



Analysis of Learning Theory in Diversion Policy in the Case of Children in Conflict with the Law

Aniek Periani^(✉), Elly Kristiani Purwendah, and Iskatrinah Iskatrinah

Universitas Wijayakusuma, Purwokerto, Indonesia
aniekperiani68@gmail.com

Abstract. Restorative Juvenile Justice starts from the assumption that responses or reaction to child's juvenile delinquency behavior will not be effective without the basic principle of justice principle being that each party can receive fair and balanced of attention, being actively involved during judicial process and benefited adequately from their interaction with juvenile justice systems. The implementation of diversion is motivated to avoid the child's physiological development from the negative side effect in the involvement of criminal justice systems. The philosophy of the juvenile criminal justice system prioritizes the protection and rehabilitation of child offenders as people who still have a number of limitations compared to adults. Children need protection from the state and society in the long future. For children who have already become perpetrators of criminal acts, a criminal justice system strategy is needed, namely trying to minimize the intervention of the criminal justice system. UU No. 11 Tahun 2012 was made to realize a judiciary that truly guarantees the protection of children in conflict with the law. Diversion with the current restorative justice approach as a correction to UU No. 3 Tahun 1997 concerning Juvenile Court which emphasizes retributive justice, so that the emphasis is more on restoring back to its original state, not emphasizing justice on retaliation. Social Learning Theory, is used as a basis for analyzing why the diversion policy is a legal goal for resolving cases of children in conflict with the law on the premise that children's growth and development based on their environment, is associated with children's delinquency. The approach is based on the assumption that a person's behavior is influenced by learning experiences, social experiences accompanied by values and awards in life in society. This theory is used in the application of diversion with a policy based on the pattern of community social services.

Keywords: delinquency · child · conflicted · law · diversion

1 Introduction

The implementation of child protection is based on Pancasila and based on the 1945 Constitution of the Republic of Indonesia and the basic principles of the Convention on the Rights of the Child, which include: non-discrimination, the best interests of the child, the right to life, survival and development as well as respect for opinions. Child. Article 23 paragraph (1) of Law Number 35 of 2014 concerning Child Protection states

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that: “The State, The Government and Regional Governments guarantee the protection, maintenance, and welfare of children by taking into account the rights and obligations of parents, guardians, or other people who are legally responsible for the child.

The 1945 Constitution of the Republic of Indonesia, the 4th Amendment as a constitutional basis, has explicitly regulated the importance of protecting human rights, including children’s rights, as stated in Article 28 B paragraph (2), which states that: “Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination”.

According to data from the Indonesian Child Protection Commission (KPAI), cases of children in conflict with the law, or ABH, are the most frequently reported cases to KPAI. From 2011 to 2019, the number of ABH cases reported to KPAI reached 11,492 cases, much higher than the reported cases of children entangled in health and drug problems (2,820 cases), pornography and cyber crime (3,323 cases), and trafficking and exploitation (2,156 cases). If examined, the number of ABH for being perpetrators of sexual violence tends to soar sharply. In 2011, there were 123 cases of child sex offenders. This figure rose to 561 cases in 2014, then decreased to 157 cases in 2016, and in mid-January to May 2019, the number of ABH cases as perpetrators of sexual violence reached 102 cases. In addition to cases of sexual violence perpetrated by children, cases of physical and psychological abuse by children have also attracted a lot of attention. According to KPAI data, ABH reports for being perpetrators of physical and psychological violence reached 140 cases in 2018 [1].

The juvenile criminal justice system must be interpreted to include root causes, why children commit criminal acts and efforts to prevent them. The scope of the juvenile criminal justice system covers a wide variety and complexity of issues ranging from children making first contact with the police, the judicial process, conditions of detention, and social reintegration, including the perpetrators in the process [2].

The Law on the Juvenile Criminal Justice System which was ratified by the DPR on July 3, 2012 contains the concept of restorative justice. Article 1 number 6 of the Law on the Juvenile Criminal Justice System mentions restorative justice, as follows: Restorative Justice is the settlement of criminal cases involving the perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a solution. Justice by emphasizing restoration to its original state, and not retaliation.

The existence of laws and regulations governing restorative justice in fact still does not guarantee the protection of children. Criminal acts committed by children are behaviors that are detrimental not only to themselves but also to society, and therefore such behavior needs to be stopped, among others, through criminal penalties. Facing cases of children who commit criminal acts in this case through a legal process, of course the settlement requires different treatment and handling from the process of handling adults. The problem of coaching is the judicial development of the younger generation, especially children who need to get their own attention and discussion. Therefore we need a legal instrument that can provide special treatment to children who have problems with the law.

Based on the background described above, the authors are interested in conducting research and writing scientific papers with the title Analysis of Learning Theory in Diversion Policy in Cases of Children in Conflict with the Law.

2 Research Method

The paradigm used in this research is constructivism paradigm which is the antithesis of understanding that puts observation and objectivity in finding a reality or science.¹ Paradigm also sees social science as a systematic analysis of Socially Meaningful Actions through direct and detailed observations of the problems being analyzed.

Research in writing this dissertation is a qualitative research. Writing aims to provide an overview of a society or a particular group of people or a description of a symptom or between two or more symptoms.

The approach (approach) of this study uses a socio-legal approach [4], which is based on legal norms and the existing theory of law enforcement from a sociological point of view as an interpretation or interpretation. The research sources used in this study are:

1. Primary Data, is data obtained from information and information from respondents obtained directly through interviews and literature studies.
2. Secondary Data, is an indirect source capable of providing additional and strengthening research data. Secondary data sources are: Primary Legal Materials and Secondary Legal Materials and Tertiary Legal Materials.

In this study, researchers used data collection techniques, namely library research, interviews and documentation. In this study, the researcher is the key instrument, namely the researcher himself who plans, collects, and interprets the data [5]. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes, and documentation by organizing the data into categories, describing them into units, synthesizing, compiling into patterns, selecting important names and what will be studied and draw conclusions.

3 Findings and Discussion

1. Weaknesses of the Juvenile Criminal Justice System in Implementing Diversion at the Investigation Stage for Cases of Children in Conflict with the Law.

Diversion is a new concept in the juvenile criminal justice system in Indonesia. New Zealand is one of the countries that can be an example of successful handling of children who are in trouble with the law. In addition, in the Netherlands there are provisions regarding discretion including, police transactions, sidelines of cases by the police, transactions by public prosecutors and alternative sanctions. The juvenile criminal justice system in Indonesia involves 4 components including the police, prosecutors, courts and correctional institutions. New Zealand and the Netherlands can be used as examples or benchmarks for Indonesia in resolving crimes committed by children, especially through diversion.

The juvenile criminal justice system can be said to be ideal for children if every action, decision taken or taken in every stage of the judiciary immediately prioritizes the

¹ Faisal, (2010), *Menerobos Positivisme Hukum*, Rangkang Education, Yogyakarta.

best interest of the child and prioritizes the protection of children's rights. Restorative justice is a relatively new thing in Indonesia. However, according to Fruin J.A, restorative justice has a different perspective, namely to fulfill a sense of justice as a result of a crime [6]. Paul Hadisuprpto's view, restorative juvenile justice departs from the assumption that the response or reaction to child delinquency perpetrators will not be effective without the cooperation and involvement of victims, perpetrators and the community. The underlying principle is that justice is fulfilled, if all parties receive fair and balanced attention, are actively involved in the judicial process and benefit adequately from their interactions with the juvenile justice system [7].

Based on the description above, it can be seen that some of the weaknesses of Law no. 11 of 2012 include:

1) Administrative Sanctions

The provisions in Article 18 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System which requires that investigations be carried out in a family atmosphere. Investigations with a family atmosphere reflect legal protection for children if they are carried out by investigators as they should, but in the event that the investigator does not conduct the examination in a family atmosphere, the legal sanctions that can be imposed on the official are only administrative sanctions. Administrative sanctions given to Investigating officials when investigators neglect the obligation to examine suspects who are not in a family atmosphere are usually too easy to ignore.

2) Child Special Officer

Equipping the presence of special officials throughout Indonesia is still in the long process of preparation to be implemented. The orders of this law are very clear, but the resources of law enforcement officers are often very lacking, so there are concerns that when this law is implemented, it has not been able to provide legal protection in accordance with the provisions of the legislation specified.

3) Legal Aid

Article 55 paragraph (1) of this Juvenile Criminal Justice System Law confirms that at every level of examination, children in conflict with the law must be given legal assistance and accompanied by a correctional supervisor or other assistant in accordance with the provisions of the legislation. The existence of arrangements for the provision of Legal Aid from Advocates must be expanded, for the following reasons, namely: a. Advocates must also be advocates who have qualifications (eg have experience dealing with children's problems, have a high interest and dedication to children, attend technical trainings). The requirements to become a legal advisor should be the same as the requirements for child investigators, juvenile prosecutors and juvenile judges, so that legal assistance is more effective; b. Not many advocates are interested in providing legal assistance to children, and also if you look at the status of children who are suspected of being in conflict with the law, they do not have a clear social status (currently many children are not clear where they live, where their parents are). Provisions on who must provide an advocate are not explained in this law. Article 55 paragraph (2) of this law only requires that every child in the examination level must be accompanied by an advocate, because this concerns the problem of cost and availability of advocates that do not yet exist at every level

of remote police stations on islands. The number of advocates is not spread across regencies/cities throughout Indonesia and is only concentrated in a few big cities which are business centers [8].

4) Provisions on Sanctions Against Judges

The existence of the provisions of Article 96, Article 100 and Article 101 of Law Number 11 of 2012 which provides for sanctions against Judges in particular is considered contrary to Article 24 paragraph (1) and Article 28 G paragraph (1) of the 1945 Constitution [9]. Article 24 paragraph (1) of the 1945 Constitution affirms that the judicial power is an independent power to administer justice to uphold law and justice, but even a judge as a human being, to fulfill his duties and responsibilities in accordance with the 1945 Constitution, requires protection from the threat of fear of to do or not to do something that is a human right. The human rights referred to in this provision must be interpreted as “the human rights of a judge in examining and deciding cases impartially and free from intervention or influence from anyone or under any circumstances”.

The Law on the Juvenile Justice System by criminalizing a violation of the judge’s obligations through the criminal procedural process is a deviation from the framework of the constitutional conception of the independence of judges which must be protected under Article 24 paragraph (1) of the 1945 Constitution [9]. Placement of the threat of criminal sanctions against violations of an obligation ordered by a law can not only be seen as “overcriminalization” or “overpenalization” but also reflects the form of intervention or affects the integrity and credibility and the ability of an independent judicial power.

The inhibiting factors for efforts to implement the idea of diversion in the current Indonesian juvenile criminal justice system include internal and external factors, namely:

1) Internal Barriers.

Although Restorative Justice and Diversion have begun to be recognized as an alternative for handling children dealing with the law from criminal justice and starting to get support from many parties, there are still many obstacles faced by the juvenile justice system, namely:

- a) The increasing need is not proportional to the resources (both personnel and facilities).
- b) Different understandings in handling children dealing with the law and victims among law enforcement officers.
- c) Lack of cooperation between the parties involved (law enforcement officers and child social workers),
- d) Ethical problems and bureaucratic barriers in exchanging data and information between law enforcement officers.
- e) Coordination between law enforcement officers (Police, Prosecutors, Judges, Advocates, Prisons, Detention Centers, Prisons) is still hampered due to sectoral ego constraints.
- f) There is no common perception among law enforcement officers regarding the handling of children in conflict with the law in the best interests of children.

- g) Limited facilities and infrastructure for handling children in conflict with the law during the court process (pre and post court decisions).
 - h) Lack of policy formulation to carry out the process of social rehabilitation of delinquents in this case the Ministry of Social Affairs or social organizations engaged in education, coaching and job training so that they can be sent to social institutions to be specially trained to be given mental and behavioral recovery.
 - i) Lack of protection for children who commit criminal acts but such will is not easy to do because the provisions in the current juvenile detention system do not provide such opportunities.
 - j) The view of law enforcement on the juvenile criminal justice system is still based on the purpose of retaliation for the evil actions of child offenders, so that the judge will impose a criminal solely on the hope that the child will be deterred.
- 2) External Barriers.

Whereas in implementing the restorative justice and diversion system there are still many external obstacles that are caused, namely:

- a) Inconsistency in the application of regulations. The absence of a legal umbrella as a basis and guide for all law enforcement agencies, the inconsistency in the application of regulations in the field in handling children dealing with the law, the simplest problems can be seen in the various limits that are the minimum age of a child in the related regulations. As a result, law enforcement officers make inconsistent decisions in cases of children dealing with the law that have similar elements of action,
- b) Lack of support and cooperation between institutions. This problem is another obstacle that is still common in enforcing a legal provision, including the handling of children in conflict with the law. Many legal professionals still consider mediation as a method of seeking second-class justice with the view that mediation does not succeed in achieving justice at all because it does nothing more than the result of a compromise of the parties involved, even though at this time the Judge is the only party who can mediate cases of children in conflict with the law unlike civil mediation which allows non-judges to be mediators in court.
- c) The public's view of criminal acts. The idea of diversion is still hindered by the public's view that tends to be vengeful and wants to take revenge against perpetrators of crime, including child offenders.

As the gate keeper for the operation of the SPPA, at the investigation level, this provision is of course binding on investigators in resolving cases of child crimes. This is also what investigators in the police do in dealing with child crimes. Child crime cases are prioritized to be resolved using a restorative approach to achieve diversion.

This condition is the focus of the study in this dissertation. Where diversion seems only as an alternative, not as the main solution in resolving cases of children in conflict with the law. Ideally, the diversion requirements listed in Article 7 of the SPPA Law are abolished. So when there is a case of children in conflict with the law, they immediately use diversion. The consideration of mandatory diversion is the consideration of the interests of the child, child protection and justice for the child.

The weaknesses of the Juvenile Criminal Justice System in implementing diversion at the investigation stage for cases of children in conflict with the law include [10]:

a. Internally

- 1) The increasing demand is not proportional to the resources (both personnel and facilities);
- 2) Different understandings in handling children in conflict with the law and victims among law enforcement officers;
- 3) Lack of cooperation between the parties involved (law enforcement officers and child social workers);
- 4) Ethical problems and bureaucratic obstacles in exchanging data and information between law enforcement officers;
- 5) Coordination between law enforcement officers (Police, Prosecutors, Judges, Advocates, Prisons, Detention Centers, Prisons) is still stalled due to sectoral ego constraints;
- 6) There is no common perception among law enforcement officers regarding the handling of children in conflict with the law for the best interests of children;
- 7) Lack of policy formulation to carry out the process of social rehabilitation of children in conflict with the law in this case the Ministry of Social Affairs or Social Organizations engaged in education, coaching and job training so that they can be sent to social institutions to be specially trained, given mental and behavioral recovery;
- 8) The view of law enforcement in the juvenile criminal justice system is still based on the purpose of retaliation for the evil deeds of child perpetrators, which is solely aimed at deterring children.
- 9) There is a bias in understanding the “obligation” of implementing diversion due to the decision of the Constitutional Court Number 110/PUU-X/2012 which states that sanctions for ignoring this provision as regulated in Article 96 of the SPPA Law have been declared contrary to the 1945 Constitution and have no binding legal force.

b. Externally

- 1) Inconsistency in the application of regulations. There is no legal umbrella as a basis and guideline for all law enforcement agencies. Inconsistency in the application of regulations in the field in handling children in conflict with the law, the simplest problem can be seen in the various limits that are the minimum age of a child in the related regulations. As a result, law enforcement officers make inconsistent decisions in cases of children in conflict with the law which have similar elements of action;
- 2) Lack of support and cooperation between institutions. This problem is another obstacle that still happens a lot in enforcing a legal provision, including handling children in conflict with the law, many legal professionals still consider mediation as a method of seeking second-class justice with the view that mediation does not succeed in achieving justice at all because it is not more from the results of the compromise of the parties involved, even though at this time the judge is one of the parties who can mediate cases of children in conflict with the law unlike civil mediation which allows non-judges to be mediators in court;
- 3) People’s views that tend to be vengeful and want to take revenge against perpetrators of crime, including child offenders.

2. Analysis of Learning Theory in Diversion Policy in the Case of Children in Conflict with the Law

Diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system. (Article 1 point 7 of Law No. 11 of 2012). Where in the settlement of these cases against children who are in conflict with the law it is necessary to have assistance from the Penitentiary Center which in this case is carried out by the Community Counselor who is a law enforcement functional official who carries out community research, guidance, supervision, and assistance to children inside and outside the criminal justice process. (Article 1 number 13 of Law No. 11 of 2012).

Diversion must be attempted at the level of investigation, prosecution and examination of children's cases in district courts. The word "must strive" implies that child law enforcers from investigators, prosecutors and judges are required to make efforts so that the diversion process can be carried out. The obligation to seek diversion is carried out in the event that the crime committed is punishable by imprisonment for under 7 (seven) years and is not a repetition of a criminal act, as stipulated in Article 7 of the SPPA Law.

The diversion process is carried out through deliberation involving children and their parents/guardians, victims and/or their parents/guardians, community counselors, and professional social workers based on a restorative justice approach. In addition, if necessary, the deliberations can also involve social welfare workers, and/or the community. One form of the restorative justice mechanism is dialogue among the Indonesian people, better known as "deliberations for consensus". So that diversion, especially through the concept of restorative justice, becomes a very important consideration in resolving criminal cases committed by children [11].

The implementation of diversion must be attempted from the stage of investigation, prosecution and at the stage of examining children's cases in court. This is as stipulated in Article 7 paragraph (2) of the Juvenile Criminal Justice System Act, diversion is limited to criminal acts committed [11]:

- 1) Threatened with imprisonment under 7 (seven) years; and
- 2) Not a repetition of a crime

In the Elucidation of Article 7, it is explained that the repetition of a criminal act in this provision is a crime committed by a child, both a crime of the same kind or not, including a crime that is resolved through diversion. According to Article 8 paragraph (3) of the SPPA Law, the diversion process must pay attention to:

1. The interests of the victim;
2. Child welfare and responsibilities;
3. Avoidance of negative stigma;
4. Avoidance of retaliation;
5. Community harmony; and
6. Propriety, decency, and public order.

The development of systems and methods of law enforcement in Indonesia shows a tendency to follow the development of community justice, especially the development of the principle of restorative justice by burdening criminals with their awareness of admitting mistakes, apologizing, and returning damage and losses to victims to their original state or at least resembling their original condition that can fulfill the victim's sense of justice.

Chief of Police Circular Number 7 of 2018 (SE/8/VII/2018 dated 27 July 2018) concerning the Application of Restorative Justice in the Settlement of Criminal Cases. This circular letter from the Head of the National Police regarding Restorative Justice is then used as a legal basis and guide for Polri investigators and investigators who carry out investigations/investigations, including as a guarantee of legal protection and control, in the application of the principles of restorative justice (restorative justice) in the concept of investigation and investigation of criminal acts for the sake of realize the public interest and a sense of community justice, so as to realize a uniform understanding and application of restorative justice within the Polri environment.

In its implementation, the concept of a restorative justice approach in various countries has shown some success, but obstacles or challenges are often encountered. The renewal of juvenile criminal law policies is an urgent matter that must be done. The Family group conferencing model is one of the alternative models offered in this renewal effort. This model has been developed in many states in Australia.

Family Group Conferencing are: Family group conferencing involves the community of people most affected by the crime—the victim, the offender, and the family, friends, and key supporters of both—in deciding the resolution of a criminal or delinquent incident. The affected parties are brought together by a trained facilitator to discuss how they and others have been harmed by the offense and how that harm might be repaired” [12].

Family Group Conferences work by involving the communities of people most affected by crime – victims, perpetrators, and their respective families, friends, and main supporters in deciding the resolution of a criminal incident. Affected parties are brought together by trained facilitators to discuss how they and others have been harmed by the crime and how it is possible to remedy the harm.

–During the conference, all present help the family and student identify their strengths. The incident that led to the recommendation for expulsion is discussed in full, in addition to related issues at school or home. All present (including staff from the new school and the school district) are called upon to reflect on the accountability for the incident and for providing support for the student to better succeed at school. After these steps the facilitator guides the participants through the creation of a detailed accountability plan for successful placement at the new school, and targets that may enable the student to safely return to their original school, if they so choose, with their good standing restored (after a minimum of 45 days and usually at a logical break, i.e., after the completion of a quarter or semester of study). The conference plan often includes referrals to therapeutic or social services [13].

During the conference, all present help families and students identify their strengths. The recommendations issued are discussed in full regarding the events that occurred, in addition to related issues at school or home. All parties are called upon to reflect on accountability for the incident and to provide support for its success. Conference

plans often include referrals to therapy or social services. To participate, the offender must admit to the offence. Participation by all involved is voluntary. Contact facilitators of victims and perpetrators to explain the process and invite them to conference; the facilitator also asked them to identify key members of their support system, who would be invited to participate as well. In order for this model to be able to be applied in the juvenile criminal justice system in Indonesia, this model must be adapted to the philosophical and juridical foundations of the Unitary State of the Republic of Indonesia which will be described as follows.

For the Indonesian people, the ethical values of society are based on the values of Pancasila. So the Indonesian people are said to be:

- a. Religious society (Sila in the One Supreme Godhead)
In relation to the handling of children, the Indonesian nation as a society that believes and is devoted to God Almighty strongly supports the protection of children. Because guiding and educating children is a religious teaching where parents are obliged, especially the father as the head of the household, to be able to guide their members to the path of goodness in order to avoid the fire of hell. Family group conferencing as a model for handling children is in line with religious teachings that are very concerned about the best interests of children.
- b. Humanist Society (Just and Civilized Precepts of Humanity)
The family group conferencing model is a model for handling children that uses a restorative justice approach where in efforts to handle children do not base their decisions and actions on revenge but prioritize human values in the form of love and efforts to restore the psychosocial condition of the perpetrator so that they are able to take responsibility for what they have done and trying to restore the loss and rights of the victim with the principle of prioritizing forgiveness and seeking a win-win solution between the conflicting parties. So the family group conferencing model has conformity with the second principle of Pancasila.
- c. A unified and unified society (Sila the unity of Indonesia)
Family group conferencing as a model for handling children that adopts a diversion mechanism in it, is an effort to reconcile the two conflicting parties. The diversion is intended to remove the grudge between the two. Children as the nation's next generation are expected to be able to bring the nation towards development and change for the better whose basic capital is rapid development. So, the family group conferencing model is a nation-building capital.
- d. A community with a family spirit (Popular Precepts Led by Wisdom of Wisdom in Consultation/Representation)
In relation to the family group conferencing model, deliberation through a diversion mechanism to reconcile two conflicting children is a form of mutual cooperation in an effort to pay attention to the best interests of children in conflict with the law and child victims. This mutual cooperation effort in a family atmosphere is realized by involving many parties, ranging from families of victims and perpetrators, mediators, community leaders, social workers who are concerned with child protection, psychologists to tribal chiefs if there is a connection with customary issues. Therefore, deliberation is the most important part in family group conferencing.
- e. A just society (Social Justice Principles for All Indonesian People)

The family group conferencing model that prioritizes deliberation in resolving conflicts always pays attention to the balance of interests between children in conflict with the law and children as victims. The deliberation carried out is a form of effort to provide a burden of responsibility to the perpetrator for the delinquency he made and to provide compensation for the losses suffered by the victim due to the delinquency committed by the victim. By giving this responsibility, children who are in conflict with the law are expected not to repeat their actions again and become more responsible for what they do. As for the victim, the compensation given to the victim is expected to be able to treat and even erase the material and psychological losses suffered by the victim. This is the justice to be achieved in the family group conferencing model.

The openness of Pancasila ideology also concerns openness in accepting foreign cultures. Therefore, as social beings, they always live together so that cultural acculturation occurs. Therefore, Pancasila as an ideology is open to foreign cultural influences, but the essential values of Pancasila are permanent. In other words, Pancasila accepts foreign cultural influences with the provisions of the essence or substance of Pancasila, namely: divinity, humanity, unity, democracy and justice are permanent. Strategically, Pancasila is open to accepting foreign cultures by rejecting values that are contrary to divinity, humanity, unity, democracy and justice and accepting cultural values that do not conflict with the basic values of Pancasila [7].

Based on Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, the police work method should not directly direct children in conflict with the law in the juvenile justice process. The concept of diversion which should be applied in Indonesia in the future, is not much different from the concept of diversion applied in Australia, namely Police Diversion. This is based on the consideration of the Police as the first gate to handle children in conflict with the law, which determines whether a child will be continued in the judicial process or other informal actions.

Combating crime by using the means of procedural criminal law as described above, of course, starts at the police level, both as investigators and as investigators. This means that crime prevention using criminal law facilities always starts at the police level.

Although technically there has been a circular from the National Police Chief regarding the application of restorative justice, this still raises doubts among police officers in the field. The position of the Circular which is based on the Juvenile Criminal Justice System Act is considered to still not provide legal certainty. Therefore, the reconstruction of regulations related to the SPPA Law is needed.

As part and sub-system of the criminal justice system, the police are a legal institution that has such broad authority as the institution that initiates the work of the criminal justice system, so that the performance of the police greatly determines the direction of criminal law enforcement. Thus, the first experience in the criminal justice process for a suspect is in contact with the police.

The diversion model that can be used as a reference is the Mode Family Group Conferencing (FGC). This model is in line with the mission of the child protection law, which is to avoid negative stigma/labeling of children due to the criminal justice process, by prioritizing the diversion mechanism as the first attempt. This alternative model is also in accordance with the culture and religious values adopted by the

Indonesian people, namely deliberation and parental involvement. Even the mother's role as a school for her children (al ummu al madrossatun) is increasingly visible.

From the description above, it can be understood that the Family Group Conferencing Model which is compatible with the juvenile criminal justice system in Indonesia can be an alternative. The concept of diversion against children is not only an alternative program for handling children in conflict with the law alone, but diversion that actually removes children from the criminal justice process. The diversion concept is not much different from the diversion concept applied in Australia, namely Police Diversion. This is based on the consideration of the Police as the first gateway to handle children in conflict with the law, which determines whether a child will proceed to the judicial process or other informal actions such as penal mediation.

4 Conclusion

Given that the legal aspects of diversion contained in the provisions of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, there are still deficiencies in providing protection for children in conflict with the law, so as soon as possible to revise the Law. The revision is carried out by taking into account the values that live in society and international provisions regarding the protection of children from the juvenile criminal justice process. At least a more technical rule is made regarding the chosen diversion model so that it can serve as a guide for stakeholders.

Law enforcement officers must cooperate and build the same perception about the protection of children in conflict with the law. The concepts of diversion and restorative justice are two concepts that aim to find alternative solutions for children in conflict with the law. The concept of diversion is implemented by maximizing the discretionary rights of law enforcement officers who handle children in conflict with the law. The concept of restorative justice must be carried out by providing an understanding of victims, perpetrators, families of victims and families of perpetrators and the community to jointly decide on the appropriate action against children in conflict with the law.

The concept of diversion in handling cases of children in conflict with the law in the future should be applied by involving all levels of the Police with their discretionary authority as regulated in Law Number 2 of 2002 concerning the Indonesian National Police and the Criminal Procedure Code to conduct Police Diversion. Police diversion is used in solving legal problems faced by children through processes outside the criminal justice system by prioritizing deliberation for consensus which is a reflection of restorative justice.

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