

Diversions Implications on Child Crime: A Review of Law Number 11 Of 2012 Concerning The Criminal Justice System

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Abstract: The strategic role that children have has given birth to various ideas regarding children's rights. The sort of exploration that will be utilized for this examination is regularizing juridical examination. The issue approach used to concentrate on legitimate issues in this study utilizes a legal methodology (sculpture approach) and a reasonable methodology (calculated approach). The results of the study show that at the level of operational regulations or technical regulations, there are still many legal vacuums. This legal vacuum is felt when there are difficulties for law enforcers at the regional level II, starting from the police, and prosecutors to courts. Many obstacles in implementing diversion in the field. These obstacles are multidimensional, both on the side of law enforcement and on the side of society.

Keywords: Diversion, Restorative Justice, Statutory Solutions, Legal Vacuum.

1. Introduction

Youngsters with every one of their implications and definitions have various qualities from grown-ups, this is a beginning stage in taking a gander at the privileges and commitments of a kid which will likewise influence his situation under the watchful eye of the law.[1] In the thought of Regulation Number 11 of 2012 concerning the Adolescent Law enforcement Framework, it is likewise expressed that kids are a command and a gift from God All-powerful who has nobility and status in general person. To keep up with their nobility, kids are qualified for extraordinary assurance, particularly lawful security in the equity framework.

The strategic role that children have has given birth to various ideas regarding children's rights. The underlying thought regarding youngsters' freedoms was authored by Eglantyne Jebb.[2] Eglantyne Jebb is a lady dissident who gathered a ten-point explanation on youngsters' freedoms or the draft Statement of the Privileges of the Kid which was subsequently embraced in 1923 by the Save The Youngsters Asset Global Association. Kids with every one of their implications and definitions have various qualities from grown-ups, this is a beginning stage in taking a gander at the freedoms and commitments of a youngster which will likewise influence his situation under the watchful eye of the law. In the thought of Regulation Number 11 of 2012 concerning the Adolescent Law enforcement Framework, it is likewise expressed that youngsters are a command and a gift from God All-powerful who has nobility and status all in all people. To keep up with their respect, kids are qualified for exceptional security, particularly lawful assurance in the equity framework. Kids enjoy benefits and detriments. One side of the

absence of kids is the degenerate way of behaving. Degenerate kid conduct is frequently alluded to as adolescent misconduct. This conduct isn't as per the standards that apply in the public eye, bringing about infringement that eventually will generally prompt crook acts.[3]

Wrongdoings carried out by youngsters (adolescent misdeeds) are progressively far reaching and changed, both with regards to recurrence and earnestness concerning quality as violations. Among the lawbreaker acts that are frequently dedicated by kids are battling, extortion accompanied by violence using sharp weapons, abuse, drug abuse, and so on. As a result of their actions, children enter conflict with the law.[4]

The issue is that there is a lawful struggle when the youngster is more than 12 years of age however has not yet arrived at 18 years of age or potentially isn't yet hitched. As expressed in Article 1 point (2) of Regulation Number 11 of 2012 concerning the Adolescent Equity Framework (hereinafter alluded to as the Adolescent Law enforcement Framework Regulation), what is implied by a youngster in struggle with the law is a kid who is 12 years of age however not yet matured 18 years of age, who is associated with perpetrating a wrongdoing. The Law on Adolescent Equity takes a gander at the youngster's side from the activities he has perpetrated, if the kid carries out a wrongdoing before the kid is 12 years of age, then he isn't classified as an underhanded kid, so according to a legitimate perspective he can't be considered criminally mindful. Then again, if you have arrived at the age of 12 to 18 years and are hitched, then you are not generally sorted as a kid and the legal cycle is through broad equity, not adolescent equity.

In Indonesia itself, for around sixteen years, Regulation Number 3 of 1997 concerning Adolescent Courts has been utilized, which utilizes a formal juridical methodology by featuring (retributive) discipline, which has a worldview of capture, confinement, and detainment for youngsters. This absolutely can possibly restrict opportunity and deny offspring of autonomy and will affect the future, for example, the wellbeing of the youngster, the realities show that the quantity of kid detainees is expanding from one year to another. 5 The adolescent equity framework is contained in Regulation Number 3 of 1997 refreshed through Regulation Number 11 of 2012 concerning the Adolescent Law enforcement Framework, there are essential changes as a work to beat the shortcomings of Regulation Number 3 of 1997 concerning Adolescent Courts. The essential changes that exist incorporate the utilization of a helpful equity approach through the redirection framework. This guideline directs the commitment of regulation masters to look for redirection (settlement through non-formal channels) at all phases of the legitimate interaction.

The term redirection isn't notable in Regulation Number 3 of 1997 concerning Adolescent Courts and Regulation Number 8 of 1981 concerning the Criminal Technique Code (KUUHAP). [5]The term redirection is just realized in Regulation Number 11 of 2012 concerning the Adolescent Equity Framework. Before Regulation Number 11 of 2012 concerning the Adolescent Equity Framework, diversion was not a mandatory process and did not have a legal basis provided by law.

Law Number 11 of 2012 concerning the Juvenile Justice System (hereinafter referred to as the Law on the Juvenile Criminal Justice System) has required law enforcers to carry out diversion.

Redirection is characterized as the exchange of settlement of kid cases from the law enforcement interaction to processes beyond law enforcement.[6] Redirection is generally completed by the technique for supportive equity, to be specific the settlement of criminal cases by including the culprit, the person in question, the culprit/casualty's family, and other related gatherings to mutually look for a fair arrangement by stressing rebuilding to its unique state, and not retaliation. Special law enforcement for youngsters has the objective of helping the fate of kids and society, which contains the standards of supportive equity.[7]

Supportive equity is the settlement of criminal cases including culprits, casualties, groups of culprits/casualties and other related gatherings to mutually look for a fair arrangement by stressing reclamation to its unique state, and not reprisal. Redirection endeavors should be done since the case is currently at the examination level until the case enters the indictment level or when the case is inspected by an adjudicator in court. Redirection and supportive equity in its dealing with are planned as a work to stay away from and distance kids from the legal cycle, to stay away from defamation of youngsters who perpetrate violations. Kids who carry out wrongdoings are supposed to have the option to normally get back to the social climate. Cooperation of all partners is expected in settling youngster violations, so supportive equity is made, both for the kid wrongdoers and for the people in question. The possibility of redirection is a type of redirecting or sidelining the treatment of adolescent wrongdoing from the customary adolescent equity process, towards dealing with kids who are to a greater degree a local area administration nature, and the possibility of redirection is done to keep kid culprits from the adverse consequences of adolescent equity rehearses. The idea of redirection depends on the way that the law enforcement process for offspring of criminal wrongdoers through the law enforcement framework truly hurts more than great.[8] The fundamental explanation is that the court will demonize youngsters for their activities, for example, kids who are viewed as malicious, so keeping them from leaving the law enforcement system is better.

The use of the standards of helpful equity and the redirection cycle as a work to determine wrongdoings carried out by youngsters, albeit officially and legitimately directed in Regulation Number 11 of 2012 concerning the Adolescent Law enforcement Framework, game plans with respect to kid security and techniques for settlement of cases violations perpetrated by kids should be visible beginning from the Constitution of this country. Article 28B section (2) of the 1945 Constitution expresses that each youngster has the privilege to endurance, development and advancement and is qualified for insurance from viciousness and separation.

At the level of the administrative regulation with respect to youngster assurance and strategies for settling criminal cases perpetrated by kids should be visible in Regulation Number 4 of 1979 concerning Kid Government assistance, Regulation Number 39 of 2009 concerning Basic freedoms Regulation Number 23 of 2002 on Kid Security, Regulation Number 3 of 1997 concerning Adolescent Courts, and most as of late by Regulation Number 11 of 2012 concerning the Adolescent Equity Framework

b. Problem Formulation

1. What are the lawful standards with respect to redirection and their ongoing application in settling instances of criminal demonstrations by youngsters
2. What are the impediments to the execution of redirection and its application in settling instances of criminal demonstrations by kids?
3. What are the regulative answers for carrying out redirection in settling instances of criminal demonstrations by kids

2. Research Objectives

In light of the plan of the issue, the motivation behind this study is to:

1. Break down the law with respect to redirection and its ongoing application in settling instances of criminal demonstrations by kids
2. Break down the execution of redirection and its application in settling instances of criminal demonstrations by kids

3. Break down administrative answers for carrying out redirection in settling instances of criminal demonstrations by kids

3. Result and Discussion

As per the historical backdrop of the improvement of criminal regulation, "redirection" was first advanced as a jargon in a report on the execution of adolescent equity put together by the president's wrongdoing bonuses of Australia in the US in 1990. 89 In view of the Unified Country Standard Least Guidelines For The Organization Of Adolescent Equity (The Beijing Rules). UN Goal 40/33 of 29 November 1985, controls giving position to policing to make strategy moves in managing or settling kid guilty parties' concerns by not taking conventional means, including halting or not keeping on/letting out of the law enforcement process or returning/returning/give up to the local area and different types of social help exercises. [1]

These approach activities are alluded to as redirection processes (redirection) as expressed in rules 11 and 17.4 of the SMRJJ/The Beijing Rule. Redirection is a system that permits youngsters to be redirected from the legal cycle to other social help processes. The use of redirection at all levels will extraordinarily decrease the adverse consequence of youngsters' association in the legal cycle. Redirection talk has been advanced in different conversations as a work to find a model for taking care of criminal cases carried out by kids. The improvement of training in the field, cops attempt to oblige the lacks that exist in the proper criminal regulation referenced above through the redirection organization

According to Peter C. Kratcoski , there are three kinds of redirection programs that can be executed, specifically:

- a. Implementation of social control (social control direction), in particular policing hand over the culprits in the obligation of management or perception of the local area, with acquiescence to the endorsement or cautioning given. The culprit acknowledges liability regarding his activities and society doesn't anticipate another opportunity for the culprit.
- b. Social administrations by the local area towards entertainers (social help direction), in particular doing capabilities to regulate, meddle, improve and offer types of assistance to culprits and their families. The people group can slow down the culprit's family to give fixes or administrations.
- c. Towards a course of supportive equity or discussion (equilibrium or helpful equity direction), specifically safeguarding the local area, giving open doors to culprits to be straightforwardly dependable to casualties, culprits and the local area. In its execution, all connected gatherings are united to accomplish open doors for activity on the culprits mutually.

Child age definition

Article 27 section (1) of the 1945 Constitution of the Republic of Indonesia expresses that all residents have a similar situation under the steady gaze of the law and the public authority and are obliged to maintain the law and the public authority and there are no exemptions. In any case, extraordinary security applies to youngsters as culprits of wrongdoings fully intent on safeguarding the interests of the kid and the fate of the kid. [2]

Article 330 of the Common Code (KUH Perdata) states that minors are the people who have not arrived at the age of 21 and have not been hitched previously. Intends that as per the

Common Code, a kid is any individual who isn't yet 21 years of age and isn't hitched. In the event that a kid is hitched before the age of 21, separated or left by his significant other before the age of 21, he is as yet viewed as a grown-up, not a kid. In the mean time, in the Crook Code (KUHP), in Article 45, a kid is a not arrived at the characterized as an individual age of 16 (sixteen) years.

Protection of children is described, among others, through article 21 of Law Number 23 of 2002 concerning Child Protection that "child protection is all activities to ensure and protect children and their rights so that they can live, grow and develop and participate optimally in accordance with the dignity and humanity, and receive protection from violence and discrimination.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states definitions of children in conflict with the law, children in conflict with the law, children who are victims of criminal acts, children who are witnesses to criminal acts, and the Juvenile Criminal Justice System. Children in Conflict with the Law” are characterized as youngsters who are 12 (twelve) years of age however not yet 18 (eighteen) years of age who are associated with carrying out a wrongdoing. Kids who are Survivors of Wrongdoing, hereinafter alluded to as "Kid Casualties" are characterized as youngsters younger than 18 (eighteen) years who experience physical, mental as well as financial misfortunes brought about by criminal demonstrations. "Children Who Become Witnesses of Crimes”, hereinafter alluded to as "Witness Youngsters", are kids who are not yet 18 (eighteen) years of age who can give data to the motivations of examination, arraignment and assessment in trials in regard to a crook case that is heard, seen, or potentially experience it yourself.

There are stages in the execution of redirection in the adolescent equity framework, in particular: [3]

- (a) The execution phase of redirection in the examination cycle.
- (b) The execution phase of redirection in the arraignment cycle. At this phase of the indictment, the public examiner should look for redirection no later than 7 days in the wake of getting the case record from the specialist. The redirection cycle will be done for a limit of 30 days. In the redirection cycle, thoughts will be completed.

Based on the scheme/chart above, it can be explained as follows; there is a public report of a crime to the local police station. Since the child case entry stage, investigators have been able to carry out diversion, both investigators as law enforcement, and investigators serving as order keepers, community protectors (non law enforcement sources). 10 Investigators are required to seek diversion for 7 days after the investigation begins. If diversion can be carried out by the parties, then the diversion process is carried out for 30 days in accordance with Article 29 paragraph 2 of the Law on the Juvenile Criminal Justice System No. 11 of 2012. At the investigative level of the diversion process, a deliberation or penal mediation forum is carried out. After all was deemed sufficient, the investigator summoned the parties and carried out the Diversion process. The result achieved is agreed that the offender pays compensation costs.

Redirection is a type of redirecting or saving the treatment of adolescent wrongdoing from the traditional adolescent equity process, towards dealing with kids who are to a greater degree a social help nature, and redirection is done to keep youngster culprits from the adverse consequences of adolescent equity rehearses. The motivation behind the actual redirection is as per the following:[4]

- a. Accomplishing harmony between the person in question and the youngster;
- b) Settling youngster cases outside the legal interaction;
- c) Keep youngsters from hardship of freedom;
- d) Empowering the local area to partake;

e) Impart a feeling of obligation to youngsters

Something else to note is the classification of misconduct that has been committed by the kid. The reason for this classification is to order violations into three (three), to be specific as follows:

- A. Gentle wrongdoing
Acts characterized at the degree of minor violations are as per the following: minor burglary, minor attack without causing injury, or minor harm to property.
- B. Moderate wrongdoing
Activities having a place with the moderate crime percentage are kinds of wrongdoings in which there is a mix of all conditions that are considered for the fittingness of settling it, regardless of whether through redirection.
- C. Serious wrongdoing
For serious wrongdoings, for example, instances of rape and actual attack which brought about serious wounds.

In light of the above classifications, gentle and direct wrongdoing/misconduct can be settled through redirection, while in instances of extreme wrongdoing/misconduct the arrangement can't be through redirection or all in all redirections isn't an answer. In addition to some of the considerations above, there are also conditions for carrying out diversion of naughty children who commit criminal acts, namely:

- a. Kid guilty parties who have carried out a wrongdoing interestingly.
- b. The age of the kid is generally youthful.
- c. Execution of types of redirection programs forced on kids gets the endorsement of the guardians/gatekeepers, as well as the youngster concerned.
- d. Wrongdoings carried out can be minor or serious violations (in specific cases)
- e. The kid has conceded to perpetrating a wrongdoing/wrongdoing.
- f. The people group upholds, and has no protests, the exchange of this assessment.
- g. Assuming the execution of the redirection program comes up short, the wrongdoer is returned for formal assessment.

Diversion Implementation Procedure

The settlement process was carried out by the police in cases.

Crimes committed by children are divided into 2, namely:

- (1) Non-penalty. In this process the Police will offer diversion or peace efforts so that the case does not reach court.
- (2) Penalty. The settlement process carried out by the police is to investigate cases reported to the police after that the police will follow up on the case by summoning the perpetrators to investigate so as to find strong evidence to proceed with the prosecution.

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

- (1) There must be intention or intention from the parties including the community
- (2) 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.
- (3) The form of peace runs in a balanced way so that the victim or his family will no longer sue the perpetrator.
- (4) The form of settlement between the perpetrator and the victim or their family is acceptable to the community

4. Conclusion

1. Diversion laws and regulations are relatively adequate at the law level. However, at the level of operational regulations or technical regulations, there is still a large legal vacuum. This legal vacuum is felt when there are difficulties for law enforcers at the regional level II, starting from the police, prosecutors to courts.
2. There are many obstacles in implementing diversion in the field. These obstacles are multidimensional, both on the side of law enforcement and on the side of society. At the implementation level, diversion is not a simple matter, because many aspects are interconnected with one another, including the matter of the readiness of the parties as well as the means and budget (cost) to carry out the diversion.
3. There are so many solutions to overcome these obstacles and they are interdependent on one another. The solutions start from legislative solutions, facilities, budgets, to human resources that will participate in carrying out the diversion. Moreover, it is assumed that the number of diversion cases in juvenile crimes with prison sentences of under seven years is not small.

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