

LEGAL PROTECTION AGAINST CRIME OF CHILD ACTORS THROUGH DIVERSION IN THE CHILDREN CRIMINAL JUSTICE SYSTEM IN INDONESIA

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ABSTRACT

Research on legal protection of child offenders through diversion in the juvenile justice system in Indonesia conducted using the normative legal research discusses three issues, namely: 1) How is Legal Protection Crime Against Child Actors Through Diversion in Children Criminal Justice System in Indonesia; 2) How is Diversion Application to Provide Legal Protection Insurance Against Children in Conflict with the Law in Indonesian Children Criminal Justice System; 3) How is the Accurate Diversion Right Applied against Children in Conflict with the Law in Indonesian Children Criminal Justice System in the Future. Based on the analysis of the study of the three issues raised, it was found that the first, the protection of the law against criminals of children in conflict with the law through diversion is by applying the juvenile justice system in Indonesia, which is formulated in the children materiel legal system, in the children formal legal system and in the law sanctions implementation of juvenile justice system. Second, diversion application to provide legal protection to children in conflict with the law in the juvenile justice system in Indonesia is a real benefit as: avoiding stigma on children, peace of perpetrators and victims, reduce the case goes to trial so it will reduce the burden on the state in the administration of criminal justice system. Third, accurate diversion applied to children in conflict with the law in the juvenile justice system in Indonesia in the future are: peace among children in conflict with the law of the victim as well as the provision of compensation to victims and children in conflict with the law, they are returned to be educated by their parents. Other diversion models, namely: children in conflict with the law of join the education or training to educational institutions or social organizations organized by the government, the state, as well as by social institutions and the observer of child protection.

Keywords: Legal Protection, Child Actors Crime, Diversion, Children Criminal Justice System

INTRODUCTION

Legal protection for children can be performed as a fundamental rights and freedoms of children as well as a variety of interests related to child welfare. So the legal protection for children includes a very broad scope. The scope of legal protection for children include: (1) protection of the freedom of the child, (2) the protection of children's rights, and (3) the legal protection of all interests relating to child welfare. Philosophically, child as part of the younger generation, as one of the human resources and a potential successor to the ideals of national struggle in the future, which has a strategic role and has the characteristics and special properties, requiring special training as well as protection.

In general explanation of the Law of the Republic of Indonesia Number 11 of 2012 on the Criminal Justice System Children, it is mentioned:

Children are an integral part of human survival and the sustainability of a nation. In the Indonesian constitution, the child has a strategic role as expressly stated that the state guarantees the right of every child to survive, grow, and develop as well as to protection from violence and discrimination. Therefore, the best interests of the child should be inspired as the best interests of the survival of the human race. Consequence of the provisions of Article 28B of the Constitution of the Republic of Indonesia Year 1945 should be followed up by making government policies aimed at protecting children.

Children need to be protected from the negative impacts of the progress of rapid development, the globalization in the field of communication and information, advancement of science and technology, and changes in life style and the way some parents who have brought fundamental social changes in the lives of people who are very influential on the value and child behavior. Deviation behavior or illegal acts committed by the Children, among others, caused by factors outside of the child himself. Data of children dealing with the law of the Directorate General of Corrections show that the crime rate as well as the negative impact substance abuse, psychotropic and addictive substances is increasing.

Crime happening right now, which is performed by such religious child, flip-flops are made case by AAL, theft of charity boxes in Padang, West Sumatra conducted by F and BMZ, which on December 28, 2011 died in police office of Sijunjung, rape case by I Gst MH, which occurred in Bali as well as other crimes committed by children vary widely. The principle of legal protection of children should conform to the Convention on the Rights of the Child, as has been ratified by the government of the Republic of Indonesia by Presidential Decree No. 36 Year 1990 on Ratification of the Convention on the Rights of the Child (the Convention on the Children's Rights).

Law No. 3 of 1997 on Juvenile Justice is intended to protect and nurture children in conflict with the law in order to meet the children who have a long future as well as provide an opportunity for children that through coaching they will be acquired her identity to become a man of independent, responsible, and useful for yourself, family, community, nation, and state.

With the enactment of the Law of the Republic of Indonesia Number 11 of 2012 on the Criminal Justice System is the turn of the Child Act No. 3 of 1997 on Juvenile Justice (State Gazette of the Republic of Indonesia Year 1997 Number 3, Supplement to State Gazette of the Republic of Indonesia Number 3668) conducted by objective so as to realize justice truly guarantee the best interests of the child protection in conflict with the law as the nation's future.

The substance regulated in Law No. 11 of 2012, among others, regarding the placement of children who undergo the judicial process can be placed in the Special Child Development Institute. The most fundamental substance in this Act is explicitly setting the Diversion Restorative Justice and intended to avoid and keep children out of the judicial process so as to avoid stigmatization of children in conflict with law and children are expected to be back to normal in a social environment. Therefore, it is necessary the participation of all parties in order to achieve this goal. That process should aim at the creation of Restorative Justice, both for the child and for the victims. Restorative justice is a process of diversion, that all parties involved in a particular crime jointly solve problems and create an obligation to make things better by involving victims, children, and society in the search for solutions to repair, reconciliation, and reassurance that is not based on retaliation.

In the general explanation Law No. 11 of 2012 states:

Given the unique characteristics and properties of the child and for the protection of Children, Children in conflict with the case law shall be tried in Children criminal court in the general court. Children's judicial process case since arrested, detained, and prosecuted; controlling process must be handled by specialized officials who understand the problem of child. However, before entering the judicial process, law enforcement, families, and the community must seek resolution process outside of court, through Diversion based on Restorative Justice Approach.

DIVERSION IN THE UNITED NATIONS STANDARD MINIMUM RULES FOR THE ADMINISTRATION OF JUVENILE (“THE BEIJING RULES”)

Based on the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), UN Resolution 40/33 of 29 November 1985, set about giving law enforcement officers the authority to take policy actions in dealing with child offenders or solve problems by not taking a formal way, among others, stop or discontinue / release of the criminal justice process or sent back / handed over to the community and other forms of social service activities.

Actions policy measures are referred to as diversion as specified in Rule 11, and 17.4 SMRJJ / The Beijing Rules. Diversion action is a mechanism that allows the child to be transferred from the judicial process to the other processes of social services. Application of diversion at all levels will greatly reduce the negative impact of children's involvement in the judicial process.

According to SMRJJ (The Beijing Rules), the principles of diversion Rule 11 is as follows.

- a. Diversion done after seeing the appropriate consideration, namely law enforcement (police, prosecutors, judges and other institutions) was given the authority to deal with young law violators without using a formal court
- b. Authority to define diversion is given to law enforcement officers such as the police, prosecutors, judges and other agencies that deal with children's cases, based on their policy, in accordance with the criteria specified for that purpose in the respective legal system and also in accordance with the principle of principles contained in the Beijing Rules.
- c. Implementation of diversion should be with the consent of the child, or the parent or guardian, however, the decision to implement diversion after being studied by the competent authority at the request of the diversion;
- d. Implementation of diversion requires cooperation and the role of society in relation to the diversion program such as: supervision; momentary guidance, recovery and compensation to victims.

Further in Explanation of Rule 11 of the Diversion, it is described as follows;

- a. Diversion as a program that eliminates the formal stages of the judicial process for a defendant and replace it with a policy-based social service model, in which the program has been widely applied both formally and informally in a variety of legal systems in many countries.
- b. The purpose of the application of this diversion program is to eliminate the negative effects, such as those arising from the application of formal and administrative procedures in the conventional criminal justice system, so in many cases the form of alternative policy is considered as the most appropriate measures and will provide optimal results, especially in the cases where the perpetrator of a criminal act which is classified as mild or serious and from the family, school, and community social

- neighborhood itself helped provide support and can behave appropriately (do not draw the magnitude of the problem).
- c. Diversion can be applied by the police, attorney, or other authorized and related institutions such as the courts, tribunals, agencies and boards (representative of the community). Application of diversion is not always restricted to narrowly trivial cases.
 - d. Implementation of diversion must be approved by young offenders (or their parents or guardians) of the suggested diversion steps. However, this agreement cannot be left unopposed, because the approval may be given as sheer desperation on the part of the teenager. This needs to be taken to minimize the potential for coercion and intimidation at all stages of the process of diversion. Teens should not feel pressured (for example in order to avoid court appearances) or pressured to agree to the diversion programs.

Further diversion is regulated in Rule 17.4 SMRJJ, in which determined that each competent authority shall have the power to discontinue the proceedings at any time. Officials have the authority to rule is based on the traits or a characteristic inherent in the handling of juvenile offenders, which is different from the interrogation of adult offenders. At any time, certain circumstances can be known by the legal authorities that will make a complete halt of the intervention as a statement of decision that is best for the case.

As we know, based on the recommendations of the Meeting of Experts on the United Nations' Children and Juveniles in Detention: Application of Human Rights Standards “, in Vienna, Austria on 30 October to 4 November 1994, has urged all countries to translate into practice with the target starting in 2000 against The Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

1. United Nations Standard Minimum Rules for Non-Custodian Measures. Resolution 45/112, 1990

Freedom Non-Seizure Measures is expected to be applied at the time of pre-trial stage, during the examination (trial and Sentencing stage), and the phase after the court decision (post-Sentencing stages). Specified in The Tokyo Rules, that if it is necessary and in accordance with applicable law, the police, prosecutors can detain suspects, if they think it is safer for people, avoid being victims of crime and for the sake of the security would be threatened if the detention is not done. For minor cases, prosecutors can assign actions without the corresponding arrest. Detention before the examination of the case is used as a final way in the handling of criminal cases, by considering the examination of the parties allegedly involved and the protection of society and the victim. Performers have a right to ask for not conducting such detention. Another option detention before the examination of the case shall be effective from the beginning of the process, if possible. In the verdict, the judge must consider the interests of actor establishment, protection of society and the interests of victims. The judge may decide the case being examined in some forms of verdicts, namely:

- a. Verbal sanctions such as advice, reprimands and threats;
- b. Suspended sentence;
- c. Criminal status;
- d. Economic sanctions and financial penalties;
- e. Foreclosure
- f. Indemnity or compensation for victims;
- g. Suspension or delay;

- h. Criminal trial and supervision;
 - i. Social work;
 - j. Compulsory reporting / come;
 - k. House arrest;
 - l. Various types of criminal non-institutional;
 - m. The combination of the above criminal types.
2. United Nations Guidelines for the Prevention of Juvenile delinquency, “Riyadh Guidelines”, Resolution No. 45/112, 1990

In principle provide guidance:

- a. The success of crime prevention conducted by children requires the efforts of the entire society to ensure progress toward the adult in harmony, with respect and develop their personality since childhood.
- b. Community service and programs for the prevention of children in conflict with the law should be developed; authorized social control agencies must be used as a last effort;
- c. Law enforcement and other relevant officials of both sexes should be trained to respond to the special needs of children and get used to implement possible programs in the maximum extent and possibilities of transfer appointment of child from justice system.

DIVERSION IN THE LAW OF THE REPUBLIC OF INDONESIA NO. 11 OF 2012

With the enactment of the Law of the Republic of Indonesia No. 11 of 2012 on the Children Criminal Justice System (State Gazette of the Republic of Indonesia Year 2012 Number 153, Supplement to State Gazette of the Republic of Indonesia Number 53 327, the Law No. 3 of 1997 on Juvenile Justice (State Gazette of the Republic of Indonesia 1997 No. 3, additional State Gazette of the Republic of Indonesia Number 3668, revoked and declared void.

The Law of the Republic of Indonesia Number 11 Year 2012 on Children Criminal Justice System has explicitly arranged the protection to children in conflict with the law through diversion in Chapter II, Article 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 as follows:

Article 6

Diversion aims:

- a. To achieve peace between the victim and the child;
- b. To resolve children cases outside the judicial process;
- c. To avoid children of deprivation of liberty;
- d. To encourage people to participate, and
- e. To instill a sense of responsibility to the child.

Article 7

1. At the level of investigation, prosecution, and examination of children case in the state court it is mandatory to sought Diversion.
2. Diversion as referred to in paragraph (1) shall be implemented in the case of criminal offenses committed:
 - a. Punishable by imprisonment under the 7 (seven) years; and
 - b. It is not repetition of criminal offense.

Article 8

1. Diversion process is done through consultations involving child and parent / guardian, the victim and / or parent / guardian, Community Supervisor, and Professional Social Worker based on Restorative Justice Approach.
2. If necessary, consultation referred to in paragraph (1) may involve Social Welfare Workers, and / or community.
3. Diversion process should take into account:
 - a. Interests of the victim;
 - b. Child welfare and responsibility;
 - c. Avoidance of negative stigma;
 - d. Avoidance of retaliation;
 - e. Harmonious society, and
 - f. Propriety, decency and public order.

Article 9

1. investigator, prosecutor, and judge in conducting Diversion should consider:
 - a. Category of crime;
 - b. Age of Children;
 - c. The results of community from Bapas, and
 - d. Support family and community environment.
2. Diversion agreements must be approved by the victim and / or family and the willingness of Child Victims and their families, except for:
 - a. The violation of a criminal act;
 - b. Misdemeanor;
 - c. Crime without a victim, or
 - d. Casualty losses value is not more than the value of the local provincial minimum wage.

Article 10

1. Diversion Agreement to resolve crimes such as violations, minor criminal offenses, victimless crime, or casualty losses value not more than the value of the local provincial minimum wage referred to in Article 9, paragraph (2) can be carried out by investigators with actors and / or his family, Community Advisor, and may involve community leaders.
2. Diversion Agreement as referred to in paragraph (1) shall be conducted by the investigators on the recommendation of Community Supervisor may take the form:
 - a. Returns losses in the case there were victims;
 - b. Medical and psychosocial rehabilitation;
 - c. Handing back to the parent / guardian;
 - d. Participation in the investigation or training in educational institutions or LPKS for maximum 3 (three) months, or
 - e. Community service for maximum 3 (three) months.

Article 11

1. The Results of Diversion agreements can take the form, among others:
 - a. Peace with or without compensation;
 - b. Handing back to the parent / guardian;
 - c. Participation in education or training at an institution or LPKS for maximum 3 (three) months, or
 - d. Community service.

Article 12

1. The result of an agreement referred to in Article 11 of the agreement set forth in the form of Diversion.
2. The results of Diversion agreement referred to in paragraph (1) shall be submitted by the direct supervisor responsible officials at every level of scrutiny to the district court in accordance with law within a period of 3 (three) days after an agreement was reached to acquire determination.
3. The determination referred to in paragraph (2) shall be carried out within a period of 3 (three) days from the receipt of Diversion agreement. The determination referred to in paragraph (3) shall be submitted to the Community Supervisor, investigator, prosecutor, or judge within the time period of 3 (three) days after enactment.
4. Upon receipt of the determination referred to in paragraph (4), investigators issued a determination of termination of the investigation or public prosecution issued a determination of termination.

Article 13

1. Children criminal proceedings continue in the case:
 - a. Diversion process does not result in an agreement, or
 - b. Diversion agreements are not implemented.

Article 14

1. Supervision or Diversion process and implementation of the resulting agreements are generated in direct superior officer in charge at every level examination.
2. During the Diversion process is going on up to the diversion implementation, Community Advisor shall provide guidance, mentoring, and supervision.
3. In the case of Diversion agreements are not implemented within the time prescribed, Community Supervisor immediately report it to the responsible officials referred to in paragraph (1);
4. The responsible Officers as referred to in paragraph (3) shall follow up the report within a period of 7 (seven) days.

Article 15

A provision regarding the implementation guidelines of Diversion process, procedures, and coordination of the implementation of the Diversion is regulated by the Government.

In providing special protection, especially protection of the law in the criminal justice system for children in conflict with the law, the Law of the Republic of Indonesia Number 11 Year 1012 has been set on a transfer of settlement Diversion of children from the criminal justice

process to the outside of the criminal justice process to criminal offenses committed: a. punishable by imprisonment under the 7 (seven) years, and b. repetition of criminal law with the involvement of children and parents / guardians, victims and parents / guardians, counselors and community supervisor, professional social workers based on restorative justice approach in a form of a restoration back to its original state and not vengeance. Diversion can be performed on every year investigation, prosecution and the proceedings before the trial court (by the judge).

CONCLUSION

Based on the description described in the analysis of the discussion in the previous chapters, the conclusion can be formulated as answers to the three research issues, as follows:

1. Legislative policy concerning the legal protection of children in conflict with the law through Diversion in the juvenile justice system is to establish regulations governing the Diversion in the juvenile justice system. With the enactment of the Law of the Republic of Indonesia Number 11 of 2012 on the Children Criminal Justice System in State Gazette of the Republic of Indonesia Year 2012 Number 153, Supplement to State Gazette of the Republic of Indonesia Number 5332, enacted in Jakarta on July 30, 2012, legal protection of children in conflict with legitimate law is set up through the Diversion. Diversion is an adaptation and adjustment of international conventions as stipulated in the United Nations Standard Minimum Rules for Non - Custodial Measures (The Tokyo Rules); United delinquency (The Riyadh Guidelines), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).
2. Diversion application to provide legal protection for children in conflict with the law in the juvenile justice system is to apply the diversion in every stage of the Indonesia criminal justice system of children, starting from the stage of investigation, prosecution and trial proceedings before the juvenile court, in accordance with the provisions of the Law of the Republic of Indonesia Number 11 of 2012 on the Criminal Justice System Children. Diversion application and restorative justice are intended to avoid dropping the child from the judicial process so as to avoid stigmatization of children in conflict with law and children are expected to be back to normal social environment. Restorative justice is a process of diversion in which all parties involved in a particular crime jointly solve the problems and create an obligation to make things better by involving victims, children and the community in finding solutions to repair and give someone peace of mind which is not based on retaliation.
3. The accurate diversions applied to children in conflict with the law in the juvenile justice system in the future are: peace between the victim and the children with or without compensation, delivery back to the parent / guardian, participation in education or training at the Educational Institute or Social Welfare Organization Institution (LPKS), Community Services.

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