

Juridical Review Regarding Implementation of Diversion For Children in Conflict With The Law According To Law No. 11 Of 2012 And Perma No. 04 Of 2017

Mahmuddin¹, Herman Bakir², Boy Nurdin³

Mzlawyerjkt@gmail.com¹, herman_bakir@borobudur.ac.id², Drboynurdin_ppslaw@yahoo.com³

Universitas Borobudur^{1,2,3}

Abstract. Delinquency committed by children has started to cause anxiety in society and cannot be seen as ordinary delinquency, children who commit multiple deeds included criminal acts, such as theft, assault, and participating in brawls between students and carrying sharp objects. This examination utilizes regularizing or doctrinal legitimate exploration techniques. Regulating legitimate examination is planned to survey and look at legitimate standards in Regulation Number 11 of 2012 concerning the Adolescent Law enforcement Framework and PERMA No.04 of 2017 concerning the utilization of redirection. In light of the consequences of the examination of the exploration and conversation surveyed, the analysts reasoned that the methodology for executing redirection for youngsters who carry out wrongdoings at each phase of Adolescent Law enforcement as expressed in Article 7 passage 1 of Regulation Number 11 of 2012 concerning the Adolescent Law enforcement Framework and Unofficial law No. .65 of 2015 concerning rules for the redirection and High Court guidelines number 4 of 2017. The phases of executing redirection against youngsters as culprits of criminal demonstrations are completed at the examination, the arraignment, and the assessment stage at the Court. The investigation phase of diversion efforts is carried out by law enforcement as a way to protect children's rights, where children aged less than 18 years are still in a developing stage where their mental and psychological conditions are easily disturbed. So, by solving cases by diversion it is hoped that it will be able to protect the rights of children as the successor of the state.

Keywords: Diversion; Crime; Children in Conflict with the Law

1. Introduction

Children are a provision given by *Allah Subhanahu Wa'taala* and must be looked after as well as possible from the time the child is still in the womb until it is born and grows and develops until adulthood. In preparing the next generation of the nation, children are the main asset. The improvement of kids since the beginning is the obligation of the family, society, and the state. [1]

Everyone has human rights and human rights are given from birth, as well as children, of course, have special rights and or are more privileged than adults and are also guaranteed by the laws and regulations that apply in Indonesia.

To achieve the right to legal protection for children, in addition to legal certainty provided by the government, it is necessary to intervene and participate from the side of the family and also the community so that good relations are bound and the level of child protection is achieved in human development.

The good development of children is also being misused so that it has a bad impact on these children, such as the modernization of globalization, especially in the field of social media supported by fast internet so that everything can be accessed easily and cheaply which can change lifestyles and have an impact on society towards children's behavior. Behavior that deviates from being carried out by children is caused by several factors that cause children to commit crimes or criminal acts.

Juvenile delinquency comes from a foreign term, namely Juvenile delinquency, which means that an act violates norms, include legal norms and social norms committed by children. [2]

Wrongdoing carried out by youngsters has begun to cause nervousness in the public eye and shouldn't be visible as conventional misconduct, kids who perpetrate many demonstrations that are remembered for criminal demonstrations, like robbery, attack, and taking part in fights among understudies and conveying sharp articles and furthermore others. If mischief like this left unchecked, it will negatively impact on survival and can also destroy the next life.

Children in conflict with the law are greatly influenced by many aspects, both from outside and from within the child. In the process of sentencing, there is a need for a special approach. The purpose of the special approach is that there is a special sentencing process to try children in conflict with the law. will make the child depressed when undergoing the legal process, even though the child as the perpetrator is still obliged to be given special protection which is used to avoid negative impacts that arise and harm the child in the future.

In the Adolescent Law enforcement Framework, there is the term supportive equity which is likewise a course of redirection, helpful equity is the settlement of criminal cases including all gatherings to track down an answer for get a decent and fair goal, including the groups of the culprits and casualties. While this redirection is for the power of policing to make a move and resolve infringement against youngsters so kids who are managing the law don't feel they are adversely impacting the general climate with the legal interaction they are going through.

Concerning the treatment of kids in struggle with the law (ABH), the police make guidelines through the Guideline of the Top of the Criminal Examination Organization No. 1 of 2012 concerning Standard Working Techniques for Taking care of Youngsters in Struggle with the Law inside the Indonesian Public Police's Criminal Examination Organization. The guideline portrays the treatment of ABH cases through proper channels and elective highways, one of which is a redirection.

The utilization of Redirection diminishes the unfavorable impacts of kids' support in the legal cycle, which is expected to decrease and distance youngsters from the legal interaction to keep away from criticism of kids who are in struggle with the law and it is trusted that kids can get back to the social climate decently and keep away from disgrace. community stigma. [3]

Regulation Number 11 of 2012 concerning the Adolescent Law enforcement Framework (SPPA) Article 1 expresses that Supportive Equity is the settlement of criminal cases including culprits, casualties, groups of culprits/casualties, and other related gatherings to look for an agreeable arrangement mutually. by stressing rebuilding to the first state and not reprisal. One of the executions of the Helpful Equity approach as indicated by Regulation Number 11 of 2012 is Redirection. Redirection is the exchange of settlement of kid cases from the law enforcement interaction to processes outside the law enforcement, which aims (Article 6 of the SPPA Law):

- a. Achieving harmony among casualties and youngsters;
- b. Resolving youngster cases outside the legal cycle;
- c. Prevent kids from hardship of freedom;
- d. Encouraging the local area to take part and;
- e. Instill a feeling of obligation in kids.

Article 1 Passage (1) High Court Guideline No. 4 of 2017 concerning Rules for the Execution of Redirection in the Adolescent Law enforcement Framework, the execution of the redirection cycle is brought out through considerations. Redirection thoughts are considerations between parties that include kids and their folks/gatekeepers, casualties or potentially their watchmen, social guides, proficient social laborers, local area agents and different gatherings to agree on redirection through supportive equity. [4]

2. Method

This study utilizes regulating or doctrinal legitimate exploration techniques. [5] Standardizing legitimate examination is planned to study and look at legitimate standards in Regulation Number 11 of 2012 concerning the Adolescent Law enforcement Framework and different regulations and guidelines that are connected with the use of redirection as a work to safeguard youngsters who experience difficulty with the law as expressed in Show on the Privileges of the Kid and The Beijing Rules. The object of examination recorded as a hard copy this article is the way the redirection is executed through Regulation Number 11 of 2012 concerning the Adolescent Law enforcement Framework as a type of legitimate security for kids who struggle with the law. Wellsprings of lawful data utilize essential legitimate materials (applicable guidelines and archives) for additional subjective investigation. The methodology utilized is legal, applied, examination, and correlation of regulation in tackling the issue detailing.

The information hotspots for this exploration comprise of essential legitimate materials, optional legitimate materials to be circled back to a general examination of regulations and guidelines, writing, information, and a few related records, as well as tertiary lawful materials to make sense of and help with investigating essential lawful materials. as well as optional.

3. Findings And Discussion

3.1 Children in Conflict with the Law in Diversion Concept

Regulation Number 11 of 2012 concerning the Adolescent Law enforcement Framework in article 1 passage 2 (two), what is implied by youngsters in struggle with the law are kids in struggle with the law, kids who are casualties of criminal demonstrations, and observers of criminal demonstrations. In view of this article, kids who are in struggle with the law can be arranged into 3 (three), to be specific:

- a. Children in conflict with the law are children as perpetrators of crimes.
- b. A child who is a victim of a crime is a child who suffers a loss in a crime, which can be in the form of physical, mental and/or economic loss.

- c. A child who is a witness to a crime is a child who can provide information because he heard, saw, and/or experienced a crime himself for the purposes of investigation, prosecution and trial court examination.

The class of youngsters as culprits of criminal demonstrations are those matured 12 (twelve) years and up to 18 (eighteen) years. In the mean time, kids who are under 12 (twelve) years of age and are in struggle with the law can't be arranged as Youngsters in Struggle with the Law (ABH). What's more, for the age of 18 (eighteen) years and over are as of now sorted as grown-ups.

The category of children who are victims of criminal acts is children who are not yet 18 (eighteen) years old. As witnesses and victims, unlike children who commit crimes, they are limited to a minimum age of 12 (twelve), so children aged 11 (eleven) 10 (ten), and below can be referred to as witnesses and victims, as well as children in conflict with the law.

Diversion is a new concept in Indonesia, this concept itself is a process of diverting the criminal justice process for children who are in conflict with the law towards a social service process or it can also be called the achievement of a formal process, namely the judicial process, into an informal process, namely a non-judicial process. "Efforts to divert the (criminal) justice process for children towards non-judicial processes are based on the consideration that the involvement of children in the judicial process has resulted in stigmatization." [6]

Kids who carry out criminal demonstrations have their freedoms safeguarded under the Show on the Privileges of the Youngster. In Indonesia itself, the Youngsters' Show is recorded in Official Announcement Number 36 of 1990 concerning the Sanction of the Show on the Privileges of the Kid which was then expressed in Regulation Number 11 of 2012 concerning the Adolescent Law enforcement Framework. [7] In the Law of the Juvenile Criminal Justice System, law enforcers are required to take the Diversion route first in handling children who conflict with the law. Discussions about the concept of diversion within law enforcement agencies are also being carried out to maximize diversion efforts to protect children's rights so that children's development and development are not disrupted due to reduced physical and mental health due to dealing with the law.

The High Court Guideline Number 4 of 2014 makes sense of that redirection consultations are considerations between the gatherings engaged with a case, specifically, kids and guardians/watchmen, casualties as well as guardians/gatekeepers, social instructors, proficient social laborers, delegates, and different gatherings. other involved to agree through a supportive equity approach, while the Facilitator is an adjudicator designated by the top of the Court. [8]

Diversion process must pay attention:

- a. The interests of the person in question;
- b. Child Government assistance and obligation;
- c. Avoidance of negative disgrace;
- d. Avoidance of counter;
- e. Community agreement;
- f. Decency, fairness and public request.

The redirection understanding should get the assent of the youngster casualty and the readiness of the kid and family, aside from wrongdoings as infringement, misdeeds, violations without casualties, and the worth of the misfortune is something like the neighborhood common the lowest pay permitted by law. The diversion agreement is carried out by law enforcement agencies, community advisers, and can involve community leaders.

The results of a Diversion agreement can take the form of, among other things:

- a. Peace with or without compensation;

- b. Handover to parents/guardians;
- c. Participation in Education or training at Educational Institutions or Victim and Witness Protection Institutions (LPKS) for 3 (three) months.
- d. Society service.

Helpful equity is the most suggested type of redirection against kids who struggle with the law. This is on the grounds that the idea of helpful equity includes different gatherings to determine an issue connected with a wrongdoing carried out by a youngster. (Ridwan Mansyur <http://mahkamahagung.go.id>. 25 August 2022)

The restorative justice process is carried out by bringing together the parties involved in the case. The perpetrator explained in detail and the reasons for the perpetrator to commit the crime against the victim. In addition to explaining the perpetrator's reasons, the perpetrator must also explain how the perpetrator will be responsible to the victim for actions that have harmed the victim. After the perpetrator finished explaining the reasons for the crime, the victim gave a response.

In addition, there were also community parties representing the interests of the community. The representatives of the community provide an overview of the losses caused by a crime that has occurred, hoping that the perpetrator will take an action or action to restore the shock or damage that has occurred due to his actions. [9]

An important thing that must be considered by law enforcers, in the Law on the Adolescent Law enforcement Framework, is the presence of assents focused on regulation implementers which peruses: Examiners, Public Examiners, and Judges who deliberately don't do redirection endeavors in dealing with kid cases will be liable to sanctions as a greatest detainment of 2 (two) years or a most extreme fine of Rp. 200,000,000. -.

3.2 The Process of Organizing Diversion for Children in Conflict with the Law according to the law. No. 11 of 2012 and PERMA No. 04 of 2017

Redirection is the exchange of kid cases from the law enforcement interaction to processes outside law enforcement. [10] The idea of redirection was first advanced as a jargon in an adolescent equity report put together by the Leader of the Australian Wrongdoing Commission in the US in 1960. In the first place, the idea of redirection existed before 1960 with the foundation of adolescent court (youngsters' court) before the nineteenth century specifically the redirection from the proper law enforcement framework and the formalization of the police to complete alerts.

A redirection is a type of cycle move which is a program just did at the pre-settlement stage in the law enforcement framework. This type of redirection or redirection is generally connected with the optional powers of policing. [11]

Redirection can be utilized as a way to help social strategies on the off chance that redirection can be utilized for the purpose of endeavors to accomplish social/local area government assistance. Social government assistance is a request for life and material and otherworldly public activity enveloped by a feeling of safety, conventionality, and internal and external security which incorporates social help to residents both exclusively and in gatherings, keeping up with the degree of social government assistance through the execution of a social assurance, direction, training and social recovery for individuals whose capacity to support life is hindered, social turn of events and guiding to further develop civilization, humankind and participation and the foundation of establishments and organizations for the satisfaction of government backed retirement which concerns the interests of individuals.[12]

Redirection is the redirection of the settlement of criminal cases from the law enforcement interaction to processes outside the legal executive by considering the arrangement of the culprit, the person in question, the culprit's family, and the casualty's loved ones. The redirection cycle should be completed by specialists, public examiners, and court judges who analyze cases in this matter in view of the sets of Regulation Number 11 of 2012 concerning the Adolescent Law enforcement Framework Article 7 passage (1) which decides as follows: [13]

At the degree of Examination, Arraignment, and Assessment of Kid cases in the Area Court, looking for diversion is required. Redirection Commitment in PERMA RI (High Court Guideline) Number 4 of 2017 concerning Rules for the Execution of Redirection in the Adolescent Law enforcement Framework Article 2 where the article contains: "Diversion is applied to children who are 12 years old but not yet 18 years old or 12 years old even though he has been married but is not yet 18 years old, who commits a crime". The procedure for implementing Diversion against children of criminal offenders implemented at the Palopo District Court is still guided by all relevant provisions regarding Diversion and also still refers to PERMA RI Number 4 of 2017-chapter III article 4 which determines: [13]

- 1.) After getting the choice of the Executive of the Court to deal with cases that should be looked for Redirection, the Adjudicator gives the Assurance of the Redirection Pondering Day.
- 2.) The determination of the judge as referred to in paragraph (1) contains an order to the public prosecutor who delegates the case to present:
 - a. The child victim's parents/guardians or companions;
 - b. Victims and/or their parents/guardians;
 - c. Community Advisor;
 - d. Professional Social Worker;
 - e. Community representatives; and
 - f. Other related parties deemed necessary to be involved in the Diversion Deliberation.
- 3.) Determination of the Judge as referred to in paragraphs (1) and (2) shall include the day, date, time and place of the Diversion Deliberation.

The execution of Redirection is inspired by the longing to stay away from adverse consequences on the spirit and improvement of youngsters through their inclusion with the Law enforcement Framework. The execution of redirection by policing depends on the power of policing which is called watchfulness or attentiveness in Indonesian. In the improvement of youngster security, the idea of supportive equity is likewise growing, specifically an idea of compromise that happens by including parties who have an interest in the wrongdoing that happened (casualty, culprit, casualty's family, culprit's family, local area, and go between). [14]

Article 7, it is explained that every child problem must be sought for diversion at the levels of investigators, prosecutions, and case examinations. We can explain the meaning of investigators in discussing general provisions, article 1 points 1 and 2 of the Criminal Procedure Code (Book of the Criminal Procedure Code). [15]

Article 1 point 6 of Regulation Number 11 of 2012 concerning the Adolescent Law enforcement Framework expresses that Helpful equity is a type of settlement of criminal cases including culprits, casualties of culprits, and other related gatherings to mutually look for a fair arrangement by underscoring rebuilding to the first state, and not counter. Besides, in Article 5 section (1) it is expressed that the Adolescent Law enforcement Framework should focus on the Supportive Equity approach. [16]

Helpful Equity is implied by the commitment to complete Redirection. Redirection is the exchange of settlement of youngster cases from the law enforcement interaction to processes beyond law enforcement. The redirection what works so kids who are managing the law are not defamed because of the legal cycle they need to go through. The utilization of this system is planned to decrease the adverse consequence of youngsters' contribution in a legal cycle. [17]

The application of Diversion in criminal cases has the following requirements:

- a. must have the intention or intention of parties including the community
- b. the perpetrator of the crime is truly sorry and promises not to repeat his actions, the perpetrator in this case must apologize to the victim and his family.
- c. the form of peace runs in balance so that the victim or his family will no longer sue the perpetrator.
- d. the form of regret between the perpetrator and the victim or their family is acceptable to society.

Conditions are the main key to implementing diversion, and there must be will from the community, the perpetrator of the crime regrets his actions and promises not to repeat it also apologizes to the victim and his family, if the perpetrator has apologized then make peace that runs in balance which makes the victim and his family will not sue again. There is a form of regret between the perpetrator and the victim or their family that is acceptable to society.

There are stages in the implementation of diversion in the Juvenile Criminal Justice System, namely: [18]

- a. The execution phase of redirection in the examination cycle.
- b. The phase of carrying out redirection in the arraignment cycle, at this phase of indictment, the public examiner should look for redirection no later than 7 days after the case is set free from the specialist. This redirection cycle will be done all things considered days. In this cycle consultation is done.
- c. The phase of carrying out redirection in the preliminary cycle.

The scheme for the stages of the diversion process in Law no. 11 of 2012 concerning the Juvenile Criminal Justice System namely:

- a. Public reports of criminal acts at the local police station. Since the entry stage of child cases.
- b. Investigators (police) have been able to carry out diversion, both investigators as enforcers (law enforcement), as well as investigators serving as order keepers, and community protectors (non-enforcement sources). Investigators are required to seek diversion for 7 days after the investigation begins.
- c. 30-day diversion, a 30-day diversion process following Article 29 paragraph 2 of the Law on the Juvenile Criminal Justice System No. 11 of 2012.
- d. Penal Mediation Forum/Deliberation conducted by investigators and *Bapas* to perpetrators, parents of perpetrators, ph, Social Welfare Workers/KPAI/Child Companion, and also community representatives.
- e. Agreement, after all, is deemed sufficient, the investigator summons the parties and carries out the Diversion Process.

Recovery with the results achieved agrees that the perpetrator provides or reimburses the costs of compensation. The execution of redirection is spurred by the longing to adversely affect the spirit and improvement of the kid through his contribution with the law enforcement framework. The execution of redirection by policing depends on the power of policing who

called carefulness. The use of the idea of redirection completed at the degree of examination, indictment, and assessment of adolescent legal disputes, gives more prominent open doors to kids who struggle with the law to be liberated from criminal dangers so that youngsters' privileges won't be removed.

The fundamental guideline of carrying out the idea of redirection is powerful activity or a non-reformatory methodology and giving an open door to somebody to address botches. Redirection tries to give equity to instances of kids who have carried out wrongdoings up to policing. Second, equity is made sense of through an assessment of the conditions and circumstances to acquire proper authorizes or activities (Suitable Treatment).

4. Conclusion

In view of the aftereffects of the examination of the exploration and conversation checked on, the analysts reasoned that the technique for executing redirection for kids who carry out wrongdoings at each phase of the Adolescent Law enforcement process as expressed in Article 7 passage 1 of Regulation Number 11 of 2012 concerning the Adolescent Law enforcement Framework and Unofficial law No. 65 of 2015 concerning rules for the execution of redirection and High Court guidelines number 4 of 2017. The phases of executing redirection against youngsters as culprits of criminal demonstrations are completed at the examination stage, the indictment stage, and the assessment stage at the Court. The investigation phase of diversion efforts is carried out by law enforcement as a way to protect children's rights, where children aged less than 18 years are still in a developing stage where their mental and psychological conditions are easily disturbed. So, by solving cases by diversion it is hoped that it will be able to protect the rights of children as the successor of the state.

To achieve child welfare and child protection in the diversion program, law enforcers must be professional and have a license and dedication regarding children in conflict with the law, so that at the level of investigation, prosecution, and court proceedings run effectively because many law enforcers deal with children who deal with the law always harms children so that children get an evil stigma in society.

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