



The Unused of Diversion within Law Conflicted Children in Serious Abuse Case of David Ozora

Eka Suryantoro

Universitas Jenderal Soedirman, Purwokerto, Indonesia
ekasuryantoro5@gmail.com

Abstract. Diversion on child offenders is to implement a better alternative in comparison to the official procedures in court. The main issue of diversion is to put the child aside from formal court procedures. This study aims to find out the excuses for diversion' absence. This study was designed with a normative juridical approach in accordance to a statutory approach (statute approach), a case approach (case approach) and a conceptual approach (conceptual approach). Data sources obtained from library research. Furthermore, the data were analyzed by descriptive analysis method which based on the results of the analysis was figured out that the reasons for the absence of diversion in the AG case, child in conflict with the law in the case of serious maltreatment of David Ozora, was that the victim's family against the application for diversion, and the AG child in conflict was to be put in charged with Article 354 of the Criminal Code carrying a sentence of over 7 years allowing the prosecutor, after receiving the case transfer from the police, to determine that the case will be transferred to a court hearing.

Keywords: Diversion, Child Crime, and Serious Abuse.

1. Introduction

Persecution is defined as an arbitrary treatment done by a person against another such as torture, oppression, and others. Attempts to commit acts of torture are subject to punishment. The offense might be committed knowingly or unintentionally. Intentional abuse denotes deliberate antagonism by the offender. Although the criminal threats and fines given are considered unheavy punishment, the formulation of this criminal law is very strict. The statement of this article has clear and definite benchmarks. This is in line with the protection of human rights which is not too easy to convict someone by having an arbitrary interpretation of a criminal act.

Article 354 of the Criminal Code regulates severe maltreatment and threatens anyone who deliberately injures another person with a maximum imprisonment of 8 years if the act results in death.[1] Regarding the criminal responsibility of children in conflict with the law, it considers unfair to justify it on material law as stipulated in the Criminal Code. The legal provisions in the Criminal Code are not only conventional and refer to the interests of Dutch colonial law, on the other hand, human behavior and civilization are also very complex, in fact, progress is moving

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A. A. Nassihudin et al. (eds.), *Proceedings of the 3rd International Conference on Law, Governance, and Social Justice (ICoLGaS 2023)*, Advances in Social Science, Education and Humanities Research 805,
https://doi.org/10.2991/978-2-38476-164-7_94

much faster than the current law.[2] Law Number 11 of 2012 Concerning the Juvenile Criminal Justice System is controlled in its growth to protect minors, particularly specific protection, meaning legal protection in the justice system.[3]

A child is gifted a right to certain protections, especially legal protection in the criminal justice system, according to Law Number 11 of 2012 which regulates the Juvenile Criminal Justice System seeking to uphold the dignity of children through a restorative justice approach. The juvenile justice system prioritizes the well-being of children who commit crimes by utilizing sanctions that aim to understand and address their needs. Along with imposing criminal sanctions, this aligns with the overall goal of serving justice to juvenile offenders.

Restorative justice concepts are an integral part of a distinct juvenile criminal justice system that prioritizes the well-being of both children and society. This approach seeks to resolve criminal cases by bringing together offenders, victims, and their families to collaboratively pursue a just outcome that emphasizes restoration to the original state, rather than retaliation. This is in accordance with Article 1 Point 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

As stated in paragraph (2) letters a and b, the juvenile criminal justice system should be involved in diversion initiatives. Efforts should be made to divert juvenile cases from the criminal justice system to external systems. Restorative justice offers a unique diversion strategy, which is regulated by Law Number 11 of 2012 Concerning the Juvenile Criminal Justice System.

The protection of children in a society is a parameter of a country's civilization, to this, it must be made as much as possible. The purpose of child protection is to advance the welfare of children by seeking proper and fair treatment.[4] Diversion means to give child offenders a better choice than legal proceedings in court. The aim is to protect children from trials in court and reduce the likelihood that they will commit crimes again in the future.[5]

According to Article 1 point 7 of Law No. 11 of 2012 regarding the Juvenile Criminal Justice System, Diversion refers to transferring the resolution of cases involving minors from the criminal justice process to other processes. This approach is based on restorative justice principles and involves discussions between the child, their parents or guardians, victims, their parents or guardians, social counselors, and professional social workers.

The purpose of diversion is to avoid children from the formal court system and keep them from being stigmatized due to their problems with the law. It is concluded that by doing this, children will be able to reintegrate back into society naturally. Therefore, to make it happen, the involvement of all parties is required. Restorative justice must be the main procedure for both the victim and the child. Diversion is a restorative justice process where all parties involved in a crime work together to find solutions and establish accountability to better the situation by involving victims, kids, and the community regarding the solutions, reconciliation, and reassurance that are not based on revenge.

One of the examples of a current case relates to a crime committed by a minor, AG has the status of a child in conflict with the law. This title is another term for a suspect referring to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). AG's status is currently under the control of the child prosecutor with special placement or detention at the Social Welfare Administration Institution (LPKS) before being presented at trial. As a child conflicting with the law, the prosecutor actually tried that AG's involvement in the abuse case did not need to be brought to trial. The SPPA Law recommends handling cases against children in conflict with the law using the diversion system at every level of the legal process or settling criminal cases outside of criminal justice. Starting from the handing over of case files from investigators to prosecutors. Until the prosecutor stated that the case was complete for trial or P-21. However, the legal diversion for the AG could not be carried as diversion because it did not meet the formal requirements.[6] On the basis of the description above, in this study the author is interested in researching with the title "Absence of Diversion in Children Conflicting with the Law in the Case of Serious Abuse Against David Ozora".

2. Problems

After reviewing the background information provided, the problem can be stated as follows: What is the basis for the absence of diversion in children conflicting with the law in the severe abuse case against David Ozora?

3. Method

This research methodology was created by using a normative juridical research type focusing on analyzing how rules or norms are used in positive law.[7] The data collection method is carried out by library research and secondary which helps develop discussions related to diversion. The data obtained were analyzed by qualitative methods. Discussion and elaboration of the research data systematically based on legal norms or legal principles, theories, and doctrines of legal science. By analyzing the data, it is expected that at the end of the research, it will be possible to achieve clarity on the issues to be discussed and a conclusion can be drawn.[7]

4. Discussion

Determination of a criminal act also affects the imposition of sanctions on a court decision, which if imposed incorrectly also has an impact on the individual's right to justice because it is a fundamental human right. As implied in Pancasila point 5 social justice for all Indonesian people.[8] Talking about justice, not all acts against the law can be punished. Criminal responsibility is a manifest form of the offender for the mistakes made.[8] This highlights the importance of holding criminals responsible for their actions and mistakes when they break the law.[9]

Legal issues committed by children are crucial issues that are seriously under consideration by the government, especially children as perpetrators of crimes.[10] The government is considering resetting the age limit for children in conflict with the law.[11] The issue of how children are treated in the legal system is of great importance, as they represent the future of a nation.[12] The Government of Indonesia has ratified the Convention on the Rights of the Child, which provides protection for children. Additionally, there are alternatives to punishment outlined in Presidential Decree No. 36 of 1990, which is supported by Laws No. 4 of 1979, No. 23 of 2002, and No. 11 of 2012. Youngsters who follow these child protection laws can avoid punishment.[13] In order to uphold the rule of law children who are conflicting with the law must be processed according to applicable legal provisions, one of which is through the juvenile justice system by providing legal protection as an effort to uphold justice for children found guilty and given criminal sanctions by judges.[14]

Juvenile Criminal Justice System requires diversion for children aged 12-18 years old suspected of committing a crime, as per Law No. 11 of 2012 and Supreme Court Regulation Number 4 of 2014. Therefore, diversion is conducted in line with Article 7 of Law No. 11 of 2012 About the Juvenile Criminal Justice System, which states that the crime committed is punished by imprisonment for less than 7 (seven) years and that it is not a recurrence of the offense. The juvenile justice system aims to protect children and prioritize their welfare. Restorative justice involves discretion and diversion, resolving cases outside of formal criminal proceedings based on juvenile justice principles. Penalties are in place for dismissing diversion efforts to reinforce legal certainty.

Effective diversion requires considering the roles of victims, perpetrators, and third parties. Success requires meeting the needs of all parties without violating the law. Third parties have the responsibility to monitor the diversion process and inform the public about the benefits of the diversion initiative itself. The conditions for diversion according to Article 7 paragraph (2) of the Law on the Juvenile Criminal Justice System are as follows:

- a. Threatened by under 7 (seven) years imprisonment; and
- b. Not a crime repetition.

However, the existence of initiatives to implement restorative justice and diversion does not mandatory that all child cases are resolved through actions returned to the child's parents. Then in the process of implementing the diversion requirements, the following steps must be considered:

- a. The parties, including the public, must provide some kind of intention, forgiving criminals an intention as a conscience. Restorative justice cannot be exercised if no one involved has good intentions;
- b. The perpetrators of the crime truly apologize for their mistakes and make swear not to repeat them. The perpetrator in this case must apologize to the victim and his family;

- c. As long as there is a balance in the form of peace, the victim or his family will no longer file a lawsuit against the perpetrator; and
- d. The community can accept the terms of a settlement reached between the perpetrator and the victim or their family. Even though a crime does not directly harm society, in general, a crime is an event that disturbs society. This is also related to the purpose of restorative justice. If the community accepts it, then the perpetrators can be accepted again.[15]

Outlined below are the steps involved in a diversion during the investigation, prosecution, and trial in the Juvenile criminal justice system:

- a. Since entering a child case, investigators have been able to carry out diversion, both investigators are law enforcers, and investigators serve as order keepers and community protectors. If the investigator does not divert, the investigator will continue the prosecution;
- b. After receiving delegation of cases from the police, the public prosecutor can determine whether the case will be transferred to court examination, or the case will be diverted;
- c. Juvenile Court after receiving a delegation of the case, will carry out a selection to determine whether to proceed to a formal examination in the Juvenile trial or carrying out an informal examination which is the same as diversion;
- d. After the case has been properly reviewed, it can also be decided that coaching will take place inside or outside the institution, or that the case will be released back into the community; and
- e. After the training is carried out, the perpetrators are released back into the community.[5]

There was no diversion in the AG case where the child conflicted with the law in the serious abuse case against David Ozora, because the victim's family refused the diversion application, and the AG child who was in conflict with the law was charged with Article 354 of the Criminal Code carrying him a sentence of over 7 years, thus, the prosecutor after receiving the case transfer from the police, can determine that the case will be transferred to a court hearing.

5. Conclusion

Diversion is the transfer of the resolution of juvenile criminal cases from the criminal justice process to a process outside criminal justice. The SPPA Law regulates that formal diversion procedures only apply to child perpetrators aged 12 to 17 years. Apart from that, diversion can be carried out if the criminal act committed is punishable by imprisonment for less than seven years and is not a repetition of a criminal act. The diversion process is carried out through deliberation involving the perpetrator child and their parents/guardians, the victim and/or their parents/guardians, community counselors, and professional social workers based on

a restorative justice approach. The absence of a basis for diversion for children in conflict with the law in the case of serious abuse of David Azora is First, because the Judge at the District Court and High Court who examined AG was deemed to have made a mistake in sentencing AG to 3 years and 6 months in prison. This error was because AG child did not participate in the serious abuse that was planned. Second, formally, the first person to be tried in this case should be Mario Dandy, who is suspected of carrying out serious abuse which was planned and allegedly fulfills all the elements in Article 355 of the Criminal Code.

Provide law enforcement officials with guidance on Law 11 of 2012 for minors involved in the criminal justice system. Law enforcement officials must play an active role in considering the fate and goals of the perpetrators of minor crimes so in order to properly defend their rights and the rights of victims. This will enable them to protect the rights of victims and perpetrators.

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