

**PELAKSANAAN KETENTUAN PASAL 7 AYAT 2
UNDANG-UNDANG NOMOR 11 TAHUN 2012
TENTANG SISTEM PERADILAN PIDANA ANAK
TERHADAP ANAK BERMASALAH HUKUM**

**IMPLEMENTATION OF PROVISIONS ARTICLE 7 SECTION 2 OF LAW
NUMBER 11 OF 2012 CONCERNING CHILDREN CRIMINAL JUSTICE SYSTEMS
ON CHILDREN'S PROBLEM LAW**

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Abstract : *Children as successors to the ideals of the struggle of the nation must always be protected by the existence of their rights, including children who have legal obligations, meaning that the child if possible is not sentenced but is resolved by way of deliberation for consensus and a familial nature commonly referred to as diversion. Settling this diversion so that children can be held responsible, remove the stamp or stigma attached to the child, and there is no sense of revenge between the perpetrator and the victim. But the obstacle in diversion is a crime committed by a child no more than 7 (seven) years and is not a repetition or recidivist, so the provisions of article 7 paragraph 2 are considered not to provide justice to children who have problems with the law, because the diversion must also ask the victim's agreement. , exceptions to the nature of minor criminal offenses, no victims, and losses suffered not exceeding the local minimum wage. The research method is normative juridical by reviewing literature and legislation relating to the problem under study, and the result is diversion prioritizing the best interests of children as perpetrators and victims in accordance with restorative justice and prioritizing children's rights to get justice in accordance with the protection of rights of child.*

Keywords : children; criminal; justice; law.

Abstrak : Anak sebagai penerus akan cita-cita perjuangan dari bangsa harus selalu dilindungi akan keberadaan hak-haknya termasuk juga anak yang bermasalah dengan hukum, artinya anak tersebut jika dimungkinkan untuk tidak dijatuhi hukuman tetapi diselesaikan dengan jalan musyawah untk mufakat dan bersifat kekeluargaan yang biasa disebut dengan diversifikasi. Penyelesaian diversifikasi ini agar anak dapat bertanggungjawab, menghilangkan cap atau stigma yang melekat pada anak, dan tidak ada rasa dendam antara pelaku dan korban. Tetapi kendala dalam diversifikasi adalah tindak pidana yang dilakukan anak tidak lebih dari 7 (tujuh) tahun dan bukan merupakan pengulangan atau residivis, sehingga ketentuan pasal 7 ayat 2 ini dianggap tidak memberikan keadilan kepada anak yang bermasalah dengan hukum, karena diversifikasi juga harus meminta persetujuan korban, pengecualian alam hal tindak pidana ringan, korban tidak ada, serta kerugian yang diderita tidak melebihi dari upah minimum daerah setempat. Metode penelitian adalah yuridis normatif dengan mengkaji literatur serta peraturan perundangan yang berkaitan dengan masalah yang diteliti, dan hasilnya adalah diversifikasi mengutamakan kepentingan yang terbaik bagi anak sebagai pelaku dan korban sesuai dengan keadilan restorative justice dan mengutamakan hak-hak anak mendapatkan keadilan sesuai dengan perlindungan akan hak-hak asasi anak.

Kata Kunci : anak; hukum; peradilan; pidana.

INTRODUCTION

Protection of children must be given from birth into the world, because children are the foundation of the hopes and future of the nation, and the State, so special treatment is needed so that later they can grow and develop optimally and naturally. The development of children who often step into increasingly mature age often experience conflicts or conflict with various interests that result in sometimes children do actions that are difficult to prohibit or be ordered by their parents, or even with adults. Protection for children is not only limited to providing all their needs, but if the child is in conflict with the law, stake holders must intervene, hand in hand in providing protection, crime and violations committed by the child actually become the responsibility of parents who educate, because of crimes or acts committed by children under the age of 8 -18 years have not been unstable and do not know what is a criminal offense and emotional emotions cannot be controlled with a tub and directed.

As a result of the actions or actions taken by the child are often regarded as something dangerous if not prohibited, and for this it is necessary to provide family care so that the actions or actions taken do not cause anarchic actions that could cause victims or endanger others.¹ If to cause harm or suffering to others, of course, children will be given sanctions or penalties that are different from the punishment of adults in general, the child must undergo his sentence in a cell to take responsibility for his actions and that has been regulated in Law Number 3 of 1997 concerning Juvenile Court² However, this Law is no longer in effect so it is replaced by Law Number 11 Year 2012 Regarding the Juvenile Criminal System (SPPA), where there are provisions governing the process

of resolving child disputes outside the court process in the form of a formal to informal transfer considering that children there is no stigma or a stamp that the community will later give to him, so³ this diversion settlement is done there must be an agreement between the parties as the perpetrator and the victim, but the main desire of the victim and without the agreement agreed the process of resolving the diversion cannot be carried out.

Positive law in Indonesia does not recognize dispute resolution outside the court, because the objective of punishment is *ultimum remedium* to provide strict and coercive sanctions for perpetrators, but for certain cases it is permissible such as law enforcement discretion, settlement through custom institutions, and mediation peace efforts, arbitration etc., because the child case is part of a particular case and aims to protect the rights of children as part of human rights and also the successor to the struggle of the nation, it can be resolved outside the court through diversion.

Diversion is a form of restorative justice that seeks justice for children who have and have already committed criminal acts, children as perpetrators of crime in the perception of the Law Number 11 of 2012 may not be punished, but resolved through deliberation through restorative justice and given for children according to the provisions of Article 7 paragraph 1 that strived for a diversion towards the child by prioritizing the best interests of the child and not treating children in a discriminatory manner.

Enforcement of children's rights is an obligation of all parties to seek settlement of children outside the court of law with the agreement of the victim, the agreement must begin with the victim who wants a settlement through diversion, in the SPPA Bill opens the possibility if there is a crime

¹ Setya Wahyudi, *Implementasi Ide Diversi Dalam Pembaruan Sistem Peradilan Pidana Anak di Indonesia*, Genta Publishing, Yogyakarta, 2011, page. 38

² Rika Saraswati, *Hukum Perlindungan Anak Di Indonesia*, Citra Aditya Bakti, Bandung, 2015, page. 23-25

³ Maidin Gultom, 2006, *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Indonesia*, Refika Aditama, Bandung, 2017, page 49

committed by a child without having to there is an agreement in the event that a criminal act is a violation, part of the criminal act is a criminal offense of a minor nature, a criminal act without a victim and the value of the loss suffered by the victim is not more than the Minimum Wage Value from the local Province, meaning that the provisions can be implemented directly without the existence or waiting for agreement from the victim and the perpetrator is strived for a speedy settlement from formal to informal through resolution outside the court⁴.

But in the implementation and application of version there are some exceptions there. Particularly in the provisions of Article 7 of the 2nd paragraph it is stated that diversion is only given if the sentence of a child sentenced does not exceed 7 years in prison and does not constitute a repeat of a criminal offense committed by a child⁵. Whereas the main purpose of giving diversion is to prioritize justice, what about the children who have just committed crimes or criminal acts for the first time and are punished above 7 (seven) years in prison, making sure that they will not get a diversion process, meaning that children will be threatened to be placed in the correctional institutions of children . While the Problem Formulation is (1) How is the implementation of the provisions of Article 7 paragraph 2 of Law Number 11 of 2012 on children with legal problems (2) How is the implementation of diversion prioritizing justice for children?

RESEARCH METHODS

This research uses normative juridical research methods which are more reviewing and reviewing existing and applicable legal rules. Normative legal research is a process to find the rule of law, legal principles and legal doctrines in order

⁴ <https://icjr.or.id/selamat-datang-tindak-pidana-diversi/> "Selamat Datang Tindak Pidana Doversi" di akses, 10 Desember 2019, Jam, 7.14 wib

⁵ Nasir Djamil, *Anak Tidak Boleh Dihukum*, cetakan ke-2 Sinar Grafika, Jakarta, 2013, page. 42

to address the legal issues encountered so that new arguments, theories or concepts are obtained as a prescription, while the types and sources of legal materials are viewed from primary legal sources, secondary and tertiary⁶.

Said to be the primary legal material because it was reviewed through the study of legal literature, inventory of relevant legislation grouped by level or hierarchy of laws and regulations, while secondary legal material literature review and literature search related to research topics and tertiary legal materials were carried out both manually or through electronics and the internet.⁷

The technique of analyzing legal material is carried out with a literature study by conducting a search relating to the relevance of or to the subject matter which is being examined⁸.

DISCUSSION

A. IMPLEMENTATION OF ARTICLE 7 PARAGRAPH 2 OF LAW NUMBER 11 YEAR 2012 CONCERNING CHILDREN WITH LEGAL ISSUES

Indonesian Criminal Law does not recognize the term "peace efforts" but for certain cases it is permitted, such as the discretionary authority of law enforcement, customary institutions and also the resolution of disputes by children in conflict with the law. , by prioritizing the middle ground or recovery will be able to give the best effort in upholding the rights of children, as with that diversion which is part of restorative justice emphasizes the principle of justice among the parties to the dispute. The term or definition of diversion is a diversion from the settlement of the

⁶ Peter Mahmud Marzuki, *Penelitian Hukum Kencana*, Jakarta, 2005, page. 300

⁷ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia Publishing, Malang, 2010, page. 54

⁸ Soekanto, Soerjono & Sri Mamudji, *Penelitian Hukum Normatif (suatu tinjauan singkat)*, Rajawali Pers, Jakarta, 2001, page. 63

case of children through the criminal justice process outside the criminal justice process of the child, and the diversion must be pursued starting the investigation stage based on the rules of Law Number 11 Year 2012 in Article 1 number 7 which mandates the existence of diversion in the process of resolving child disputes, there are even some other regulations that also regulate diversion such as Regulation of the Supreme Court with Number 4 of 2014 concerning Guidelines for the Implementation of Diversity in the Juvenile Justice System, Government Regulation 2015 with Number 65 concerning Guidelines for the Implementation of Diversity and Handling Children who are not yet 12 (twelve) years old. In the settlement and handling of cases involving children of the police, prosecutors, courts and social counselors or correctional centers, advocates or aid providers, Special Child Development Institutions (LPKA), Temporary Child Placement Institutions (LPAS) and the organization of social welfare (LPKS) as an institution or institution institutions that deal with children who have problems with the law, which means whether the child will be released or processed in court, from being released until it is included in the institution of punishment in the corridor of restorative justice.

The juvenile justice system law explains that diversion is a diversion or diverted from the settlement of a case from a judicial process that is also criminal to proceedings outside an existing criminal justice, with the aim of:

- a) Achieve peace between child and victim Peace is meant in addition to agreeing that there is also no sense of revenge or hatred between victims and perpetrators, peace here is to forgive each other and accept each other's shortcomings without inculcating deep hatred, ready to compensate according to the agreement between the parties.
- b) Settle all cases of children outside a judicial body process

Children who have problems with the law are more likely to experience fear when confronted or presented in a courtroom, and to avoid the tact and anxiety of carrying out provisions outside⁹ the judicial process, with the aim that the child is brave to express the problem and not be afraid and establish self-confidence and responsibility.

- c) Prevents a child from the act of deprivation of liber

The Child Protection Act provides protection that there is a matter of giving priority to the best interests of the child, this implies that children who are in conflict with or have problems with the law must be protected and upheld their rights to continue to get education and teaching, first and foremost, the right to health, in other words, don't be treated as a convict or a guilty person, deprivation of liberty and not being given freedom by treating a child as a convict can be said to be a violation of the human rights of a child.

- d) Encourage people to participate

Community awareness of children in conflict with the law is very much realized, the community's perception that children who commit crimes or violations must be punished according to applicable legal provisions, unaware and do not know that there are rules governing children with legal problems, at least there must be a sense of protecting the community that children are the same as others not to be judged or put in prison, and children must also be upheld for the existence of their birthright.

- e) Instill a sense of responsibility to the child

The responsibility is inculcated to children from an early age, by implementing the diversion the child

⁹ Harefa Beniharmoni, *Kapita Selektta Perlindungan Hukum Bagi Anak*, Deepublish, Yogyakarta, 2016, page, 36-38

can assume his responsibilities and promise not to repeat his mistakes or actions again, literally that this is a virtue of self-maturity in which the child is required to be able to solve all problems and problems that arise in him, can think and sort out an act or action that is considered not good to continue¹⁰.

The form of mechanism of restorative justice is a dialogue among the people of Indonesia to reach an agreement or called a "consensus agreement" to seek an agreement for mutual compensation, where no one wins or loses or wins but is equally or can be said as win solution. Diversion is pursued at the level of investigation, but in the provisions of article 7 paragraph (2) it is stated that the granting of diversion is only given to criminal offenses which if carried out:

- a) threatened with imprisonment for under 7 (seven) years, and
- b) is also not an act called repeat of a criminal offense

While in the process of granting diversion must pay attention

- (i) The interests of the victim, in order to obtain an appropriate and appropriate compensation and in accordance with the victims' right to justice. The amount of compensation received by the victim in accordance with the suffering he experienced, could include medical expenses, hospital costs, or other costs that are calculated as compensation for the victim.
- (ii) The welfare and responsibility of children, can assume the responsibility of children and foster awareness in children. The weight and lightness of a responsibility must be borne by the child as a form of self-awareness that is in him, the

awareness is at least a form of self-awareness in the child to be able to distinguish between right and wrong, and actions taken if you have to repeat the act and still have to emphasizing the right of children to always act to protect themselves not to act unlawfully.

- (iii) Avoiding negative stigma for children, so that children are not labeled as children who commit acts which are called criminal acts or naughty children, meaning that your journey is still long and must continue the aspirations in carrying out the development wheel, if a child already has negative stigma in the community will certainly always have a bad predicate and this will have an impact on its future, everyone will avoid it, no one wants to accept it either in the neighborhood, school or the environment where the children work later.
- (iv) Avoid idleness, Feelings of guilt result in responsibilities that must be borne by the child with the burden of compensation to the victim, so that the child is active in acting and thinking of what ways he does to fulfill a sense of justice in compensating the victim, in this active attitude avoids feeling lazy in the child.
- (v) Community Harmony
Peace in the parties to the dispute provides a sense of peace for the community, because there is no anarchist action carried out by the perpetrators and also the victims, peace is carried out because of an agreement between the parties to sit together in deliberation to provide rich compensation¹¹.
- (vi) Propriety, Decency And Public Order
Laws are upheld to protect the public, and the State is obliged to protect its citizens by imposing sanctions for

¹⁰ Sigit Angger Pramukti dan Fuady Primaharsha, *Sistem Peradilan Pidana Anak*, Pustaka Yustisia, Yogyakarta, 2015, page, 28-31

¹¹ Wirjono Prodjodikoro, *Asas-Asas Hukum Pidana Di Indonesia*, Refika Aditama, Bandung, 2003, page. 17

violating the rights of its citizens, morality in society must not be violated, and concerning public order because it involves the recognition and protection of the rights to life including the right to life not to deprive liberty.

B. IMPLEMENTATION OF DIVERSITY BASED ON JUSTICE

Implementation of diversion intended for children who are also considered to have problems with the law and prioritizing their rights has not yet been maximized in its application, it should be investigated before the application of diversion in the criminal process of children must be traced to the negative and positive impacts in its implementation, if there are still things what is not yet clear is that at least the implementation of diversion is postponed first, but if there is something positive, the diversion process can be continued. In the opinion of the researchers, there are still many obstacles and obstacles faced in implementing the diversion against children who have problems with the law, for example¹²:

a) Application of Diversity in Article 9 Paragraph 2 Item 1

Exceptions to the rule such as giving discrimination to children as perpetrators of crime, because children who can get diversion in accordance with point a sentence below a minimum of 7 (seven) years, this can mean that not all children can get the peace efforts, how about a person a child for the first time committing a crime and then sentencing above 7 years? certainly did not get the diversion peace process in accordance with the mandate in Law No. 11 of 2012 concerning the Child Criminal Justice

System, and the child must carrying out his sentence in prison, his psychology and psychology will be shaken because of his mental unpreparedness in facing a new room or house, not to mention being ridiculed and bullying by his friends for holding by the predicate of a wicked child and holding him in prison. Stigma and bad stamps will always be attached to children because they are considered as criminals that must be avoided and if necessary be kept away from social interaction, at least diversion efforts should be prioritized so that children in correctional institutions are reduced and encourage peace, the article must immediately revised so that in the future it can provide encouragement in seeking peace with diversion.

b) Lack of Understanding of Law Enforcement Officials Regarding Diversity

Not all law enforcers understand the diversion's procedures and procedures, where the diversion starts at the level of investigation, and there are different interpretations that differ from law enforcement, besides the lack of even¹³ very minimal facilities and other adequate infrastructure to be a factor in the diversion, there is a need for training given to law enforcement officers from a police force, also the prosecutor's office or from the judge itself in order to understand and understand the diversion itself. The lack of facilities for juvenile justice rooms, children who commit acts called criminal offenses are put together or combined with adult cells, due to the lack of availability of an institution of development

¹² Setya Wahyudi, *Implementasi Ide Diversi Dalam Pembaruan Sistem Peradilan Pidana Anak di Indonesia*, Genta Publishing, Yogyakarta, 2011, page, 42-43

¹³ E.Y. Kanter dan S.R. Sianturi, *Asas-Asas Hukum Pidana Di Indonesia dan Penerapannya*, cet. III, Jakarta: Storia Grafika, page, 67-72

specifically for existing children. The actions of law enforcement are influenced by law enforcement factors, namely the existence of legal factors themselves, law enforcement, facilities provided or various facilities that often do not support law enforcement, society and culture. There are still many children who take actions to be inserted or hanged in adult cells, of course this is considered to be in violation of the provisions in Law No. 11 of 2012 concerning the Criminal Justice System for Children

c) Community Ignorance of Diversity

The public does not fully understand what is meant by dispute resolution outside the court or from formal to informal, they only know that anyone who commits a crime let alone endanger must be subject to sanctions, and on the one hand the community does not all want to accept that crimes and offenses committed by children must be resolved with efforts to peace, it is more inclined to imprison so that there is a deterrent effect and no longer repeat their crimes or violations, so that¹⁴ the orderly and legal society is considered as a means of prospering the community, coordination and outreach to the community is needed so that they better understand diversion as an effort to peace and settlement of children's disputes, especially in protecting the rights of children as a generation that will carry forward their ideals and hopes and also the struggle of the nation.

In addition, minimal and incomplete facilities and infrastructure become obstacles that cannot be implemented. The diversion process can prevent the diversion process from running, especially

if the location is far from out of town, further hampering this matter.

CONCLUSION

1. Implementation of diversion according to the provisions of Article 7 and Law No. 11 of 2012 on Justice Restorative Justice is diversion in the process of transferring from formal to non-formal still prioritizing children's rights in its protection and must prioritize the best interests of children as perpetrators and victims of the criminal acts that occur
2. The implementation of a just diversification gives priority to suction rights for children without any exceptions in the application of diversion because the recognition and protection of children's rights has existed since the child was born into the world, so that in the implementation of diversification children are prioritized as principals to obtain their rights without exception.

SUGGESTION

1. Implementation of diversion must always be endeavored to fulfill the sense of justice and legal compliance between the parties to the dispute namely the child as the victim and the child as the perpetrator by promoting the protection of children's rights.
2. There must be cooperation and coordination from all stakeholders in creating the best interests of the child, having the same opinion towards the child as the perpetrator so that the protection and supervision of the child from the parents and family should be increased.

¹⁴ Ibid, page, 75

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