of responsibility in children so that they do not repeat actions that constitute criminal acts [4]. Therefore, diversion efforts against it might not be required and would not include a repeat offender.

In light of the challenges above, the question posed in this study is: What are the conditions for Diversion in the juvenile criminal justice system? To implement Diversion, the investigator, the public prosecutor, and the judge must consider a number of these factors [5]. The Diversion requires the victim and the child's consent, as well as the child and family's willingness, except under the following circumstances: Crimes in the form of infractions, misdemeanors, and victimless offenses; or The victim's loss does not exceed the local and provincial minimum wage. Peace with or without indemnification, Handover back to parent/guardian, and participation in education or training in educational institutions or Social Welfare Implementation Institutions (LPKS) for a maximum of 3 (three) months or Community service are the forms of diversion agreement outcomes.

Relevant Statutes and Regulations are two descriptions following the Law Enforcement Theory; According to Soerjono Soekanto, the problem with law enforcement lies in its potential influencing factors [6]. These elements are listed below: Legal factors, Aspects of law enforcement, namely those who create and administer the law, Qualities of resources or facilities that support law enforcement factors in the community, such as the context in which the rule applies or is applied, and In the association of life, cultural factors, namely work creation, and taste based on human nature, play a significant role. Usefulness Theory; The foundational tenets of The following are Jeremy Bentham's teachings: The purpose of the law is to provide new individuals in the crowd with a guarantee of happiness. Consequently, Bentham's utility principle states, "the greatest happiness of the greatest number" (the greatest joy for as many people as possible). Collusively because the quality of pleasure remains constant, legislation must achieve four goals: to provide subsistence, to provide abundance, to provide security (to provide protection), and to achieve equity.

2 Research Method

Empirical normative legal research is used. This research type looks directly at the field's problems and is linked to binding regulatory sources. In addition, scientific research has sources as reference material to support the researcher's argument. The primary and secondary data sources are the primary data source, and the primary data source is data obtained directly from the agency to be studied. Primary data sources are also called basic data or empirical data. Secondary data sources are from literature or literature related to the research object; in formative research, the primary data source comes from literature such as the Juvenile Criminal Justice System Act, news in the mass media, and judges' rulings.

3 Result and Discussion

In practice, diversion requirements are by the mandate of the SPPA Law. If any of these conditions are not satisfied, the diversion procedure continues to the trial phase, and the chief justice establishes a schedule for the proceedings. On the other hand, suppose the Diversion can be carried out and has met the criteria of predetermined conditions. In that case, the chief justice immediately determines the timetable for implementing the Diversion of the Child and the victim.

The diversion process deliberations are attended by the child, parents/guardians, victims, parents/guardians of victims, community supervisors, and social workers. When the Diversion is successful, the leadership, by attaching the minutes of the diversion event and the first diversion agreement, then the Court issues an injunction from the predetermined diversion result. The result of the agreed Diversion must still refer to the SPPA Law, which in Article 9 paragraph (3), namely Criminal acts in the form of violations, Misdemeanor crimes, Crimes without victims, and The value of the victim's loss is no more than the value of the local, provincial minimum wage. The diversion agreement at the Tanjungpinang District Court is in the form of community services, such as cleaning mosques and houses of worship for 3 (three) months or per diversion agreement. During the service process, the child is by the Bapas (Correctional Center), and then the Bapas will report to the Court if the Diversion is out. If the Diversion is within the period specified by the Court, the Court then provides that the child's case is not continued or stopped. However, if the child does not carry out diversion provisions, the problem will continue until it gets a decree from the Court.

Before trying Diversion, the Court looks at the indictment file from the prosecution to see if the child is facing subsidiarity, alternative, cumulative, or combination (combined) indictment. Because PERMA Number 4 of 2014 on Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System says that judges have to make an effort if a child with a crime that could lead to jail time.) This PERMA also regulates the stages of diversion deliberations, where the facilitator appointed by the Chief Justice is obliged to provide opportunities to The child about the indictment. Parents/Guardians to convey matters related to the child's actions and the expected form of settlement, Victim/Child /Parent/Guardian to provide a response and anticipated state of accommodation.

Then, there is a specificity in the judicial system (excess). Because the level of crime committed by children is not dangerous, according to the explanation of the SPPA Law article 9 paragraph (1) of the letters, the dangerous criminal acts are terrorism, premeditated murder, drug dealers, and rape. So, if the child gets an alternative charge where one of the charges is a

criminal threat of under 7 (seven) years, it is better to attempt the Diversion first at the very first level, namely investigation. However, inseparable from the advantages alone, the disadvantage of Diversion is that it is an obstacle when the child because of the child's status. Therefore, it must be released and diverted to the Court when it devolves.

Diversion processed. Furthermore, lacking is the absence of LPAS, LPKS, and LPKA in the Kepulauan Riau Provincial City and the Law mandates. In the Institution in Batam, however, the solution is that the child goes to the Prosecutor's Office during the child Remains presented. Therefore, the presence of children in detention centers, prisons, and adults, places children in situations prone to being victims of various acts of violence. Consequently, it takes strong attention and effort to minimize harm to children who face legal proceedings in the criminal justice system. Therefore, in seeking Diversion, the investigator, the prosecutor, or Court must pay attention to the formal requirements so that the diversion process from each stage proceeds appropriately. After seeing the conditions, determining the results of this Diversion requires appropriate steps in paying attention to the child's interests. Therefore, the actions taken include paying compensation, being sent home to parents, being rehabilitated, and getting a job.

Therefore, in the child's best interests, the child can be fostered or not, seeing the type of crime committed and his age. So, they tried to find a way to change it or not. Thus, when someone has paid attention to the child's interests or indeed can no longer be alternated, identified, or singular, the term, with the threat of 7 years. Thus, the public prosecutor and investigator can now provide the children with restorative justice (RJ). The word is that SPPA or Diversion, or the plan or charge is an option so that PERMA may make the Diversion.

Based on the description of the conditions for Diversion in the juvenile justice process, one of the critical conditions in the implementation of Diversion, namely the recognition or statement of guilt of the perpetrator and his willingness to attempt Diversion. Moreover, the diversion effort is to learn and recover children as the perpetrators of criminal acts. Therefore, the absence of a confession/statement of guilt from the perpetrator of a criminal act is an impetus for formal legal proceedings for a criminal act. However, as was said above, it cannot come from the requirements for Diversion through the SPPA Law, which is to give the community a chance to play an active role, where the community can participate in child protection from prevention to the society of children. That means that carrying out the SPPA Law is not only the responsibility of law enforcement but also gives the general public a chance to play an active role.

Thus, all forms of handling children facing the law, including when dealing with narcotics cases, must be carried out by prioritizing the child's best interests even though the Diversion itself is when the diversion conditions are successful and have followed the trial process to completion.

It is worth realizing that although child delinquency is an anti-social act that can be troubling to the community, it is something that must as a social fact. Therefore, the treatment of child crimes should be different from the treatment of criminal acts at their age carried out by adults. Based on this description, the author relates the theory of practicality to the conditions of Diversion in the child's judicial process in terms of legal objectives that can provide guarantees of happiness to individuals, especially to the child (victim). It is necessary to have a diversion process itself carried out with deliberations attended by the child, parents/guardians of the child, victims, parents/guardians of victims, community supervisors, and social workers. As well as paying attention to several things, like the victim's needs, the child's well-being and responsibility, avoiding a bad reputation and retaliation, keeping the public in order, and obeying the law.

4 Conclusion

The Diversion, as referred to in paragraph (1) if." As a result, the diversion process must take into account the interests of the victim, the child's welfare, and the responsibility of the parties involved, as well as minimize stigmatization and vengeance. As a general rule, the diversion procedure should be in the early stages of a criminal case, such as the investigation (police). To ensure that the child's life goes on as smoothly as possible. The child's condition would deteriorate with specific actions with adults since each level has much time. Therefore, the federal government should establish LPAS or a Temporary Child Placement Institution. LPAS is a temporary place for children to stay during their court cases. There is also the Social Welfare Implementation Institution (LPKS), which is a place where social services for children are, and the Children's Special Development Institution (LPKA), which is a place where children do their time for crimes.

References

- [1] E. van Daalen, K. Hanson, and O. Nieuwenhuys, "Children's Rights as Living Rights: The Case of Street Children and a new Law in Yogyakarta, Indonesia," *The International Journal of Children's Rights*, vol. 24, no. 4, pp. 803–825, Dec. 2016, doi: 10.1163/15718182-02404006.
- [2] M. R. Lubis and Gomgom. T. Siregar, "Implementation of diversion in case resolution children to realize protection law against children," *Journal of Contemporary Issues in Business and Government*, vol. 27, no. 02, pp. 1001–1006, Mar. 2021, doi: 10.47750/CIBG.2021.27.02.119.
- [3] W. S. Aji, "The Implementation of Diversion and Restorative Justice in the Juvenile Criminal Justice System in Indonesia," *Journal of Indonesian Legal Studies*, vol. 4, no. 1, pp. 73–88, 2019, doi: 10.15294/JILS.V4I01.23339.
- [4] S. Fajar Ari, A. Hamidah, and A. Fajar Dian, "The Application of Restorative Justice System Through the Diversion of Children in Conflict with Laws in Central Java Polda (Regional Police of The Republic of Indonesia)," *International Journal of Psychosocial Rehabilitation*, vol. 24, no. 2, pp. 3802–3810, 2020, Accessed: Jul. 17, 2022. [Online]. Available: <http://repository.upstegal.ac.id/1394/>
- [5] R. Y. Hola, A. Aliyas, and S. Rais, "Optimization of Social Report as a Consideration of Diversion in The Child Criminal System," *Jurnal Hukum Volkgeist*, vol. 6, no. 1, pp. 93–100, 2021, doi: 10.35326/VOLKGEIST.V6I1.1613.
- [6] S. Soekanto, *Kesadaran hukum dan kepatuhan hukum*. Rajawali, 1982. Accessed: Jul. 17, 2022. [Online]. Available: <http://inlislite.uin-suska.ac.id/opac/detail-opac?id=18376>
- [7] L. Epstein and A. D. Martin, *An introduction to empirical legal research*. OUP Oxford, 2014.
- [8] M. Muhaimin, *Metode Penelitian Hukum*. Mataram University Press, 2020.
- [9] B. Sunggono, "Metodologi Penelitian Hukum," *PT RajaGrafindo Persada*, 2016. <https://opac.perpusnas.go.id/DetailOpac.aspx?id=53205> (accessed Jul. 17, 2022).