

Legal Flexibility in Children Diversion Which Conflict With the Law (ABH) Case Study At Ex Residency of Cirebon Jurisdiction

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Abstract. Along with the development of the juvenile justice system practices that have been implemented so far as regulated in Act No. 11 Of 2012 on Child Criminal Justice System (Act of SPPA). The problems of this study are: the flexibility of implementation of diversion in the case of ABH at Ex Residency of Cirebon Jurisdiction, problems that exist and occur in carrying out the diversion case of ABH in the Ex Residency of Cirebon Jurisdiction, diversion in Case of ABH solutions in the future will come.

The method used by researchers is sociological approach juridical law and specification in this study were included descriptive analysis. While the sources and types of data in this study are primary data obtained from the field study interview. And secondary data obtained from the study of literature.

Based on the results of research that In accordance with Act No. 11 Of 2012 on Juvenile Justice System, flexibility implementation of new diversion is the stage, which can be done at this stage of the investigation in Children Investigators, or at what stage in the Prosecuting Attorney of the Child, as well as examination by the Child Justice. Hampered that diversion is restricted by a minimum penalty of which may carry out a diversion, even if the victim and the perpetrator (ABH) has versioned, it turns out if the criminal threat is more than seven (7) years, the diversion that has made News The event can be canceled and further processed to court for trial. Supposedly back in the Draft Bill which is being processed in the House of Representatives of Indonesia, should attempt a diversion in case the child is not constrained by the threat of punishment, because diversion is only mediation enforcement between criminal and victim that in application not sure in agreement.

Keywords: Flexibility Law; Diversion; Children; ABH

1. Introduction

The Child Criminal Justice System is ultimate goal for the welfare of children. This is confirmed in the United Nations Standard Minimum Rules for the Administration of Justice Juvenile, that the purpose of juvenile justice is⁴:

The Criminal Justice System for the child / adolescent will prioritize the welfare of juvenile and shall ensure that any reaction to the law offenders teens will always commensurate with the circumstances of both the offenders and the violation of the law or the law.

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⁴United Nation, "United Nations Standard Minimum Rules for Administration of Juvenile Justice", United Nation <http://www.in.org/documents/ga/res/40/r003.htm>. in Yutirsa Yunus, *Analisis Konsep Restorative Justice Melalui Sistem Diversi Dalam Sistem Peradilan Pidana Anak Di Indonesia*, Jurnal Rectts Vinding, Vo, 2, Nomor 2.

In line with that in the jurisdiction of the Ex Residency (Region III) Cirebon application of diversion in the case of Children in conflict with the law (ABH) is executed flexibly, if both parties accept to peace or versioned, so do versioned, but if there is a rejection of parties victim after investigators sought by police, *Bapas*, then the process is forwarded to the Public Prosecutor, but the diversion are endeavored to cases transferred to the court. It can be seen many cases children are resolved through diversion and determined in the courts, and also there are continued until the court decision.

Along with the development of the juvenile justice system practices that have been implemented so far as regulated in Act No. 11 Of 2012 on Child Criminal Justice System (Act of SPPA). With the presence of the SPPA Act is expected to fill the space of justice as the concept of restorative justice (Restorative Justice), contained in Act of SPPA so that the state of the child remains with dignity as human right

Law enforcement is very close to the community, as the theory proposed by Carl von Savigny, which he said "*Das recht wird nicht gemacht, est ist und wird mit dem volke*" (the law was not made but grow and grow with the community)⁵. But apparently modern law used by the Indonesian people in the community are developed not from Indonesia, but from outside. Modern law is the product of social, economic and western cultures, especially Europe⁶. Modern law has a typical liberal, liberal types where not only the substantive law that is important, but also the procedure. Thinking about the law which gave birth to positivism, can not be separated from the presence of the modern State⁷. Procedures for settling disputes through the judicial system that led to the court ruling is a law enforcement towards the slow lane, because taking a long distance, through a variety of levels, ranging from police, prosecutors, courts, high courts even to the Supreme Court.

Based on the background of the problems mentioned above, then the problem can be formulated as follows: How can the flexibility of implementation of diversion in the case of ABH at Ex Residency of Cirebon Jurisdiction? The problems that exist and occur in implementing diversion ABH cases at Ex Residency of Cirebon Jurisdiction? How ABH solution in the case of diversion in the future?

Research methods

The method used by researchers is sociological approach juridical law and specification in this study were included descriptive analysis. The source and type of data in this study are primary data obtained from the field study interview. And secondary data obtained from the study of literature.

⁵Darji Darmodiharjo dan Shidarta, 2008, *Pokok-pokok Filsafat Hukum: Apa Dan Bagaimana Filsafat Hukum Indonesia*, PT. Gramedia Pustaka Utama, Jakarta, p. 124.

⁶Satjipto Rahardjo, 2009, *Hukum Progresif Sebuah Sintesa Hukum Indonesia*, Genta Publishing, Yogyakarta, p. 138.

⁷Satjipto Rahardjo, 2000, "*Rekonstruksi Pemikiran Hukum Di Era Reformasi*", makalah disampaikan dalam Seminar Nasional Menggugat Pemikiran Positivisme Di Era Reformasi, ODIG Undip, Semarang, 22 July 2000, p. 4.

2. Results and Discussion

2.1. Implementation Flexibility Diversion In Case of ABH at Ex Residency of Cirebon Jurisdiction

The conception of a child protection covers a very broad scope, in the sense in which the protection of children is not only about the protection of the physical and spiritual children, but also for the protection of all rights and interests to ensure the growth and normal development, both spiritual, physical and social. Wherein the position of the child as the younger generation who will continue the noble ideals of the nation, the future leaders of the nation in the future and as a source of hope for the older generation needs to get the widest possible opportunity to grow and develop with a reachildable good spiritually, physically and socially. Child protection is a business and activities of the whole society in a variety of positions and roles are well aware of the importance of children for the country at a later date⁸, In regard to the legal protection for children, the principles of the protection of children has been set up in various international conventions and national legislation that exists. So it appeared that the real efforts for child protection has been sought by the government for a long time.

Research has shown that approximately 80% of the children were known to police commit abuses will only do it once, so use the resources judicial system "scary" to deal with these children actually quite unfounded, unless absolutely be required⁹.

Children who have violated the law or committed a crime greatly influenced by several other factors beyond the child such as social, educational, playmate and so on. To perform the protection of children from the influence of the formal process of the criminal justice system so the thought of human and legal experts and humanitarian action to create formal rules issued (*remove*) A child who have violated the law or commit criminal acts of the criminal justice process by providing other alternatives are considered better for the child. Based on that idea, it gives birth to the concept of diversion which in the Indonesian term called diversion or redirection¹⁰.

Based on the foregoing, it can be concluded that Flexibility Implementation of Diversion Case of ABH could occur or be implemented at the level of investigation to police, or at the level of prosecution and / or in the courts, all of which are in the process of diversion that involve Supervisor Society (PK) from the Institute of Corrections (*Bapas*), Investigator Child, Attorney Child Judge Child, ABJ, victims and parents / guardians of ABH and victim

⁸ Maidin Gultom, 2010, *Perlindungan Hukum Terhadap Anak dalam Sistem Peradilan Pidana Anak di Indonesia*, PT Rafika Aditama, Bandung, p. 33.

⁹ Santi Kusumaningrum, 2008, *Penggunaan Diversi Untuk Anak Yang Berhadapan Dengan Hukum (Dikembangkan Dari Laporan Yang Disusun oleh Chris Graveson)*, http://SantiKusumaningrum - diversion-guidelines_ adopted-from-chris - report.pdf.

¹⁰ Marlina, 2010, *Konsep Diversi Dan Restorative Justice Dalam Hukum Pidana*, USU Press, Medan.

2.2. Existing Problems And Carry Diversion Happen In Case of ABH at Ex Residency of Cirebon Jurisdiction

Given the unique characteristics and properties of the Child and for protection against Children, the Children's discuss matters dealing with the law have to see that the children have the motivation and actions of certain characteristics that are distinctly different from adult offenders. As disclosed in the convention of children's rights which expressly states that: "In all actions concerning children from, whether undertaken by public or private social welfare institution, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a Consider the primary's (in all actions concerning children undertaken by institutions of public or private social welfare, the judiciary, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration)"¹¹

Thus the concept of restorative justice through diversion in UUSPPA applied at all stages of the criminal justice process and, interrelated and constitute a single entity, ie from the stage of investigation, prosecution and examination before the court as well as placement on LPKA. Stages in question is as the author of the mentioned above. Where the conduct of diversion time, flexible pursued at the level of the police investigation, if not at the level of investigation then attempted again at the level of prosecution in the State Court; if it has not reached agreements can be versioned, then back will be pursued at the level of inspection in the State Court, if at examination level in the State Court was also not obtained an agreement to do versioned,

Many of the factors and problems that become obstacles in seeking diversion. Obstacles to the implementation of diversion usually occurs because of the attitude of the victim's family that were not receiving the implementation of diversion and diversion assume responsibility for the child not represent who committed the crime and compensation commensurate with the circumstances that have caused.

Besides the factor of resistance of the victims and families assume that diversion is not commensurate with the consequences concluded by the offender to the victim, as well as factors of other parties involved in the attempt of diversion, including Investigators Children, Attorney Child, Judge Child, PK *Bapas*, nor Social services. Based on interviews with officers PK *Bapas* Cirebon¹². Particularly PK *Bapas* Cirebon that covers the jurisdiction of the five District City, the city of Cirebon, Cirebon, Indramayu district, Majalengka and Kuningan regency, of course HR PK *Bapas*, which are still limited, if simultaneously a lot of police who need PK *Bapas* to do versioned will meet resistance to meet the diversion event, in addition to a limited number of human resources also distances the location of diversion that must be taken because of the limitations *Bapas* have a vehicle to come to the location of the diversion of the distance away from the office, and not easily accessible by public transport. Another obstacle is the availability of diversion in every police station, which is not necessarily every police station has a space qualified to do versioned. namely Cirebon, Cirebon, Indramayu district, Majalengka and Kuningan regency, of course HR PK *Bapas*, which are still limited, if

¹¹ Convention on the Rights of the Child International Article 37.

¹² Results Interview with Ari Susanto, SH., MH., Correctional Officer Supervisor Society Cirebon City Hall, the interview was conducted on December 10, 2019.

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Siagian said that the effectiveness is timely completion of the target that has been set, meaning whether the execution of a task is considered good or not depends on where tasks are completed and did not answer how to solve it and how the costs incurred, for that.¹³ Thus that the law can be implemented effectively, the legal problems that ditemukan then it must be resolved.

¹³ Siagian, Sondang P., 1985, *Bunga Rampai Manajemen Modern*, Gunung Agung, Jakarta.

Based on the description above, according to the authors problem in pursuing the implementation of diversion, including two (2), namely internal and external factors.

The second factor is exactly who was instrumental in spearheading the diversion in the case of ABH, internal factors are the main factors and the most decisive, if the internal factors can not accept to do a diversion, the diversion will not happen, even if external factors are already making efforts vigorously, meaning versioned not something easy to do and can be done in any case even if diversion do respect the regulations allow such cases to be pursued ABH diversion for criminal liability in such cases under the 7 (seven) years.

The problems that exist and occur in implementing diversion cases ABH at Ex Residency of Cirebon Jurisdiction, constrained that diversion is restricted by a minimum penalty of which may carry out a diversion, even if the victim and the perpetrator (ABH) has versioned, it turns out if the criminal threat over 7 (seven) years, the diversion that has made news event is canceled and can be further processed to justice

2.3. In Case of ABH Diversion Solution In The Future

Jurisdiction Ex Residency of Cirebon is also the jurisdiction or the working area of Class I Cirebon Correctional Center, which includes the jurisdiction of the city of Cirebon, Cirebon, Indramayu district, Majalengka and Kuningan District. Of the five jurisdictions, the author will conduct analysis of one of the cases occurred in the jurisdiction of Police of the Republic of Indonesia Resort Cirebon (Polres Ciko), which in the case of ABH matter the Crime of Torture by using a sharp weapon that occurred on Sunday August 18 2019.¹⁴

Case of ABH¹⁵ is sought diversion in the North West of Cirebon Police Office (Polsek Utbar) Polres Ciko station on August 23, 2019 with the facilitator Otong Jubaedi, SH., M.AP rank of Inspector (Inspector) investigator from the police Utbar attended by: Children Victims Party; Party Party / Performer / Suspect Children; and Other parties that *Bapas* and social Officer.

Based on these results, according to the authors refer to the theory of effectiveness, if the internal factors and external factors have been able to realize the diversion in the case of children, the purpose of effectiveness has achieved operational objectives. If the success of diversion agreed by internal and external parties canceled by the requisite criminal threat, the legal factors as external factors must be revisited, as a factor that can cancel the deal, and conditions such as the form of forcing a man to the law, not the law for man as proposed by Satjipto Rahardjo.

Solution diversion in the case of ABH in future should in the Draft Bill are back being processed in the House of Representatives of Indonesia, should attempt a diversion in case the child is not constrained by the threat of punishment, because the diversion is just such an attempt to make peace between perpetrators and victims in implementation is not necessarily an agreement.

¹⁴ Results Interview with Ari Susanto, SH., MH., Correctional Officer Supervisor Society Cirebon City Hall, the interview was conducted on December 10, 2019.

¹⁵ See Minutes of the Indonesian National Police Diversion Resort Cirebon, Sector North West Cirebon

3. Closing

2.1. Conclusion

Based on the previous description authors to conclude that:

- Flexibility implementation of diversion in the case of ABH at Ex Residency of Cirebon Jurisdiction. In accordance with Act No. 11 Of 2012 on Juvenile Justice System, flexibility implementation of new diversion is the stage, which can be done at this stage of the investigation in Children Investigators, or at what stage in the Prosecuting Attorney of the Child, as well as examination by the Child Justice.
- The problems that exist and occur in implementing diversion cases ABH at Ex Residency of Cirebon Jurisdiction, constrained that diversion is restricted by a minimum penalty of which may carry out a diversion, even if the victim and the perpetrator (ABH) has versioned, it turns out if the criminal threat over 7 (seven) years, the diversion that has made news event is canceled and can be further processed to justice.
- Solution diversion in the case of ABH in future should in the Draft Bill are back being processed in the House of Representatives of Indonesia, should attempt a diversion in case the child is not constrained by the threat of punishment, because the diversion is just such an attempt to make peace between perpetrators and victims in implementation is not necessarily an agreement.

2.2. Suggestion

- The limited quantity and quality of law enforcement a child, whether it Investigator Children, Attorney Child, Judge Child and Mentors Society of the Institute of Corrections should be increased in quantity, in terms of quality, the improvement of human resources through training and certification should be improved in line the remuneration that has been given to the party, including the means and facilities were lacking and did not support the implementation of child protection should be promoted.
- The vast area of Central Correctional Class I Cirebon, must be overcome by establishing a Post Hall of Corrections in various town and / or county, and it should encourage cooperation and coordination between the Department of Corrections with the local government, making it easier to obtain information about the client's children as well as to undertake research community, the limitations of time and distance to do the research community in the information open at this time, should be able to overcome the technological sophistication, and to reach the awareness of society in implementing child protection, it must be established cooperation between the Institute of Corrections with universities, public and religious figures to important disseminating child protection.

- In connection attempts diversion may not always be agreed upon, then the minimum requirement of criminal liability under 7 (seven) years can be versioned, and therefore the requirements are discriminatory with criminal suspects who are free to do a peace deal can abolish the penal provisions criminal threat under 7 (seven) years to be able to do versioned eliminated, so that the diversion in the case of a child can be pursued with any criminal threat, because new diversion is an effort that has not produced an agreement.

4. References

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- [2] Convention on the Rights of the Child International Article 37.
- [3] See Minutes of the Indonesian National Police Diversion Resort Cirebon, Sector North West Cirebon.
- [4] Maidin Gultom, 2010, *Perlindungan Hukum Terhadap Anak dalam Sistem Peradilan Pidana Anak di Indonesia*, PT Rafika Aditama, Bandung
- [5] Marlina, 2010, *Konsep Diversi Dan Restorative Justice Dalam Hukum Pidana*, USU Press, Medan.
- [6] Santi Kusumaningrum, 2008, *Penggunaan Diversi Untuk Anak Yang Berhadapan Dengan Hukum (Dikembangkan Dari Laporan Yang Disusun oleh Chris Graveson)*, http://SantiKusumaningrum - diversion-guidelines_ adopted-from-chris - report.pdf.
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