



Revealing Obstacles to the Implementation of Diversion Against Children in Conflict with the Law

Larasati

Faculty of Law, Universitas Negeri Gorontalo, Indonesia. E-mail: larasatilarasi157@gmail.com

Abstract: The purpose of this study was to find out and analyze efforts to implement diversion against children who are in conflict with the law. Children who have violated the rules are classified as criminal acts. The results of this study, researchers found that first, the effectiveness of the implementation of diversion for children who are in conflict with the law has not been effective. This is due to the lack of effort on the part of the perpetrator and the perpetrator's family in seeking diversion, the victim and the victim's family do not want to accept diversion, and the low understanding of members of the Gorontalo City Police on Diversion and the lack of welfare of police members have contributed to the process of implementing diversion to become less effective. Second, obstacles in the implementation of diversion against children in conflict with the law are caused by obstacles from the substance of the law caused by the Juvenile Criminal Court System Law itself, obstacles from the legal structure due to low and lack of human resources from the police, obstacles from the public.

Keywords: Juvenile Crime, Diversion, Restorative Justice.

@2023_Larasati.

Under the license CC BY-SA 4.0

How to cite:

Larasati. "Revealing Obstacles to the Implementation of Diversion Against Children in Conflict with the Law, *Estudiante Law Journal* 5, no. 2 (Juni, 2023): 294-304

1. Introduction

The essence of the constitution is the conception of the state which is the basis and limitation of the constellation of the state administration system.¹ Therefore, in legal politics, legal discovery and new law-making that is in accordance with the goals of the State is a value that must be implemented in order to achieve legal supremacy and justice.

In our daily lives, even in society, in order to make ends meet, there are often crimes and violations committed by certain people and people who threaten some members of society, which in law is known as criminal acts.² At present, not only the crime rate or quantity of crime is increasing but also the type of crime or quality has developed rapidly in Indonesia. Criminal sanctions are seen as an effective solution to tackling this problem. Criminal sanctions are a manifestation of the state's responsibility to maintain security and order as well as efforts to protect the law for its citizens. This is a logical consequence of the concept of forming a state which, according to JJ Rosseau, is based on community agreements. Furthermore, the people agreed to enter into a noble agreement (*modus vivendi*) which was set forth in a basic law in the form of the state constitution.³ Legal protection is really needed because of efforts to integrate various needs in associations so that there are no conflicts between needs and can enjoy all the rights granted by law.⁴

Criminal acts are acts that are prohibited by a rule of law accompanied by threats (sanctions) in the form of certain crimes, for anyone who violates them. It can also be said that a criminal act is one which is prohibited by law and punishable by law, as long as it is remembered that the prohibition is aimed at the act that caused it, while the criminal threat is directed at the person who caused the incident.⁵

Children are part of the younger generation, besides that children are also one of the human resources which is a potential and successor to the ideals of the nation who have a strategic role that has characteristics and characteristics that require guidance and protection in order to guarantee⁶ sustainability of human life and the future of a nation in continuing the ideals of the nation's struggle in order to realize the greatest possible

¹ Ahmad dan Novendri M. Nggilu Fakultas, "Denyut Nadi Amandemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution of the Constitution Through the the Principle of the Guardian of the Constitution." *Jurnal Konstitusi*. 16, No. 4 (2019): 785-808., 791

² Dian Ekawaty Ismail and Mohamad Taufiq Zulfikar Sarson, "Criminology Analysis of Women's as Perpetrators of Domestic Violence Crimes," *Jambura Law Review* 3, no. 1 (2021): 57-76., 58

³ Ramdan Kasim, "Dehumanisasi Pada Penerapan Hukum Pidana Secara Berlebihan (Overspanning van Het Straftrecht)," *Jambura Law Review*. 2, No. 1 (2020): 1-29., 3

⁴ Jufryanto Puluhalawa, Mellisa Towadi, and Vifi Swarianata, "Perlindungan Hukum Situs Bawah Air Leato / Japanese Cargo Wreck The Legal Protection of The Leato Underwater Site" *Jurnal Reformasi Hukum* 24. No. 2 (2020): 189-208., 197

⁵ Hakim Lukman, *Asas-Asas Hukum Pidana Buku Ajar Bagi Mahasiswa* (Jakarta: DEEPUBLISH, 2020).

⁶ Moh. Rizky & Lisnawaty, "Menakar Peran Kepolisian Dalam Mencegah Tindak Pidana Pencabulan Terhadap Anak Di Bawah Umur," *Jurnal Legalitas* 12, no. 12 (2019).

welfare and prosperity for the entire nation's people. Therefore, children as the next generation of the nation must be legally protected so that they can grow and develop according to their rights and obligations as members of society, children of the nation and as citizens.⁷

Legal protection for a nation's society is a benchmark for the nation's civilization because it must be endeavored according to the capabilities of the nation and the nation.⁸ Children who commit crimes can still be held accountable, criminal threats for children who commit acts that are against the law have been regulated in the Criminal Code and Law No. 11 of 2012 concerning the juvenile justice system. Law No. 11 of 2012 concerning the juvenile justice system regulates it through criminal sanctions, there are two criminal sanctions, namely the main punishment and additional punishment. And if it is proven that the child has committed an act that is against the law, then the trial process is in accordance with the provisions that apply in Law no. 11 of 2012 and the sentence is ½ (one-half) of an adult's sentence for life imprisonment and the death penalty does not apply to minors. As for children as criminal offenders if they are not yet 18 years old then diversion is applied or the child who is subject to sanctions is not up to 7 years old then the child is not punished but is given guidance and returned to his parents. However, what happened on the ground was the opposite, many children had to experience life in prison for the actions they had committed.

Crimes committed by children need to receive different treatment and action from crimes committed by adults. The explanation above shows that so far the process of applying diversion to perpetrators of criminal acts of minors has not been effective. Fitriyani Siregar argues that effectiveness comes from the word effective which implies the achievement of success in achieving the goals that have been set. Effectiveness is always related to the relationship between the expected results and the actual results achieved. So legal effectiveness according to the meaning above means that an indicator of effectiveness in the sense of achieving predetermined goals or objectives is a measurement in which a target has been achieved in accordance with what was planned.⁹

According to the Gorontalo City Police, from 2019 to 2021 there were 27 cases of children who were in conflict with the law who were seeking diversion. The data on children who are in conflict with the law include cases of abuse, theft, carrying guns, weapons, and others.

Cases of juvenile offenses handled by the Gorontalo Police, which successfully attempted diversion from the 2019 to 2021 period, recorded only 4 cases, namely; 1). The first case that occurred in 2019 was a case of maltreatment, in which all the suspects were minors,

⁷ Forneman Harefa, "Pertanggungjawaban Pidana Terhadap Anak Sebagai Pelaku Tindak Pidana Perdagangan Anak" (Universitas Medan Area, 2016).

⁸ Krisna, *Hukum Perlindungan Anak* (Yogyakarta: CV.BUDI UTAMA, 2012).

⁹ Nur Fitriyani Siregar, "Efektivitas Hukum," *Al-Razi* 18, no. 2 (2018): 2-3.

this case was successful in diversion, 2). The second case received in 2020 was a case of maltreatment, in which the suspect was a minor, this case was successful in diversion, 3). The third case is a crime of theft, this case is in the same year as the second case in this case there are 2 suspects where the two suspects are school children or minors, this case was successful in diversion, 4). The fourth case is a rape case.

2. Method

This type of research is Empirical legal research. Empirical research is a legal research method that uses empirical facts taken from human behavior, both verbal behavior obtained from interviews and real behavior carried out through direct observation. Empirical legal research starts from written positive legal provisions that apply to legal events. in concerto in society,¹⁰ Data analysis is done by collecting data, qualifying then connecting the theory related to the problem and drawing conclusions to determine the results.

3. Analysis And Discussion

Obstacles in the Implementation of Diversion Against Children in Conflict with the Law

Every year children who are in contact with the law are always increasing, in certain cases, children who are perpetrators are of particular concern to law enforcement officials. Therefore, efforts to protect the law for children who are in conflict with the law need to be continuously pursued in order to maintain the welfare of children, bearing in mind that children are one of the most valuable assets for the progress of a nation in the future. At the Gorontalo City Police, it was found that there had been a decline in complaints regarding cases of children in conflict with the law. However, this cannot be an excuse for not examining in more detail the obstacles to the implementation of diversion.

One of the efforts to provide legal protection for children who are in conflict with the law is to use diversion as mandated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which emphasizes that the child public prosecutor is obliged to seek diversion if the case fulfills the conditions for diversion. . The diversion process as mentioned above must aim at creating restorative justice, both for children and for victims as stated in Article 8 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which states that:¹¹

¹⁰ Kornelius Benuf dan Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020): 27.

¹¹ Lihat UU No. 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak

"The Diversion process is carried out through deliberations involving children from their parents/guardians, victims and/or their parents/guardians, social counselors, and professional social workers based on a restorative justice approach."

Restorative justice is a process of diversion, namely all parties involved in a particular crime jointly overcome problems and create an obligation to make things better by involving victims, children and society in finding solutions to improve, reconcile and reassure not based on retaliation. The concept of Diversion is a new paradigm in law enforcement, even though this concept has long been developed and practiced in the settlement of criminal cases in several countries that adhere to the Common Law System. Because this concept is relatively new, it is not surprising that efforts to apply this concept in criminal law enforcement practices in Indonesia have not been optimal. Here are some of the causes:

Barriers from Legal Substance

The legal substance itself has an important position in the formation of good rules in society which can boost the effectiveness of law enforcement itself. Legal substance is the entire legal rules, legal norms, and legal principles, both written and unwritten, including court decisions. Thus, the substance of the law must be seen as fundamental. The law can be said to be good when the legal rules are clear, the legal norms adopted are pure norms that are adhered to in society so that the law made can accommodate the rights of the community to be regulated, and the legal principles used are appropriate legal principles.

In the observations made by researchers in compiling this research, researchers found that diversion actually already has an international legal framework, there have even been several attempts where Indonesia has tried to implement this in several parts of the Indonesian legal system before the SPPA Law was formed, but its application is still hampered by the fragility of implementation and law enforcement. Several forms of legal products that address children in conflict with the law are as follows:

Article 37 letter b of the Convention on the Rights of the Child states that no child will lose their right to freedom illegally or arbitrarily. If a child is arrested, detained or punished, this must be done in accordance with applicable law, and only as a last resort and for the shortest possible time.¹²

Article 17 of the UN Regulations for the Protection of children who have been deprived of their freedom which emphasizes that a child who is in conflict with the law must be treated innocent until a court decision is handed down. Detention prior to trial should be

¹² Lihat Pasal 37 huruf b Konvensi Hak - Hak Anak

avoided as much as possible unless circumstances are unavoidable. As well as legal remedies must prioritize alternative solutions.¹³

Point 11 in the UN Standard Minimum Regulations concerning the Administration of Justice for Juveniles emphasizes the priority of implementing diversion as the main process of resolving children's problems in conflict with the law.¹⁴

Article 66 paragraph 4 of Law Number 39 of 1999 concerning Human Rights stipulates that the arrest, detention or imprisonment of children may only be carried out in accordance with applicable law and can only be carried out as a last resort.¹⁵

Article 16 paragraph 3 of Law Number 23 of 2002 concerning Child Protection which reiterates that the arrest, detention or imprisonment of children can only be carried out as a last resort.¹⁶

Reflecting on the rules that the researchers have attached above, it can be seen that the government's efforts to form alternative settlement methods to accommodate children who are in conflict with the law. Furthermore, in the SPPA Law, actually the process of handling diversion has been tried to be arranged neatly. However, the researcher found several points in the diversion articles which, according to the author, caused the implementation of diversion to be less effective, namely:

Reflecting on the rules that the researchers have attached above, it can be seen that the government's efforts to form alternative settlement methods to accommodate children who are in conflict with the law. Furthermore, in the SPPA Law, actually the process of handling diversion has been tried to be arranged neatly. However, the researcher found several points in the diversion articles which, according to the authors, caused the implementation of diversion to be less effective, namely: the interests of the victim; Child welfare and responsibility; Avoidance of negative stigma; Avoidance of retaliation; Community harmony; and Decency, decency, and public order.

Based on the above article, the author sees that the diversion process is focused on the "interests of the victim". It can be understood that as a victim in a criminal case, of course, his interests need to be protected. However, in the context of diversion where an offender is a "child", then of course the treatment must be different from that of an adult offender. So that even though he is a perpetrator of a crime but he is still a "child" his interests must be safeguarded, so the "interests of child offenders" must also be included in this juridical product.

¹³ Lihat Pasal 17 Peraturan PBB untuk Perlindungan anak yang dicabut kebebasannya

¹⁴ Lihat Poin 11 dalam Peraturan - Peraturan Minimum Standar PBB mengenai Administrasi Peradilan Bagi Anak

¹⁵ Lihat Pasal 66 ayat 4 Undang - Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia

¹⁶ Lihat Pasal 16 ayat 3 Undang - Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak

Article 9 paragraph (1) states that investigators, public prosecutors and judges in carrying out diversion must consider: The category of crime; child's age; Results of community research from Bapas; and Support of family and community environment.

Based on the article above, the authors found one of the causes of the failure of diversion in the legal substance of the SPPA Law. In point d, support from the family and community environment is one of the 4 things considered. Meanwhile, the family and community environment is influenced by the level of knowledge, culture, religion, social position, and many other things. This of course can be a serious obstacle to the implementation of diversion, an example of this the researchers found in the Gorontalo City Police. At the researcher's research location, the level of public knowledge hinders the process of carrying out diversion, the community still thinks that when someone commits a crime, it must be resolved in court (especially for cases considered to violate and disturb public order).

Based on the above, the researcher is of the opinion that the substance contained in the regulations related to the handling of children in conflict with the law itself, namely the Law on the Juvenile Criminal Court System also contributes to providing obstacles to the process of implementing diversion in the field for law enforcement officials . Furthermore, according to the researchers, they feel that this law can still be supplemented with adequate derivative regulations to provide a more effective diversion implementation method.

Obstacles from the Legal Structure

It is understood that the legal structure is the whole of existing legal institutions and their apparatus, including among others the police and their police, the prosecutors and their prosecutors, the courts and their judges, and others.

Sociologically, every law enforcer has a position and role. Position is a certain position in the social structure. The position contains certain rights and obligations. Rights and obligations are roles. Therefore, someone who has a certain position is called a role holder. A certain role according to researchers can be translated into the following elements: ideal role, proper role, self-considered role, role that should be carried out.

According to researchers, the ideal role and what should come from other parties, while the role that is considered by oneself and the role that is actually carried out comes from oneself. The issue of roles is considered important because discussions about law enforcers are actually more focused on discretion. Discretion concerns making decisions that are not strictly bound by law, in which personal judgment also plays a role.

Furthermore, the researcher sees that the law itself still has some deficiencies in its structure, so it needs direction to overcome these deficiencies which is based on the following reasons: There is no legislation that is so complete that it can regulate all human

behavior; There are delays in adapting legislation to developments in society, resulting in uncertainty; Lack of funds to implement legislation as desired by legislators; and There are individual cases that require special handling.

Based on the above, the researcher feels that the use of a role perspective is considered to have certain advantages as follows: Based on the above, the researcher feels that the use of a role perspective is considered to have certain advantages as follows: The main focus is on community dynamics; It is easier to make a projection because it focuses on the procedural aspects; Pay more attention to the implementation of rights and obligations and responsibilities.

The proper role of certain law enforcers has been formulated in several laws and policies of the respective institutions. Actually, the weaknesses of existing regulations can be overcome if there is concern and sensitivity from law enforcement officials in handling children who are in conflict with the law. This happens because they have the discretion to provide a better alternative than prison to protect the future interests of the child. But unfortunately, more law enforcement officers have a legalistic paradigm which is only guided by written law and is on the grounds that they are trained for it. In fact, the law itself also provides flexibility in handling children who are in conflict with the law.

Furthermore, apart from the two reasons that the researchers have described above, obstacles also come from the police and the community. The following are the obstacles originating from police and community factors:

Low Understanding of Gorontalo City Police Members Regarding Diversion. Talking about police competence, it cannot be separated from the human resources (HR) of the police itself. Based on the results of the researcher's interview with Bripka Faisal Karim, SH, one of the PPA Investigators from the Gorontalo City Police said that:¹⁷

"One of the obstacles faced by the Donggala Resort Police in carrying out the diversion approach is that many law enforcers still have a legalistic, rigid paradigm, and lack understanding of handling ABH. contextually what is regulated by law is what they apply."

In the process of law enforcement through the Diversion approach, an understanding of legal knowledge is very important. This is because the lack of understanding of the science of law will lead to paradoxes of law enforcement. This understanding is crucial, because in diversion, the perpetrators are children, the approach to children must certainly be differentiated from adults. Children need a more humane and comfortable approach. Children are creatures that can be easily influenced by factors outside of themselves, this is because children still have a weaker identity and a less solid stance compared to adults. In this regard, of course the police as the party that will carry out

¹⁷ Hasil wawancara dengan Bripka Faisal Karim, SH, selaku penyidik unit PPA Polres Gorontalo Kota

and implement the diversion process certainly need to have qualified qualifications. Therefore, the researcher will describe in tabular form related to the educational background of the investigators at the Gorontalo City Police PPA Unit as follows:

Table 2
State of the Number of Investigators of the PPA Unit of the Gorontalo City Police

Education Male - Female	Amount
SMA	4 2 6
Diplomas	- - -
Undergraduate	2 1 3
Postgraduate	- - -
Total	6 3 9

Source: Gorontalo City Police PPA Unit

The education level qualifications of investigators at the Gorontalo City Police PPA unit are shown in table 2 above where the majority of investigators still have high school education, only 3 have a bachelor's level of education (S1), no police officers have a diploma level of education (D3), none members who have a postgraduate level of education. Seeing the condition of the education level of investigators at the Gorontalo City Police PPA Unit above, it can be said that it is relatively low and this can certainly affect the work competence of police members, especially investigators, in carrying out their duties. With low education, it is difficult to expect to be able to develop and implement the concept of diversion against children who are in conflict with the law.

Lack of Facilities and Infrastructure, Based on the results of research by researchers at the Gorontalo City Police, that there is no special room for diversion meetings at the Gorontalo City Police, for diversion meetings they still use the investigation room at the Gorontalo City Police Criminal Investigation Unit. Diversion is held in which many parties are involved in the process. As the results of the researcher's interview with Faisal Karim as an investigator at the PPA Unit of the Donggala Police who said that:¹⁸

"There is not yet a special room for the diversion meeting at the Gorontalo City Police PPA Unit, even when the diversion meeting process is held, sometimes some of the parties involved stand up because there is not enough room to accommodate the parties present"

¹⁸ Hasil wawancara dengan Bripka Faisal Karim, SH, selaku penyidik dalam Unit PPA Polres Gorontalo Kota

In addition to the absence of room for diversion meetings, detainees for cases of children in conflict with the law are also not available so child detainees are combined with adult detainees. does not provide a negative stigma for children who are in conflict with the law.

Barriers From Society

The Gorontalo Kota Polres is located in Gorontalo City which is the capital city of Gorontalo Province. Even though they are in the city, there are still many people who still think that a crime committed by someone must and can only be processed through legal channels, more precisely through the courts. This understanding carries over to criminal acts committed by children, where the majority of the people of Gorontalo City still think that this matter must still be resolved through the courts. This is what is still an obstacle in this diversion process, the majority of people still do not know about the diversion approach to solving cases of children in conflict with the law as mandated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.¹⁹

"The diversion system as an alternative to solving juvenile criminal cases should be socialized more by the government and the police to the community, because the reality that occurs sometimes is that the settlement of juvenile criminal cases using the diversion system is constrained by the public's understanding that only legal channels can provide justice for the diversion mechanism. didn't come to an agreement."

Based on the results of the interviews above, that the community's understanding of diversion must be carried out as soon as possible by the government and the police, this understanding can be carried out by outreach to the community, especially the people in Gorontalo City, the researcher needs to emphasize that this diversion is not only intended for certain groups, but for all children in conflict with the law.

4. Conclusion

Based on the results of the analysis and discussion described above, it can be concluded that Obstacles in the implementation of diversion for children in conflict with the law are caused by; Obstacles come from legal substance because the Law on the Juvenile Criminal Court System has not yet provided a clear alternative mechanism for implementing diversion to serve as a guideline for law enforcement officials; Obstacles from the legal structure due to weaknesses in existing regulations; Obstacles from the police were due to the relatively low educational level of investigators at the Gorontalo City Police PPA Unit. Obstacles on the part of the community are caused by the majority of people still not knowing about the diversion approach to solving cases of children in conflict with

¹⁹ Hasil wawancara dengan Bripka Faisal Karim, SH, selaku penyidik dalam Unit PPA Polres Gorontalo Kota

the law. Obstacles from facilities and infrastructure are caused by a lack of facilities and infrastructure at the Gorontalo City Police.

References:

Book :

Hakim Lukman. *Asas-Asas Hukum Pidana Buku Ajar Bagi Mahasiswa*. Jakarta: DEEPUBLISH, 2020.

Krisna. *Hukum Perlindungan Anak*. Yogyakarta: CV.BUDI UTAMA, 2012.

Journal Article:

Ahmad dan Novendri M. Nggilu. "Denyut Nadi Amandemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution of the Constitution Through the the Principle of the Guardian of the Constitution." *Jurnal Konstitusi*. 16, no. 4 (2019): 785-808.

Ismail, Dian Ekawaty, and Mohamad Taufiq Zulfikar Sarson. "Criminology Analysis of Women's as Perpetrators of Domestic Violence Crimes." *Jambura Law Review*. 3, no. 1 (2021): 57-76. <https://doi.org/10.33756/jlr.v3i0.10984>.

Kasim, Ramdan. "Dehumanisasi Pada Penerapan Hukum Pidana Secara Berlebihan (Overspanning van Het Strafrecht)." *Jambura Law Review* 2, no. 1 (2020): 1-29. <https://doi.org/10.33756/jalrev.v2i1.2402>.

Kornelius Benuf dan Muhamad Azhar. "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer." *Gema Keadilan* 7, no. 1 (2020): 27.

Muhtar, Mohamad Hidayat. "Model Politik Hukum Pemberantasan Korupsi Di Indonesia Dalam Rangka Harmonisasi Lembaga Penegak Hukum." *Jambura Law Review* 1, no. 1 (2019): 68-93. <https://doi.org/10.33756/jalrev.v1i1.1988>.

Nur Fitryani Siregar. "Efektivitas Hukum." *Al-Razi* 18, no. 2 (2018): 2-3.

Puluhulawa, Jufryanto, Mellisa Towadi, and Vifi Swarianata. "Perlindungan Hukum Situs Bawah Air Leato / Japanese Cargo Wreck The Legal Protection of The Leato Underwater Site / Japanese Cargo Wreck Abstract Laut Mempunyai Makna Besar Bagi Indonesia , Sebagaimana Dijelaskan Shanti Dwi Kartika Bahwasannya : " Laut Se." *Jurnal Reformasi Hukum*. 24, no. 2 (2020): 189-208

Thesis :

Forneman Harefa. "Pertanggungjawaban Pidana Terhadap Anak Sebagai Pelaku Tindak Pidana Perdagangan Anak." Universitas Medan Area, 2016.