



Problems with Implementing Diversity Efforts at the Prosecution Stage (Case Study at the South Coast Prosecutor's Office)

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Abstract

Children who lack or do not receive love, care, guidance and guidance in the development of attitudes, behavior, adaptation, and supervision from parents, guardians or foster parents will be easily dragged into the flow of social relationships and the environment is less healthy and detrimental to personal development. These factors include the development of rapid development, the flow of globalization in the field of communication and information, advances in science and technology and changes in the style and way of life of parents who have brought fundamental social change. In tackling juvenile delinquency, a special way of prevention and control for children is needed, namely the implementation of the Juvenile Justice System. Law of the Republic of Indonesia Number 11 Year 2012 concerning the Juvenile Justice System is intended to protect and protect children who are dealing with the law. In Article 1 number 7 that Diversion is the transfer of the settlement of a child case from a criminal justice process to a process outside of criminal justice. so that the diversion that was carried out was not reached because the victim's family, especially the victim's parents could not accept the consequences borne by his child, then herein lies the unfair implementation of diversion for the victim and the diversion attempt was considered as a shield for the child offender because the child offender felt protected by the diversion attempt and causing increasingly criminal / criminal offenses committed by offenders under the age of 18 (eighteen) years.

Keywords: Justice; Diversity Implementation; Prosecution Stage; Child Case

Introduction

Children as young people are the successors of the ideals of the nation's struggle and human resources for development. Children as a form of long-term investment that cannot be ruled out its role to realize the life of the nation and state in all fields of life. Therefore children need guidance, optimal physical, mental and spiritual guidance. Child development must be done continuously for the sake of life and protection from all possibilities that will endanger them and the nation in the future.

In principle, legal protection for children must be in accordance with the Convention on the Rights of the Child as ratified by the Government of the Republic of Indonesia with Presidential Decree Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child (Convention on Rights children). This convention states that in childhood is a period of sowing seeds, erection of piles, foundation making which is also called the period of formation of character, personality and character of a human being so that they will have strength and ability and stand firm in living.¹ So that children are entitled to continuous care so that they can grow and develop naturally both physically, mentally, spiritually and socially as well as special assistance in protecting themselves from all possibilities that will endanger them and the nation in the future.² Therefore, child protection activities are a benchmark for the nation's struggle and must be pursued in accordance with a legal action that has legal consequences.³

Law Number 11 of 2012 concerning the Criminal Justice System for Children is intended to protect and nurture children who are in conflict with the law so that children can meet their long-term future and provide opportunities for Children so that through their formation their identity will be obtained to become independent, responsible people, and useful for yourself, family, community, nation and country.⁴ Not only was the Convention on the Rights of the Child ratified by the Republic of Indonesia in 1990, it was also supplemented by the Beijing Rules on 29 November 1985, The Tokyo Rules on 14 December 1990, Riyadh Guidelines on 14 December 1990 and Havana Rules on 14 December 1990.

The number of cases of children dealing with the law, not all cases are carried out in a way that is appropriate according to the rules and effective. Starting from the examination of police investigators to the level of court examination and finally there are decisions that sometimes harm the child. Whereas children who have problems with the law and are faced before a court judge do not really understand the mistakes that have been made and should be given a reduced sentence and differentiation of the punishment for children and adults or even transferred to the non-judicial path. Because children are believed to be more easily developed and made aware of.

Every child in the criminal justice process has the right:⁵

- a. treated humanely with due regard to needs according to age;
- b. separated from adults;
- c. get legal assistance and other assistance effectively;
- d. doing recreational activities;
- e. freedom from torture, punishment or other cruel, inhuman or degrading treatment and dignity;
- f. not sentenced to death sentence or life imprisonment;
- g. not be arrested, detained or jailed, except as a last resort and in the shortest amount of time;
- h. obtain justice before an objective juvenile court, impartial, and in a hearing that is closed to the public;
- i. not deprived his identity;
- j. get the assistance of parents / guardians and people trusted by children;
- k. get social advocacy;
- l. get a private life;
- m. gain accessibility, especially for children with disabilities;
- n. get an education;

¹ Maidin Gultom, *Perlindungan Hukum terhadap Anak dalam Sistem Peradilan Pidana Anak di Indonesia*, Refika Aditama: Bandung, 2008, hal.1

² Darwan Prints, *Hukum Anak Indonesia*, Citra Aditya Bakti, Bandung, 1997, hal.98

³ Abdul G. Nusantara, *Hukum dan Hak-hak Anak*, Rajawali, Jakarta, 1996, hal.23

⁴ Mohammad Taufik Makarao, Weny Bukamo, Syaiful Azri, *Hukum Perlindungan Anak dan Penghapusan Kekerasan dalam Rumah tangga*, PT Rineka Cipta, Jakarta, 2013, hal. 62

⁵ *Ibid*, hal. 68

- o. get health services; and
- p. obtain other rights in accordance with statutory provisions.

In the administration of juvenile criminal justice, general principles of child protection that must be considered are the principle of non-discrimination, the best interests of children, survival and growth and development, and respect for children's participation. The form expected by international instruments (the Convention on the Rights of the Child) in dealing with juvenile delinquency is trying to prevent children from settling through the criminal justice system.

Children are not miniature adults, children have their own characteristics and characteristics, so they must be treated differently (special) as well, so they must pay attention to their rights, future survival, and also must consider the best interests of children. Therefore Law Number 23 of 2002 concerning child protection has regulated the special protection that can be given to children in conflict with the law, more precisely regulated in Article 59 of Law Number 23 of 2002 concerning Child Protection.

The role of the government needs to be encouraged in terms of fulfilling children's rights obligations as a consequence that has ratified the Convention on the Rights of the Child. If you study the regional autonomy system through the bureaucracy implemented by the current government and to fulfill the rights of children it is necessary to have an institution / or volunteer who has a special concern to deal with advocacy against children in conflict with the law. Through this policy, it is expected that the handling of children in conflict with the law can use restorative justice as an alternative to the implementation of criminal punishment against children.

Problem Formulation

Based on the background above, the problem in this study is:

1. What are the factors that become obstacles to the achievement of diversion at the stage of non-compliance?
2. What caused the unfair efforts to diversify the victims?

Discussion

In general, diversion efforts, the process of resolving violations of the law that occurred is carried out by bringing the victim and the perpetrator (the defendant) together to sit in a meeting to jointly talk about the problem at hand. During the meeting the mediator gave the party the opportunity to give a clear picture of the actions taken by the defendant (the offender's child).

Before being transferred to the Prosecutor's Office for diversion, investigators in the Protection of Women and Children (hereinafter referred to as PPA Investigators) are also obliged to carry out diversion, as stated in Article 7 paragraph (1) of the SPPA Act: "at the level of investigation, prosecution and examination of children cases in a district court must be diversified." The public prosecutor is obliged to seek a diversion no later than 7 (seven) days after receiving the case file from the investigator (in accordance with Article 42 of the Law-SPPA) and the diversion as intended, carried out within a maximum of 30 (thirty) days. In the event that the diversion process succeeds in reaching an agreement, the public prosecutor submits the minutes of the diversion along with the agreement of the diversion to

the Chair of the District Court to make a decision. If in case the diversion fails, the public prosecutor is obliged to deliver the minutes of the diversion and submit the case to the court by attaching a report on the results of the community research.

The Public Prosecutor who handles cases of children dealing with the law (hereinafter referred to as ABH) is a prosecutor who specializes in handling cases of crimes committed by children whether as children, perpetrators, victims and / or witnesses in a crime. However, this does not mean that the Public Prosecutor handling the ABH case does not handle the general criminal case (an adult criminal act).

The Public Prosecutor who handled the ABH case was the prosecutor who had been recommended by the Head of the South Coast Prosecutor's Office and then issued a Decree by the Head of the West Sumatra High Prosecutor's Office on behalf of the Attorney General of the Republic of Indonesia in connection with the Decree of the Head of the West Sumatra High Prosecutor's Office, in carrying out his duties The appointed Public Prosecutor must refer to the applicable legal provisions and the provisions of the Republic of Indonesia Attorney's Office.

The diversion process was attended by the victim and the child who committed the crime and his guardian as well as the facilitator in this case the public prosecutor at the South Coast Prosecutor's Office who handled the case and the community supervisors namely representatives from BAPAS and professional social workers namely representatives from P2TP2A. Within 3 (three) days prior to the diversion, a summon of the parties had been carried out namely; the child who committed the crime and his / her parent / guardian, the victim and his / her parent / guardian, then the BAPAS and representatives from P2TP2A to be able to attend the implementation of the diversion. The summons of the parties in written form which is then sent directly to the parties, as for the format and substance / content of the Child / Parent's or Child's / Child's Victim's / Child's Victim's / Child's Victim's / Child's Parents or Child's Guardian is made based on the attachment to the Attorney General's Regulation Number: PER-006 / A / JA / 04/2015 concerning Guidelines for the Implementation of Diversity at the Prosecution Level.

The diversion takes place in the child's special room (hereinafter called RKA) which is a room for carrying out the acceptance of responsibility for children and evidence in the case of the child and carrying out the process of diversification. When the diversion took place, the public prosecutor as the facilitator gave the opportunity for the parties to provide opinions, suggestions, and / or responses to:

1. criminal offenses alleged against the Children;
2. social report research results;
3. social report results; and / or
4. the form and method of settlement of the case.

Then the Public Prosecutor sent the Minutes of the Diversion to the Chair of the Painan District Court to be asked to determine it immediately after the diversion was finished. Since the file was received by the Public Prosecutor who had been appointed directly by the Head of the South Coast Prosecutor's Office in accordance with the Law-SPPA and the Attorney General's Regulation Number: PER-006 / A / JA / 04/2015 concerning Guidelines for the Implementation of Diversity at the Prosecution Level.

In view of Article 7 paragraph (1) of the SPPA Law regarding diversification obligations at each stage, namely the stage of investigation, prosecution and examination in court. Then Article 7 paragraph (2) of the Law-SPPA states that diversion is carried out against a criminal act that is not a repeat of a criminal act, which means the child who has committed a crime has never committed a crime of kind or not of a type in this case theft or other criminal acts. The article also mentions that diversion is carried out against a criminal act that is threatened with imprisonment for less than 7 (seven) years, which means that a crime that is threatened with imprisonment for more than 7 (seven) years is not required diversion.

After examining the files submitted by the investigators and have been declared complete (P-21), the next thing the public prosecutor does as the facilitator is to summon the parties to attend the diversion. But those present on the day and date of the diversion that has been determined, only the victims and the Penitentiary (BAPAS) as well as the Integrated Service Center for Women's and Children's Empowerment (hereinafter referred to as P2TP2A).

When handed over to the Prosecutor's Office because the diversion did not reach an agreement at the investigation stage, the public prosecutor is required to carry out the diversion process. However, due to the lack of coordination between the investigator and the public prosecutor related to the summons of the offender who could not be present which could not be present on the day and date of diversion that had been determined by the public prosecutor in advance. Therefore, diversion at the prosecution stage also could not be carried out.

The public prosecutor has also sent a Letter of Notification of Follow-Up Investigation Complete Results (P-21A) which is an attempt by the public prosecutor to remind investigators to hand over the suspect and his evidence to the prosecutor. However, the investigator has not been able to bring the perpetrators of the crime to carry out the diversion or it can be said that the investigator has not submitted the suspect and the evidence to the public prosecutor. So with his authority, the public prosecutor returned the Investigation Commencement Order (SPDP) along with the file to the investigator. That way the case is no longer the responsibility of the prosecutors.

Based on the results of an interview with the Public Prosecutor at the South Coast Prosecutor's Office, explaining that the factors which become obstacles in the implementation of diversion so as not to achieve the efforts of diversion in the case of children in the South Coast Prosecutor's Office, namely:

1. the victim is not willing to forgive or accept the statement of forgiveness from the perpetrator because the perpetrator has repeatedly committed the same crime against the victim,
2. the lack of good faith from the perpetrators to provide compensation in the form of material or apologies to the victim,
3. as well as the presence of a third party from the victim's family that causes diversion because of the central ego of the victim's family.⁶

Of the 8 (eight) child cases that were undertaken diversified at the prosecution stage in the South Coast Prosecutor's Office only 2 (two) of them had achieved diversification efforts, namely in narcotics cases where the child offenders as narcotics users who had previously achieved diversification efforts at the investigation stage which was also achieved at the prosecution stage and the child offender received a sanctuary in the form of rehabilitation. Furthermore diversionary efforts were also reached in the criminal act of mistreatment in which the victim received an apology from the perpetrator and the perpetrator also had a good intention to provide compensation in the form of medical expenses to the victim.⁷

Of the several cases of children whose diversification efforts were carried out at the stage of appeals in the South Coastal District Prosecutor's Office, not all of the children's cases were able to achieve diversification efforts. This is because the victim feels unfair about the sanctions imposed on child offenders because the consequences borne by victims are not commensurate with the deterrent effect given to child offenders. Because with this diversionary effort, it is considered to provide protection to child offenders by diverting the settlement of child cases from criminal justice processes to processes outside of criminal justice. Thus, causing child offenders to repeat the same criminal acts, as in the case of

⁶ Wawancara dengan Monica Sevi Herawati, SH., Jaksa Penuntut Umum pada Kejaksaan Negeri Pesisir Selatan, tanggal 19 Juli 2018, pukul 09.00 WIB.

⁷ Wawancara dengan Anisa Ratna Kinanti, SH, Jaksa Penuntut Umum pada Kejaksaan Negeri Pesisir Selatan, tanggal 20 Juli 2018, pukul 10.00 WIB.

theft. The unfair effect for the victim is also felt in the case of a child committed by a child offender in the name of Bharata Yudha in the form of a traffic accident due to riding a motorcycle with a high speed of approximately 80 (eighty) km / hour so that the perpetrator crashes into a girl aged 5 (five) years which results in the right leg of a child victim being amputated due to being crushed by a motorcycle wheel driven by the offender so that the child victim is physically disabled for life, while the offender only receives sanctions in the form of imprisonment for 2 (two) months and 15 (fifteen) days.⁸ While what is meant by "fair" is impartial, impartial, impartial to the right, properly, not arbitrary. As for the obstacles to implementing diversion in the case of child offenders among them:

1. Many witnesses do not know the perpetrators;
2. The victims also did not know the perpetrators;
3. Victims who do not want peace, while the public prosecutor and the Bapas have tried to explain the appropriate procedures;
4. The victim's immediate family wants peace, but ninik mamak the victim who does not want peace.

Conclusions

1. The diversion at the stage of prosecution in the case of children has been carried out in the South Coast Prosecutor's Office since the enactment and enactment of Law Number 11 of 2012 concerning the Child Criminal Justice System which has been effective since 2014. Diversification at the stage of prosecution in the case of children in the Coastal Prosecutor's Office Selatan has been implemented based on the provisions of the implementation of the diversion regulated in Act Number 11 of 2012 concerning the Juvenile Justice System and other laws and regulations related to the implementation of the juvenile justice system and adjusted to the Republic of Indonesia Prosecutor's Prosecuting Prosecutor's SOP, namely the Attorney General's Regulation Republic of Indonesia Number: PER-36 / A / JA / 09/2011 concerning Standard Operating Procedures for Handling Common Crimes Cases.
2. Factors that become obstacles in the implementation of diversion at the stage of prosecution of cases of children in the South Coast Prosecutor's Office, namely the non-cooperation of the victim as did not come when called to attend the diversion, did not allow the victim to forgive or accept an apology from the perpetrator because the perpetrator has repeatedly committed the crime against the victim or the consequences received by the victim against the crime that has been committed by the perpetrator is not worth / unbalanced with the sanctions received by the perpetrator, there is a central ego from the victim's third party family in terms of the amount of material compensation.
3. The application of diversion is considered unfair by victims of criminal acts committed by child offenders because diversion is considered a shield by child offenders because with the diversion process at each stage of handling child criminal cases causes the offenders feel protected from criminal legal sanctions by Law Number 11 Year 2012 concerning the Juvenile Criminal System in Article 1 number 7 which explains that diversion is the transfer of the settlement of a child case from the criminal justice process to the process outside of criminal justice, thus causing an increase in the level of criminal / criminal acts by the child offender.

⁸ Hasil penelitian terhadap perkara anak di Kejaksaan Negeri Pesisir Selatan, tanggal 19 Juli 2018, pukul 09.00 WIB.

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