
The Effectiveness of Settlement of Criminal Acts of Minors Through Non-Litigation Efforts at the Gorontalo District Court

Ismiaty Amiri¹

¹ Faculty of Law, Gorontalo State University, Indonesia. E-mail: diarymiary858@gmail.com

ARTICLE INFO

Keywords :

Crimes Involving children, Non-Litigation, Diversion

How To Cite :

Amiri, I., (2020). The Effectiveness of Settlement of Criminal Acts of Minors Through Non-Litigation Efforts at the Gorontalo District Court. *Estudiante Law Journal*. Vol. 2 (1): 114-122.

DOI :

ABSTRACT

This Reaserch aims at finding out (1) to what extent the efficacy of non-litigation, especially diversion in settlement of crimes involving children, in Gorontalo district court and (2) factors hindering the non-litigation process against crimes involving children in Gorontalo district court. The research method employs a normative and ampirical approach. Finding indicate that the implementation of non-litigation in settlement of crimes involving children in Gorontalo district court is less effective. This is due to the externalities existing on the child who is referred to as a perpetrator or victim's parent/guardian. Hence, a thorough education outreach needs to be conducted to the family and the children regarding the objectives and the benefits of the diversion.

[@2020](#) Amiri, I.

Under the license CC BY-SA 4.0

1. Introduction

A. Background

Children are the most important asset for a country. The future of a nation is seen from the current condition of the children. This can be seen from how the Indonesian state places special attention on children by creating government regulations that specifically regulate everything related to children. For example, Law No. 11 of 2012 specifically regulates the juvenile justice system. Where it is explained in the law starting from the rights of children, as perpetrators of criminal acts, as well as victims. The purpose of this regulation is to prevent children from being labeled as evil and of course to protect children from psychological disorders that will be caused by the completion of criminal acts through formal channels. However, Unfortunately, the existence of law with a very good purpose is not effective in its implementation. This can be seen from the level of completion through diversion efforts so far not more than 50% of the success rate, and it can also be seen from the decreasing interest of the concerned family in carrying out the Diversion process. So with this background, the researcher wants to raise this case with the title "Effectiveness of Settlement of Child Crimes Through Non-Litigation Efforts at the Gorontalo District Court" this is to find out the extent of the effectiveness of these non-litigation efforts. and it can also be seen from the decreasing interest of the family concerned to carry out the Diversion process. So with this background, the researcher wants to raise this case with the title "Effectiveness of Settlement of Child Crimes Through Non-Litigation Efforts at the Gorontalo District Court" this is to find out the extent of the effectiveness of these non-litigation efforts. and it can also be seen from the decreasing interest of the family concerned to carry out the Diversion process. So with this background, the researcher wants to raise this case with the title "Effectiveness of Settlement of Child Crimes Through Non-Litigation Efforts at the Gorontalo District Court" this is to find out the extent of the effectiveness of these non-litigation efforts.

B. Problem Formulation

This study will answer 2 (two) questions as the formulation of the problem, namely first, how is the effectiveness of the resolution of criminal acts of minors through non-litigation efforts in the Gorontalo District Court and second, what are the inhibiting factors for the Gorontalo District Court in carrying out non-litigation efforts. against crimes against minors.

2. Research Method

The type of research used by the author is a type of research that uses empirical and normative legal research. According to legal expert Soerjono Soekanto, empirical legal research is research that refers to empirical facts taken from human behavior, both verbal

behavior obtained from interviews and real behavior that is directly observed.¹ In other words, research is carried out on the actual situation or real conditions that occur among the community with the intent and purpose of knowing and finding the facts and data needed by researchers, then the data that has been collected which then leads to the identification of a problem. which then ultimately refers to problem-solving. Some of the points used in the research method in question are:

2.1 Approach,

The approach used by the researcher is qualitative. Mukti Fajar and Yulianto explain in their book that a qualitative approach is research carried out by analyzing research results that produce analytical descriptive data, or data presented by respondents or sources verbally or in writing and also observing real behavior, which is researched and studied as something Whole one.² The data sources used are primary, secondary, trendier, and library data sources.

2.2 Method of collecting data,

Data collection is done by observation and interviewing certain parties. And the library.

2.3 Data Analysis Techniques

Based on the method used, the data obtained by the researcher to assist in writing this thesis will be analyzed using qualitative juridical analysis or it can be interpreted as a research method that can produce analytical descriptive data, then compiled in a structured and systematic manner and then analyzed qualitatively, intending to answer the main problem in the crime of children. Because it does not use formulas and numbers, then by using deductive and inductive thinking methods, namely the deductive method is a way of thinking that starts with general things and then is specific. While the inductive method is a way of thinking that starts from things that are specific to general things.

3. DISCUSSION

3.1 Effectiveness of Settlement of Criminal Acts of Minors Through Non-Litigation Efforts.

Effectiveness is the smooth or running of a certain process or plan by what is expected. While non-litigation is an effort to settle a case outside the court or without undergoing a formal legal process in court. And Diversion is part of non-litigation efforts. It's just that there are certain conditions to be able to carry out the diversion effort. A diver is not a way or an attempt to reconcile the child as the perpetrator with the victim and family but

¹ Mukti Fajar and Yuliyanto Ahmad "Dualism of Legal Research (Normative and Empirical) Student Library, Second Printing, Yogyakarta, March, 2013, p. 280

² Ibid p. 192

is a form of informal punishment.

In Law No. 11 of 2012 concerning diversion, the diversion process is carried out through deliberation involving the child and the victim's parents/guardians and their parents/guardians, community advisors, and professional social workers based on a Restorative justice approach.³

Investigators, public prosecutors, and judges in conducting diversion must pay attention to:

- 1) Category of crime
- 2) Child's age
- 3) The results of community research from the fathers
- 4) Family and community support

In the theory of Restorative Justice, the process of resolving acts of law violations occur in the following ways:

1. Bring the parties concerned the perpetrator and the victim to a meeting to talk to each other
2. In the meeting, the mediator provides an opportunity for the perpetrators to explain clearly the actions that have been carried out

Restorative justice is a process in which all parties involved in a criminal act together solve the problem of how to deal with the consequences that will occur in the future.⁴

Several stages must be carried out before diversion efforts are carried out at the Gorontalo District Court. Diversion must be carried out first at the investigator level by presenting with the child as the perpetrator/victim with their respective families/guardians, then presenting several related parties, such as community counselors and social workers. If the diversion process at the police level is not successful. Then the case will continue to the prosecutor's level, and the prosecutor's office will continue to seek the Diversion process in resolving the child's case. And then if the efforts have not been successful, the process will be continued in the District Court. Of course, at this stage, the court is still working on a diversion process to resolve the child's case.

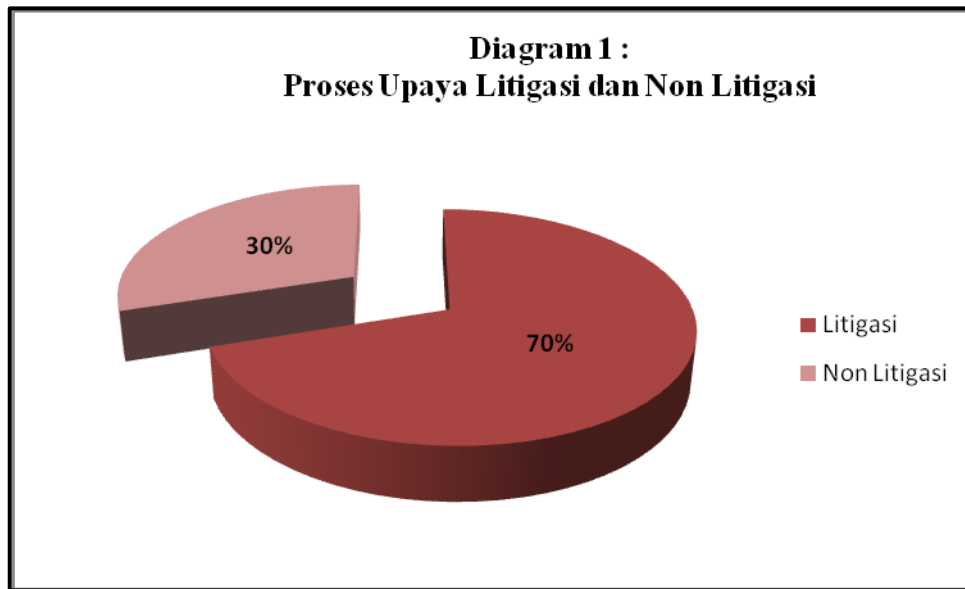
The method of resolving child crimes out of court in recent years has tended to decline, even though the benefits and objectives are very clear not to punish, but to create a sense of responsibility for children who commit crimes, not only that, the purpose of this diversion effort is to protect children. from the negative stigma, namely the bad stamp. The effectiveness of this process can be seen from the data below:

³ Law Number 11 of 2012

⁴ Novi Edyanto, "Restorative Justice To Resolve the Case of a Child Who Facing the Law", *Science Journal Police*, Vol.11, No.3, December 2017, p.41

TABLE 1
CRIMINAL CASE DATA FOR CHILD UNDER THE AGE OF 2019 to 2021

NO	YEAR	NON LITIGATION	LITIGATION
1	2019	-	3
2	2020	-	8
3	2021	6	3

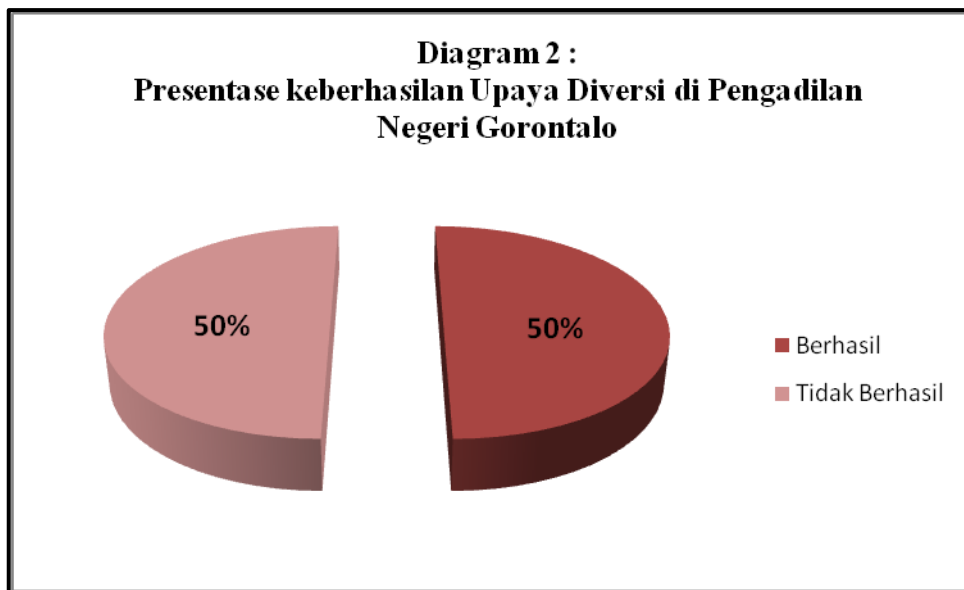


source : SIPP Gorontalo District Court 2019-2021

TABLE II
DATA CASE OF CRIMINAL CHILD UNDER AGE THROUGH NON-LITIGATION EFFORT (DIVERSION) 2021

NO	SUCCEED	NOT SUCCESSFUL

1	NARCOTICS	TRAFFIC
2	THEFT	CHILD PROTECTION
3	PERSECUTION	BREAKING THAT CAUSES LITTLE AND SERIOUS INJURY



source : SIPP Gorontalo District Court 2019-2021

It can be seen in the previous diagram that the completion rate through itigas tends to be higher than the non-litigation effort, and in the second diagram the success rate obtained by using this non-litigation effort is no more than 50% of the success rate. This shows that this non-litigation effort is less effective in its application in the Gorontalo District Court.

3.1 The inhibiting factors experienced by the Gorntaloo District Court in carrying out diversion efforts

In a system to achieve effectiveness, some certainly do not get the results by what has been determined or what has been desired. This happens of course some factors or reasons cause it.

Based on the results of an interview with one of the staff of the general law department at the Gorontalo District Court, Mrs. Femmy, she described several cases that were not

successful in implementing diversion efforts. Each of these factors is different based on the solutions offered by the court to the victim and the family. As well as the losses suffered by the victims and their families.

According to law number 11 of 2012 concerning DIversion, it is stated that the Diversion agreement can take the form of:

- 1) Refund of losses in the event of a victim
- 2) Medical and psychosocial rehabilitation
- 3) Handing back to parents/guardians
- 4) Participation in education or training or LPKS for a maximum of 3 months
- 5) Community Service for a maximum of 3 months
- 6) Peace with or compensation
- 7) Handing back to parents

The factors that led to the unsuccessful efforts based on an interview with one of the staff of the legal information section of the Gorontalo District Court that the researchers managed to collect and summarize there are 2 factors, namely:

- 1) Compensation Factor
- 2) Compensation translated from English is compensation in the form of a monetary award that must be paid to the plaintiff as compensation for loss or injury. To guarantee a verdict, the claimant must show that the breach of duty has caused the anticipated harm.⁵

The economy has always been one of the biggest factors to get things done. This includes resolving legal cases. Compensation is one of the most accurate ways to do Diversion. However, compensation will not be realized if there is no compensation agreement from both parties. Even from the court, to achieve a balanced outcome, it is necessary to seek an agreement between the perpetrator and the victim. Usually, in the agreement offered by the court, the perpetrator's family feels unable to agree to the suggestion of compensation offered, this can affect the failure of the diversion effort.

Desire and satisfaction factor Mrs. Femy as the staff of the information department said that in various matters of criminal cases carried out by children through diversion efforts, satisfaction between the two parties concerned was very necessary to be able to achieve success in implementing the diversion system.

A diversion process will be successful if both parties find an agreement. However, if one of the parties does not agree with the offered agreement, the DIversion process will not be successful. This often happens to the victim's family. Usually, the victim's family does not accept or feels very disadvantaged if only a settlement is carried out through diversion efforts.

It is true that if we talk about desire, satisfaction, or anything related to human emotions, it will never be in sync with legal provisions. Everyone's fair share is different. What is

⁵ English Wikipedia (accessed 02 December 2021 at 01:30)

fair to others is not necessarily fair to others. For example, parents give snacks to 7-year-old and 23-year-old children with the same nominal value of 100 thousand, in general, both are fair with the same nominal value, but not fair from the point of view of each child's needs. A 7-year-old child doesn't understand what needs he needs to be able to spend 100 thousand while for a 23-year-old child, he knows very well what needs he will use with the 100 thousand money.

Therefore, it is very necessary to have a voice of agreement and approval from both parties concerned.

4. CLOSING

4.1 Conclusion

Children are objects or subjects whose position must be considered. That's good in general, especially when dealing with the law. Children are the forerunner of the future, seeing how the future of a country depends on how children are developing at this time. In the legal process, Indonesia has paid attention to this matter, this is shown by the existence of Law No. 23 of 2002 which was later changed to Law No. 35 of 2014 concerning Child Protection, and Law No. 11 of 2012 concerning Juvenile Justice which includes regulates the existence of Diversion efforts to resolve criminal cases committed by children. These efforts, of course, take into account all aspects that can later affect the growth and development and psychology of children.

Non-litigation efforts are an effort or process of resolving legal cases outside the court, diversion is part of non-litigation efforts. However, non-litigation generally resolves criminal cases out of court in this case without following a formal legal process, while Diversion has certain terms and conditions in carrying it out. The conditions for carrying out the diversion effort are as follows:

- 1). The person concerned is a minor or aged at or 12 years old but not yet 18 years old
- 2). Criminal threat under 7 years old
- 3). Not a repetition of a crime

The diversion process is not a way or an effort to achieve peace between parties dealing with the law, but a punishment that is diverted from the formal legal process to the non-formal legal process. To create a sense of responsibility for children who commit criminal cases to avoid being labeled as evil against the child.

4.2 Suggestions

Based on the inhibiting factors that have been collected by the author. Factors that become obstacles are factors that come from external to the Gorontalo District Court. So, the writer's suggestions are:

1. In this effort, it is better for the judge to be able to socialize in more detail and clarity about the holding of such a diversion effort. So that if the family concerned understands very well what the goals and functions of the diversion effort are, then the family can accept the results of the agreement offered by the mediator.
2. If there has been socialization and education of detailed information about the

diversion effort for the party concerned, and if the parties can accept and agree to hold the diversion effort, then the responsible party must be able to carry out strict supervision and guidance control, so that the child who is the perpetrators of criminal acts, will feel continuously monitored and will be more responsible for what has become a mutual agreement between the two parties. This can also be a way so that the parties concerned will develop a sense of trust and a sense of security if the settlement of cases is carried out by diversion.

References

Book:

Sasmita Atma, 1997, *Juvenile Justice in Indonesia* (Bandung: Mandar Maju)

Ali Mahrus, 2015, *the basics of criminal law*, (Jakarta : SinarGrafika)

Nashriana, 2014, *Protection of Criminal Law for Children in Indonesia*, (Jakarta: PT Raja GrafindoPersada).

Syamsudin Azis, 2014, *Special Crimes*, (Jakarta: SinarGrafika).

Mukti Fajar and Ahmad Yulianto, 2013, *Dualism in Legal Research (Normative and Empirical)* (Jogjakarta: Pustaka Pealajar).

Suekanto Soerjono, 1984, *Delivery of Legal Research*, (Jakarta:Universitas Indonesia-UI Press).

Edyanto Novi, 2017, *Restorative Justice to resolve cases of children in conflict with the law*, "Journal of Police Science".

Internet:

<https://www.dosen Pendidikan.co.id/effectiveness-is/> accessed on 22 February 2021 (13:00 WITA)

<http://literaturbook.blogspot.com/2014/12/pengertian-aktifan-dan-landasan.html> accessed 22 February 2021(at 14:00 WITA)