

Implementation of Diversion as a Form of Mediation in Resolving Child Crimes at Medan Police Headquarters

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Abstract

Polrestabes Medan, as one of the law enforcement agencies in Indonesia, plays a crucial role in the implementation of diversion as a mediation mechanism for resolving child criminal acts. The implementation of diversion in the jurisdiction of Polrestabes Medan not only functions as an alternative solution in resolving cases, but also as a tool to provide effective guidance to children involved in criminal acts, while maintaining a balance between justice for victims and rehabilitation for child perpetrators.

The purpose of this study is to find out about the procedure for implementing diversion as a form of mediation in resolving child criminal acts at the Medan Police Headquarters and the application of diversion in the jurisdiction of the Medan Police Headquarters. The approach method used in this study is the juridical-empirical method. Juridical-empirical research is a legal research on the application or implementation of normative legal provisions directly in every specific legal event that occurs in society.

From this study, it can be concluded that Diversion is an effort to divert the settlement of children's cases from the criminal justice process to a path outside the criminal justice system through agreement and peace between the child perpetrator and the victim, with the aim of prioritizing the best interests of the child. This diversion process is carried out starting from the investigation stage, prosecution, to examination in court, with the final result being a consensus stated in the court's decision. The implementation of diversion in the jurisdiction of the Medan Police is implemented comprehensively with more priority to resolve children's cases outside the criminal justice system, with an emphasis on deliberation and agreement between the child perpetrator and the victim. The approach used by the police at the Medan Police also emphasizes a friendly and non-violent attitude, in order to create a conducive environment for children during the process.

Keywords: *Diversion, Mediation, Child Crime, Medan Police*

INTRODUCTION

Child protection, especially in the criminal justice system, is an issue that continues to be a concern in various countries, including Indonesia. Children who come into conflict with the law, either as perpetrators or victims, often face the risk of stigmatization, loss of their rights, and deep psychological harm if not handled with the right approach.

In order to protect children's rights and minimize the negative impacts of the judicial process, the Indonesian government through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) has mandated the implementation of diversion as a form of resolving criminal cases involving children.

Children are a group that is very vulnerable to sexual violence because children are always weak or helpless and very dependent on the adults around them. This makes children helpless when they threaten not to tell what happened. Sexual violence against children is a moral and legal violation as well as physical and psychological harm (Fitria Ramadhani et al, 2022).

In an effort to protect children's rights and minimize the negative impacts arising from the formal justice process, the Indonesian government has established an important policy through the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). This law emphasizes the implementation of diversion as one of the main strategies in resolving criminal cases involving children.

Diversion, a form of mediation and settlement outside the court process, is designed to prevent children from judicial procedures that can have a negative impact on their psychological and social development. With this approach, it is hoped that children can overcome their problems in a more restorative way, which focuses on recovery, education, and social reintegration, rather than just giving punishment (Hartono and Widiastuti, 2023).

The settlement of juvenile criminal cases through diversion can also be described as a system when the facilitator regulates the settlement process of the conflicting parties to achieve a satisfactory settlement as restorative justice. The tradition and mechanism of consensus are real manifestations in strengthening the law

that has lived in society since ancient times (Chairuni Nasution, 2023).

Not only does it play a role in preventing children from criminal proceedings, Diversion also functions as an important effort in fostering legal awareness among children and their families. The author emphasizes that the success of diversion is highly dependent on the quality of the mediation carried out and the active and constructive involvement of all parties in the process. This shows that the implementation of diversion must be supported by competent human resources and adequate facilities to achieve the desired results (Sudirman and Hasanah, 2023).

The Medan City Police (Polrestabes), as one of the police institutions that has a major responsibility in handling various criminal cases involving children, has taken proactive steps by implementing a diversion mechanism in handling these cases. The implementation of this diversion not only reflects the Medan Police's commitment to protecting children's rights, but also illustrates an effort to adopt a more humanistic and restorative approach.

Through diversion, Polrestabes Medan seeks to resolve juvenile criminal cases outside the formal justice system, with the aim of preventing children from being entangled in legal processes that can have long-term negative impacts. Providing an approach that focuses on recovery, education, and social reintegration, which are crucial aspects in ensuring that juvenile perpetrators of criminal acts can return to society in a positive and productive way (Pratama and Rahayu, 2023).

Based on the description above, the author formulates the problem being analyzed, namely, how is the procedure for implementing diversion as a form of mediation in resolving juvenile crimes and how is the implementation of diversion in the jurisdiction of the Medan Police.

This study aims to gain a deeper understanding of the implementation procedure of diversion as a form of mediation in resolving child criminal acts at the Medan Police and the application of diversion in the jurisdiction of the Medan Police. This study is expected to provide an important contribution to the development of more child-friendly law enforcement policies and practices.

METHOD

Research Material is a method or effort to carry out something by using the mind carefully to achieve a goal by searching, writing, compiling, formulating, and analyzing until compiling a report ((Zainuddin Ali, 2014). Empirical legal research is research or observation in the field or field research where the research focuses on collecting empirical data in the field (Mukti and Yulianto, 2010).

Analysis which is carried out in the field on each problem found has a qualitative nature from a search or research which produces descriptive data, namely in writing or orally from individuals or behavior.

The approach method used in this study is the juridical-empirical method. Juridical-empirical research is a legal research on the application or implementation of normative legal provisions directly in every specific legal event that occurs in society (Abdulkadir, 2004).

In the juridical-empirical approach that examines the Implementation of Law Number 11 of 2012 concerning Juvenile Justice Article 1 number 7 regulates Diversion which explains the transfer of child case resolution from the criminal justice process to a process outside the criminal justice process, where in its implementation whether it has been appropriate or not in the jurisdiction of the Medan Police. Because the researcher wants to find an application of law related to problems concerning children as perpetrators of criminal acts who undergo the Diversion process as an alternative resolution of criminal acts against children.

RESULTS AND DISCUSSION

Procedures for Implementing Diversion as a Form of Mediation in Resolving Child Criminal Offenses

For children under 8 (eight) years of age, investigators have the duty and authority to conduct an examination to determine whether the child can still be fostered or not. If the results of the examination indicate that the child can still be fostered, the investigator will return the child to the parent or foster guardian. However, if the child is considered no longer fostered, the investigator will hand him/her over to the Department of Social Affairs after considering the recommendations of the community counselor.

Since the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, there have been significant changes in the criminal justice system previously regulated by the Criminal Procedure Code, one of which is the implementation of the diversion system in juvenile courts. Diversion is an action or treatment to divert or place juvenile offenders out of the criminal justice system (Fatmawati et al, 2016).

In carrying out this procedure, several important stages must be met, such as deliberation between the related parties and the agreement of the victim's and perpetrator's families. Diversion must be carried out by

considering the best interests of the child, the principle of restorative justice, and without ignoring the rights of the victim (Eva Achjani, 2004).

However, the implementation of diversion in the field often faces various complex challenges. One of them is the gap in understanding among law enforcers and related parties regarding the concept and purpose of diversion itself. These differences in interpretation and understanding can result in inconsistencies in the application of the law, where some parties may still tend to prioritize a retributive approach compared to the restorative approach mandated by the Law.

The context of criminal procedure law emphasizes that the activity of examining criminal acts carried out by the police, prosecutors, judges and other officials must prioritize the interests of the child or see what criteria are best for the welfare of the child concerned without reducing attention to the interests of society (Sudarsono, 2004). Meanwhile, from the perspective of criminal science, it is believed that the imposition of criminal penalties on delinquent children tends to be detrimental to the development of the child's soul in the future (Paulus Hadisuprpto, 2003).

This detrimental tendency is the result of the effects of criminal penalties, especially imprisonment, which is in the form of stigma (evil label). The task of the public prosecutor in court is to prove his charges by providing supporting evidence in the prosecution of the case. The public prosecutor must be active, corrective and professional in the evidentiary process (Lidya Rahmadani et al, 2023).

At every stage of the examination, whether during investigation, prosecution, or in court, the principles of Restorative Justice and Diversion are applied. Restorative Justice is a method of resolving criminal cases involving perpetrators, victims, their families, and other relevant parties to jointly seek a fair solution by emphasizing the restoration of the initial condition rather than retaliation. The principle of restorative justice focuses on improving or restoring the condition of children who are considered naughty due to juvenile delinquency (Kartini (Kartini, 2003).

According to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Diversion is the process of transferring the resolution of Juvenile cases from the criminal justice system to a system outside the criminal justice system with the aim of:

- 1) Achieving peace between victims and children;
- 2) Resolving children's cases outside the judicial process;
- 3) Protecting children from deprivation of liberty;
- 4) Encourage the community to participate;
- 5) Instilling a sense of responsibility in children.

Diversion is the right and obligation of law enforcement officers, including investigators, public prosecutors, and judges, to implement diversion in accordance with the terms and conditions stipulated in Article 7 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. This is also stipulated in Article 3 of Supreme Court Regulation Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System.

Regarding the requirements for implementing diversion, the Supreme Court has attempted to clarify the provisions in Article 7 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System through Supreme Court Regulation Number 4 of 2014 concerning Guidelines for the Implementation of Diversion for Children. Based on Article 7 paragraph (2), there are two main requirements for submitting a diversion, namely if the crime threatened against the child has a criminal threat of less than 7 years and if the crime is not a repetition.

The provisions refer to criminal law for criminal threats under 7 years, while the requirement of "not repeating the crime" includes crimes committed by children, both similar and different crimes, including crimes that have previously been resolved through diversion. The obligation to seek diversion from the start of investigation, prosecution and examination of child cases in the district court, with the following requirements, is threatened with imprisonment of less than 7 (seven) years, which is not a repetition of the crime (Syaiful Asmi, et al 2022).

Based on the explanation in the Supreme Court Regulation regarding Diversion in Article 7 paragraph (2) of Law Number 11 of 2012, the threat of a criminal sentence of less than 7 years referring to criminal law is the basis for implementing diversion, taking into account the type and level of seriousness of the crime committed. The legal principle adopted by Article 3 of the Supreme Court Regulation stipulates that the existence of replacement money is related to criminal provisions that determine whether a case meets or

does not meet the requirements for diversion, depending on the model of charges filed by the public prosecutor against the child.

Article 10 paragraph (1) of Law Number 11 of 2012 concerning the Child Criminal Justice System explains that diversion can be carried out to resolve criminal acts such as violations, minor crimes, crimes without victims, or losses that do not exceed the provincial minimum wage. This process involves investigators, perpetrators, and/or their families, as well as community counselors and community leaders.

The article explicitly states that victimless crimes can be addressed directly by investigators through diversion, with the involvement of community counselors and community leaders. However, even though the crime does not have a direct victim, investigators cannot implement diversion according to the understanding in Article 7 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In addition, the implementation of Article 3 of the Diversion Regulation is not entirely in line with the objectives of diversion as regulated in Article 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

The application of the diversion principle referring to the Supreme Court Regulation and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System has created legal uncertainty and is contrary to the objectives of diversion as stipulated in the law. In accordance with Article 3 of the Supreme Court Regulation concerning guidelines for the implementation of diversion and Law Number 11 of 2012, juvenile judges are required to seek diversion if a child is charged with a crime.

In this case, when the judge is faced with a case of a child in conflict with the law, and one of the charges involves a threat of imprisonment of less than 7 years, the judge must first attempt diversion without considering subjective factors towards the child. On the other hand, it should not happen that in one case diversion is carried out while in another case the child in conflict with the law is not given the opportunity to follow the diversion process.

According to Supreme Court Regulation Number 4 of 2014, diversion deliberation is a negotiation process involving children and parents or guardians, victims and/or their parents/guardians, community counselors, professional social workers, and other related parties, with the aim of reaching an agreement through a restorative justice approach.

The facilitator in the process is a judge appointed by the Chief Justice to handle the child's case. Diversion is an alternative to divert the long and rigid legal process in resolving children's cases. Mediation, dialogue, or deliberation are integral parts of diversion to achieve restorative justice.

Punishment of perpetrators of child crimes does not always guarantee justice for victims, because there are still unresolved problems even though the perpetrators have been punished. Considering the principles of child protection, especially those emphasizing the best interests of the child, a process of resolving children's cases outside the criminal mechanism is needed, known as diversion. The punishment system is not an ideal solution to solving children's problems, because it can often lead to violations of children's rights.

For this reason, a procedure and mechanism are needed in the system that can accommodate the resolution of cases, one of which is through a restorative justice approach. This requires legal reform that not only changes the law, but also modifies the existing criminal justice system, so that all legal objectives can be achieved. One form of this restorative justice mechanism is dialogue, which in Indonesian society is known as "musyawarah untuk mufakat". Thus, diversion, especially through the concept of restorative justice, is an important consideration in resolving criminal cases involving children.

If the diversion agreement is not fully implemented by the parties based on the report from the Community Guidance of the Correctional Center, the judge will continue the examination of the case in accordance with the Criminal Procedure Code for Juvenile Justice. In making his decision, the judge must consider the partial implementation of the diversion agreement, as regulated in Article 2 of Perma No. 14 of 2014.

The procedure for implementing diversion as a form of mediation in resolving juvenile crimes at the Medan Police Headquarters in 2024 follows the guidelines set by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) and related regulations. The following are the general stages in implementing diversion at the Medan Police Headquarters:

- 1) Identification of Cases Eligible for Diversion
 - a. Initial Assessment by Investigators: When a child is suspected of committing a crime, investigators conduct an initial assessment to determine whether the case qualifies for diversion. Eligible cases are crimes that carry a sentence of less than 7 years and are not a repeat of serious crimes.

- 2) Diversion Preparation
 - a. Notification to Related Parties: The investigator informs the child, parents/guardians, victims, and other related parties about the diversion implementation plan. They are given an explanation of the purpose of diversion, its procedures, and the rights of each party.
 - b. Appointment of Mediator: A mediator, who may be a social worker, psychologist, or competent community leader, is appointed to facilitate the mediation process.
- 3) Implementation of Diversion Mediation
 - a. Mediation Meeting: A mediation meeting is held with the presence of the child perpetrator, parent/guardian, victim, and other relevant parties. The mediator leads this meeting with the aim of reaching an agreement that is fair to all parties.
 - b. Diversion Agreement: If mediation is successful, all parties agree on steps the child must take, such as an apology, compensation to the victim, or participation in a rehabilitation program.
- 4) Documentation and Validation of Agreement
 - a. Drafting of Agreement: Agreements reached during mediation are put into writing and signed by all parties involved.
 - b. Ratification by Investigator: The agreement is then submitted to the investigator for approval. If this agreement meets legal requirements, investigators will ratify it.
- 5) Implementation of the Diversion Agreement
 - a. Implementation Monitoring: The implementation of the diversion agreement is monitored by authorities, such as investigators or social workers. This monitoring ensures that the child fulfills the agreed obligations.
 - b. Implementation Report: After the agreement is implemented, the investigator or mediator makes a final report on the implementation of the diversion and its results.
- 6) Case Closing
 - a. Termination of Legal Process: If the diversion agreement is implemented properly, the legal process against the child perpetrator will be terminated, and the case will be considered closed.
- 7) Alternatives if Diversion Fails
 - a. Failure of Diversion: If diversion fails (e.g., no agreement or agreement not implemented), the case will proceed to formal judicial proceedings, in accordance with applicable provisions.

This procedure is designed to provide a restorative and educational solution for child perpetrators of criminal acts, while also providing justice for victims without having to go through a lengthy judicial process that has the potential to cause stigma for children.

Implementation of Diversion in the Medan Police Jurisdiction

In the implementation of diversion, which must be carried out at the investigation stage, it applies to criminal acts committed by children aged between 12 and 18 years. This rule shows that the lighter the criminal threat, the higher the priority for carrying out diversion. The age of the child is an important factor in determining the priority, where the younger the child, the higher the priority for implementing diversion.

If a diversion agreement is reached, the consent of the victim or the victim's family is required. In accordance with Article 9 paragraph (2) in the juvenile criminal justice system, a diversion agreement must be approved by the victim and/or the victim's family, as well as the child and his/her family, except for minor crimes, violations, crimes without victims, or crimes with losses that do not exceed the provincial minimum wage.

The four things above are alternatives, which means that if one of the criteria is met, then the diversion agreement does not require approval. If the diversion agreement is reached based on these criteria, then the agreement can be made by the investigator together with the perpetrator or his family, community counselor, and can also involve community leaders.

Diversion Agreement between both parties, namely the child as the perpetrator and the victim or his/her family, in addition to being accompanied by the child's parents/guardians, community counselors, and professional social workers, at the investigation level can also involve community leaders. The results of this agreement are then stated in a diversion agreement document signed by all parties involved. Furthermore, the results of the diversion agreement are submitted to the direct superior at the police examination level, namely the Head of the Women and Children Protection Unit (PPA) of the Medan Police within 3 (three) days from the time the agreement is reached.

After that, the document is submitted to the Head of the Medan District Court or in the jurisdiction of the court where the child's criminal act occurred to obtain a determination from the Head of the District Court regarding the results of the diversion. The determination must be issued within a maximum of 3 (three) days, and submitted to the community guidance counselor, investigator, prosecutor, and judge. After receiving the determination letter, the police investigator will issue a letter of determination to terminate the investigation. However, if no agreement is reached in the process of implementing the diversion, the child criminal justice process will continue to the next stage.

Supervision of the diversion process is the responsibility of the direct superior of the investigator at the PPA unit of the Medan Police. During the diversion process until the implementation of the agreement, the community counselor is required to accompany, provide guidance, and supervise. If the diversion agreement is not implemented within the specified time, the community counselor must immediately report this to the direct superior of the child investigator at the local police. The superior is then required to follow up on the report within a maximum of 7 (seven) days after receiving the report.

Based on the results of interviews at the Medan Police, the police in handling cases of Children in Conflict with the Law prioritize a coaching approach first, especially if the perpetrator can still be coached. In carrying out their duties, the police arrest the perpetrator and provide advice without using violence, but with a friendly and non-intimidating attitude.

Based on interviews with the Medan Police PPA Unit, the police in handling juvenile delinquency take a non-violent coaching and guidance approach, with a friendly attitude to avoid children's fear of the police. The police put forward the motto "We Are Ready to Serve You," which means they are ready to serve regardless of social status, age, or other backgrounds.

If the police catch a child who is repeatedly committing mischief and is not aware of his actions, the police will take firm steps in accordance with applicable provisions, in the hope that the child can realize his behavior. Siti Rohana, a member of the PPA Unit of the Medan Police, stated that in conducting examinations and investigations, the police consider whether the child's actions are classified as minor or serious.

If the investigator considers that the child's actions are classified as minor, the investigator has the authority to conduct deponeering, which means not continuing the legal process and closing the case. However, if the child's actions are considered serious, the investigator will submit the case file to the public prosecutor for further processing at the prosecution level.

Law Number 23 of 2002 concerning child protection further accommodates special protection for children in conflict with the law. Article 64 paragraph (2) stipulates that special protection for children in conflict with the law is implemented through:

1. Humane Treatment of Children in Accordance with the Dignity and Rights of Children.
2. Provision of Special Child Companion Officers from an Early Age.
3. Provision of Special Facilities and Infrastructure.
4. Imposition of Appropriate Sanctions in the Best Interests of the Child.
5. Continuous Monitoring and Recording of the Development of Children in Conflict with the Law.
6. Provision of Guarantees to Maintain Relationships with Parents or Family, and
7. Protection From Identity Disclosure Through Mass Media And To Avoid Labeling.

From the explanation above, if law enforcers do not have a child rights perspective, then it could be that the rights that should be inherent in a child are not obtained. Because this depends entirely on law enforcers, whereas in fact human rights are inherent in every human being because humans are not given and depend on an institution. The next critical point is medical assistance and psychological and social rehabilitation assistance that should be applied to all children who are in conflict with the law.

CONCLUSION

Diversion is an effort to divert the settlement of children's cases from the criminal justice process to a path outside the criminal justice system through an agreement and peace between the child perpetrator and the victim, with the aim of prioritizing the best interests of the child. Diversion applies to children aged between twelve and eighteen years, or who are already twelve years old but have not reached eighteen years of age even though they have been married, who are suspected of committing a crime. This diversion process is carried out starting from the investigation stage, prosecution, to examination in court, with the final result being a consensus stated in the court's decision.

Diversion in the jurisdiction of the Medan Police is implemented comprehensively by involving various parties, such as parents, community counselors, social workers, and community leaders. Diversion is prioritized to resolve child cases outside the criminal justice system, with an emphasis on deliberation and agreement between the child perpetrator and victim. This process aims to protect the best interests of the child, prevent the negative impacts of the formal justice process, and ensure that the child continues to receive appropriate guidance. The implementation of diversion starts from the investigation stage to the trial, with the final result being an agreement that is ratified through a court ruling. The approach used by the police at the Medan Police also emphasizes a friendly and non-violent attitude, in order to create a conducive environment for children during the process.

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