
CRIMINATION AS A LAST EFFORT IN A CHILD CRIMINAL JUSTICE SYSTEM REFLECTING THE PRINCIPLE OF RESTORATIVE JUSTICE

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Abstraction

Diversion aims to achieve peace between victims and children, resolve cases of children outside the judicial process, prevent children from deprivation of independence, encourage the community to participate and instill a sense of responsibility in children. Diversion must be carried out at every stage starting from the level of investigation, prosecution and examination at the District Court. Diversion is said to be successful if there is an agreement, and the case can be stopped and restorative justice is achieved, whereas if the diversion is not successful then the case is continued until the child is sentenced.

Keyword : Diversion, Restorative, Children.

Introduction

Children are an inseparable part of human survival and the sustainability of a nation and state. Children need to be protected from the negative impacts of rapid development, globalization in the field of communication and information, advances in science and technology, as well as changes in the style and way of life of some parents which have brought about fundamental social changes in people's lives that greatly affect the values of the children and behavior of children.

As a manifestation of the commitment of the State of Indonesia as stipulated in the 1945 Constitution of the Republic of Indonesia, which is formulated in Article 28 B paragraph (2),

in terms of providing protection for children and upholding the rights of children, the Government of the Republic of Indonesia has ratified the Convention on the Rights of the Republic of Indonesia. -The Rights of the Child (Convention on the Rights of the Child) by Presidential Decree Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child (Convention on the Rights of the Child). Prior to the enactment of Law Number 23 of 2002 concerning Child Protection, basically children with problems were categorized in terms of child delinquency, which refers to Law Number 3 of 1997 concerning Juvenile Court. What is meant by juvenile delinquency is regulated in Article 1 point 2 of Law Number 3 of 1997 concerning Juvenile Court.

Children who commit criminal acts and children who commit acts that are declared prohibited for children, both according to legislation and according to other legal regulations that live and apply in the community concerned. The term naughty child is no longer used after the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the term has changed from naughty child to child in conflict with the law (ABH). Currently, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System uses the term for a child who commits a crime as a child in conflict with the law.

The most basic substance regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is a strict regulation regarding Restorative Justice and Diversion. The recovery process according to the concept of Restorative Justice is through diversion, namely the transfer or transfer from the judicial process to an alternative process for resolving criminal cases, namely through recovery consultations or mediation. The transfer step is made to prevent children from further legal action and for community support, besides that the transfer aims to

prevent the negative influence of subsequent legal actions that can lead to stigmatization.¹

Diversion is currently considered a process that has been internationally recognized as the best and most effective way of resolving cases of children in conflict with the law. This thought initially arose because the conflicted child was influenced by several other factors outside of the child, such as association, education, family, playmates and so on.

Diversion aims to achieve peace between victims and children, resolve cases of children outside the judicial process, prevent children from deprivation of independence, encourage the community to participate and instill a sense of responsibility in children. Diversion must be carried out at every stage starting from the level of investigation, prosecution and examination at the District Court. Diversion is said to be successful if there is an agreement, and the case can be stopped and restorative justice is achieved, whereas if the diversion is not successful then the case is continued until the child is sentenced.

A Juvenile Criminal Justice System that Reflects the Principles of Restorative Justice

Children are not to be punished but must be given guidance and guidance, so that they can grow and develop as normal children who are healthy and fully intelligent. Children are a gift from God Almighty as a candidate for the nation's next generation who are still in a period of physical and mental development. Sometimes children experience difficult situations that lead them to act against the law. However, children who violate the law do not deserve to be punished, let alone then put in prison².

¹Wagiati Soetedjo and Melani, Child Criminal Law, (Bandung, PT. Refika Aditama, 2017), p.135.

²M. Nasir Djamil, 2015, Children Are Not To Be Sentenced (Notes on the Discussion of the Law on the Criminal Justice System for Children of the Republic of Indonesia), PT. Sinar Graphica, Jakarta, p.1

In the imposition of a crime, although the punishment imposed on a child may be in the form of a warning or a criminal with conditions, stigmatization as a child who has served a sentence is attached to the child who is in conflict with the law.

For the sake of legal protection for children in conflict with the law, especially children in conflict with the law, by taking into account the principles in the juvenile criminal justice system, all cases of children without exception can be diverted so that the deprivation of liberty and punishment is truly a last resort.

Conclusions

Diversion aims to achieve peace between victims and children, resolve cases of children outside the judicial process, prevent children from deprivation of independence, encourage the community to participate and instill a sense of responsibility in children. Diversion must be carried out at every stage starting from the level of investigation, prosecution and examination at the District Court. Diversion is said to be successful if there is an agreement, and the case can be stopped and restorative justice is achieved, whereas if the diversion is not successful then the case is continued until the child is sentenced.

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