

Agreement as an Essential Element in Implementation of Diversion

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Abstract—The purpose of this research is to describe and analyze the implementation of child case diversion at the stage of investigation, both successful and unsuccessful. This study uses a normative / doctrinal approach. The data used is secondary data as the main data and primary data as supporting data. Secondary data includes laws and government regulations governing diversion and written agreements between victims and perpetrators. Primary data in the form of interviews. The data obtained were then analyzed qualitatively and presented descriptively. The results of the study show: (1) Reasons for agreeing to be converted: a. Between the perpetrator and the victim forgive each other accompanied by substitution in the form of victims; b. Actors will not repeat the same actions; and c. The parties agreed to resolve the case in a family manner and did not blame him later on. (1) The reasons for not being agreed to be converted are: a. Settlement with diversion is deemed not to give or take sides with justice; b. Diversion is considered not to represent the interests of victims; c. Concern about the perpetrator committing the same crime.

Keywords—*diversion; investigation*

I. INTRODUCTION

Diversion is a model of settlement of children in conflict with the law that relies on restoring their original state after a crime has occurred. To realize this situation, it takes a unity of steps for various parties, such as victims, perpetrators, parents of perpetrators, parents of victims and other parties. Diversion is only for criminal offenses under the penalty of under 7 (seven) years, not recidivists and perpetrators (children) under the age of 18 (eighteen) years. Diversion must be based on agreement. There is no diversion without agreement.

Speaking of Diversion in Law No. 11 of 2012 means speaking abstract laws. Implementation of diversion is something concrete and this becomes a management problem. Satjipto Rahardjo [1] asserted, speaking of law enforcement, essentially spoke about the enforcement of ideas and concepts which are abstract. Law enforcement is an attempt to concretize these ideas into reality, and that is already in the management area.

According to Soerjono Soekanto enforcement is the process of applying discretion concerning making decisions that are not strictly regulated by the rule of law, but have their own judgment [2]. Soerjono Soekanto further emphasized that law

enforcement is not merely a means of implementing legislation, even though in reality in Indonesia the tendency is so, so that enforcement is so popular [2]. In the context of discretion, the police as investigators become the main gate for the implementation of diversion. Diversion is open at every stage of criminal case examination. The success of diversion at the investigator stage will have an impact on time and cost efficiency.

The results of Karyono's research stated that the implementation of diversion at the level of investigation at Cirebon City Police Station was successful. According to him in Cirebon City police station there are 7 (seven) investigators who have met the criteria as stated in article 26 paragraph (3) of Law No. 11 of 2012, namely a. has experience as an investigator; b. has interest, attention, dedication and understanding children's problems; and c. has attended technical training on juvenile justice [3].

Noting the results of the above research can be known, whether or not diversion is carried out at the investigation level of the investigative element becomes very important. Even so, the role of the victim and the perpetrator or his representative also plays a more important role.

The promotion of diversion for investigators is a necessity, while for victims and perpetrators or those who represent are choices, which are then included in the agreement. Referring to these normative rules, the purpose of this research is to describe and analyze the implementation of child case diversion at the stage of investigation, both successful and unsuccessful.

II. RESEARCH METHODS

This paper is the result of normative / doctrinal legal research. Data used in the form of secondary data as the main data and primary data as supporting data. Secondary data which includes: (1) Law No.11 of 2012 concerning the Child Criminal Justice System; (2) Government Regulation No. 65 of 2015 concerning Guidelines for Implementation of Diversion, Diversion Agreements; and (3) the results of the diversion agreement that contained Depok Police, Weru Police, Kedawung Police, Cirebon District Police and Majalengka Regional Police. For primary data in the form of interviews

with the police and police. The data obtained were then analyzed qualitatively and presented descriptively.

III. RESULTS AND DISCUSSION

A. *Successful Diversion*

For successful diversion, it can be exemplified in Depok Police, Weru Sector Police and Kedawang Sector Police. Depok Police Station and Weru Sub-District Police include the Cirebon District Police District jurisdiction, while the Kedawang Sub-district Police Office is in the Cirebon City Police Station.

In Depok police, in the period January to September 2017 there were 7 cases of children in conflict with the law. The seven cases included cases of abuse, sexual intercourse, and/or obscene acts and/or carrying away underage women without the permission of their parents.

The seven cases, only one of which was carried out diversion namely the case of persecution. The reason for the diversion is because the reported party apologized to the reporter or the victim, the reporting parent gave the victim / parent the cost of Rp. 25,000,000 (twenty-five million rupiahs).

The reported party promised not to repeat the action, both to the victim and his family. The reporter or victim or parent of the victim agrees not to proceed with the investigation process as in the Police report Number LPB / 18 / II / 2017 / Jbr / Depok Police dated February 16, 2017.

In Weru Sector Police there is also a successful Diversion, namely the case of persecution carried out by Iwan Setiawan bin Sukiman against Didi Paridi by using a sharp weapon in the form of clurit which resulted in the victim's right thigh part being torn. The offender violates Article 351 paragraph (1) of the Criminal Code. (Case Number: 20 / Pid.Sus-Anak / 2014 / PN.Mks).

On September 22, 2017, which was initiated by the police and took place at the Weru Police Station, which was attended by Agung Hidayat bin Sadul representing the victims and Sukiman bin Mastura representing the perpetrators of the meeting. The meeting was also attended by the Cirebon Class 1 Community Guidance (Mediator), Head of the UPT PPKS of the Social Affairs Office, Kab. Cirebon, Social Worker Service Unit, Weru Sector Police Investigator. In addition, it was also attended by the General Head of the Danamulya Village and the General Kaur of Bode Lord Village (as witnesses).

The meeting was agreed upon: (1) The perpetrator provided compensation to the victims of Rp. 2,500,000 (two million five hundred thousand rupiahs); (2) The perpetrators and victims agree to forgive and resolve this problem in a family manner; (3) Actors will continue the school under the supervision of Cirebon Bapas Class 1 and the Cirebon District Social Service; and (4) If in the future there is someone who has a problem with this case it is deemed invalid.

Based on the agreement as mentioned above, the perpetrators on September 25, 2017 submitted a request for revocation of the Police Report Number: LP B / 77-381 / VIII / 2017 / JABAR / RES CRB / SEK WERU, on August 22, 2017

concerning criminal acts of persecution. The reasons for revoking the report are: (1) That the case of the persecution has been resolved by means of family consultation; (2) Reported party Br. Iwan Setiawan bin Sukiman has acknowledged his mistake and apologized and promised not to repeat it; (3) The reported party Iwan Setiawan bin Sukiman has replaced the medical expenses of the victims of Didi Paridi in the amount of Rp. 2,500,000 (two million five hundred thousand rupiahs).

News of the Diversion Program was made on September 25th. In the news about the Diversion Program. Based on the Minutes of Diversion, the Police Department submitted a request to the Chairperson of the State Source of Obligation to obtain the Diversion determination. Based on the determination of Diversion from the Sector Police, on September 29, 2017, the District Court determined the determination of Diversity in the case as stated in the Police report, which in its decision stipulated: (1). Grant the request of the investigator; (2). Order the parties to implement the Diversion agreement; and (3). Ordered the investigator to issue a warrant to terminate the investigation after the Diversion agreement was fully implemented.

In the Kedawang Police Sector, there was also a successful diversion, namely theft. On August 31, 2017 at the Kedawang Pores police station in Cirebon, a diversion meeting was held attended by the victims and their parents and the perpetrators and parents of the perpetrators and witnessed by Cirebon Correctional Center (BAPAS) officers and Cirebon Social Service Unit staff and professional officers RI Ministry of Social Affairs with the results: (1) That the reported party has apologized to the reporting party / victim for the actions he has committed; (2) That the reported party and his parents are willing to replace the cost of the loss suffered by the victim in the amount of Rp. 500,000 - (Five Hundred Million) as a substitute for the registration of STNK and the reported party and the reported parent is willing to fix the damaged motorcycle and is able to return 2 units of mobile phones; (3) That the reported party promises not to repeat its actions to both the reporter / victim and others; and (4) That the reporter / victim is willing to revoke his report and is able to not continue the investigation process.

When examined, at least there are several reasons that menlandasi the parties to do diversion and success, namely: (1) The perpetrator pleaded guilty and then between the perpetrators of the forgiveness of each other accompanied by giving compensation in the form of a sum of money to the victim; (2) Actors will not do the same actions, both to the perpetrator and to others; (3) Agreement that against other parties trying to dispute the case in the future, it is deemed invalid; and (4) The parties agree to settle the case in a family manner.

Guided by the reason for the diversion as mentioned above, it can be seen that "the agreement in which there is peace" between the perpetrators and victims not to continue the legal process shows that in criminal cases the agreement has become the highest and binding law for those who make it, which in civil language is called freedom of contract and the language of sociology which Marc Galanter as quoted by R. Otje Salman is referred to as transactional law [4].

In Islam, retaliation for evil is permissible, but forgiveness is far better. Allah SWT said: " And the repayment of a crime is a worthy crime, but whoever forgives and does good (to those who do evil) then rewards from Allah. Really, He doesn't like wrongdoers ." (Al-Qur'an, Ash-Shura: 40).

Article 6 of Law No. 11 of 2012 and Article 2 of Government Regulation Number 65 of 2015 affirms Diversion aims: a. achieves peace between victims and children; b. resolve child cases outside the judicial process; c. avoids the child from deprivation of liberty; d. encourages people to participate; and e. instill a sense of responsibility to the child.

Barda Nawawi Arief based on the Minimum Standards Rules for Administration of Juvenile Justice (SMR-JJ) states that in juvenile justice shows two goals or objectives, namely promoting child welfare (the promotion of the wellbeing of the juvenile) and the principle of proportionality [5]. Barda Nawawi Arief further emphasized that the first target, which is to promote child welfare, requires that the criminal justice model for children should emphasize or prioritize child welfare [5]. This means that the juvenile justice model must support the principle of avoiding the use of sanctions that are solely criminal or that are merely punitive sanctions. While for the second, namely the principle of target proportionality is the principle which is a tool to curb the use of sanctions that are punitive in the sense of relying solely (just desert).

Still according to Barda Nawawi Arief, that a juvenile offender should not be seen as a criminal, but must be seen as someone who needs help, understanding and affection. Furthermore, Barda Nawawi Arief also said that the juridical approach to children should prioritize a persuasive approach - educative and psychological (psychological) approach which means that as far as possible avoid legal processes that are solely punitive, which have mental degradation and decline discouragement and avoiding the stigmatization process that can hinder the process of development, ability and independence of children in a reasonable sense [5].

In that article 8 paragraph (3) of Law No. 11 of 2012 and Article 6 of Government Regulation Number 65 of 2015 confirms that in conducting Diversion must pay attention to: a. the interests of victims; b. welfare and responsibility of children; c. avenging aversion; d. negative stigma avoidance; e. community harmony; and f. obedience, decency and public order.

B. Unsuccessful Diversion

For unsuccessful diversions, sample researchers at the Cirebon District Police Station and Majalengka Regional Police Station. According to Iwaka Mashadi, PPA Kanit in Cirebon district police station, during January to September 2017 there were 11 criminal cases of children. The eleven cases of the child were not successfully diversified due to several factors, including the victim's family who did not want diversion, community leaders did not allow cases to be diversified, consideration of the Social Service and Correctional Center (BAPAS) and perpetrators of crimes were recidivists. Of the several obstacles the most influential obstacle in diversion settlement was that the victim did not want diversion.

In the Majalengka Regional police station during the period of January to September 2017 there were 14 cases of children in conflict with the law. The fourteen cases, only one was successfully converted. According to Tutik Sulastri, part of the Criminal Investigation Unit of the Majalengka Regional Police PPA unit, the reason for this diversion cannot be caused by: (1) The victim's parents insist on continuing the case to the court on the pretext of obtaining justice in the court through a decision; (2) Some cases are considered too heavy not to be processed in court, so the diversion process is deemed not to represent justice for the victim; (3) Parents fear that someday their children as perpetrators will repeat the same crime if the case can be resolved with diversion. In other words, the perpetrator's parents want to give a deterrent effect to their child as the perpetrator in the crime.

If listened to, there are three things that cause the child case to not be diversified, that is, the victim's family does not want Diversion, the community does not want Diversion and the perpetrator is a recidivist.

In the Diversion process must pay attention to considering the harmony of the community. If the diversion is carried out, the community feels disturbed, so that it is not converted into danger (see Article 8 paragraph (3) of Law No. 11 of 2012).

The Diversion Agreement must obtain the consent of the victim and / or family of the child of the victim and the willingness of the child and his family, except for criminal offenses, minor crimes, criminal offenses without victims or the loss of victims not more than the local provincial minimum wage (see Article 9 paragraph (2) Law No. 11 of 2012).

By referring to these articles, the case of Children is not diversified on the grounds that they do not get the consent of the victim and also the community and because the perpetrator is a recidivism justified.

IV. CONCLUSION

The implementation of diversion at the level is guided by normative rules. Diversion at the investigation level, there are those who succeed and some who don't succeed. (1) For those who succeed based on consideration: a. Victims and competing actors forgive and perpetrators provide compensation to victims; b. The perpetrator promises not to do the same thing; c. Actors and victims will resolve the case in a family manner; d. Other parties who wish to question are considered invalid. (1) For unsuccessful diversions based on consideration the perpetrators and the public do not want diversion and the perpetrators are included in the recidivism.

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