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Abstract

This research aims to analyze the application of diversion in restorative justice in the Juvenile Criminal Justice System. The research carried out is descriptive research with a normative legal research type related to the application of diversion in restorative justice in the criminal justice system. The results of the study show that the implementation of diversion in restorative justice in the system of implementing diversion for children who conflict with the law in the juvenile justice system, is the implementation of a system in restorative justice to provide justice and legal protection to children who disagree with the law without ignoring the child's criminal responsibility. Diversion is not a peaceful effort between children in conflict with the law and their victims or families, but rather a form of punishment for children in conflict with the law in an informal way. The recommendation in this research is that law enforcement officers, in carrying out their duties of investigation, prosecution, examination, and determining case decisions at court hearings, should prioritize the application of diversion as an alternative to the application of imprisonment. There needs to be massive outreach regarding diversion to the community. The government should provide diversion facilities and infrastructure to guarantee protection for children.

Keywords: Diversion, restorative justice, juvenile crime.

1. Introduction

Children who commit crimes are children who conflict with the law where the child is 12 (twelve) years old but not yet 18 (eighteen) years old and is suspected of committing a criminal act (Eviningrum, 2020; Tärnfalk & Alm, 2021). The age limit for children provides a grouping for someone to be referred to as a child (Quanjer, 2012). What is meant by age limit is the maximum age grouping as a manifestation of the child's legal status so that the child changes position to adulthood or becomes a legal subject who is independently responsible for the actions and legal actions carried out by the child (Wadong, 2000).

Specifically, sanctions against children are determined based on the difference in the child's age, namely for children under 12 (twelve) years old only subject to action. In contrast, for children who have reached the age of 12 (twelve) years to 18 (eighteen) years can be sentenced to a criminal offense (Nurdiansyah, 2018). Considering the unique characteristics and characteristics of children and for the sake of protecting children, cases of children who conflict with the law must be tried in a juvenile criminal court within the general criminal justice environment. Deviations from legal norms committed by teenagers are part of the social problems faced by society. This problem is a symptom of bad intentions, which can cause acts that violate applicable law (Setiawan, 2015). Deviant behavior among teenagers is often manifested in the form of delinquency, motorbike gangs, brawls, terrorism, thuggery, drugs, sexual harassment, moral decadence (Setiawan, 2015).

Motorbike gangs usually start from a group of teenagers who like to speed around on motorbikes, both during the day and at night. This illustrates that traffic violations committed

by children are very high, even at the level of traffic accidents which result in victims, both material victims, injuries and deaths. Traffic Law no. 22 of 2009 (Djamil, 2015) does not regulate the form of the process for investigating criminal traffic accidents against minors, but generally explains the form of the investigation process for perpetrators or suspected motor vehicle drivers so that when a child experiences a criminal traffic accident, whether the child is the perpetrator or the child is the victim, it is handled by traffic investigator.

The Traffic Law also explains that the types of traffic accidents can be classified into 3 (three) parts, namely minor traffic accidents which result in material casualties, moderate traffic accidents which result in serious injuries and serious traffic accidents which result in the victim's death and It is also explained that light traffic accident cases which result in material victims can be resolved outside of court if there is a peaceful agreement between the parties involved, while moderate traffic accidents and serious traffic accidents, although the driver, owner and/or public transport company are obliged to provide assistance to the victim in the form of medical costs and/or funeral costs without dismissing criminal charges, but in practice there are several cases of moderate traffic accidents which cause serious injuries to the victim and serious traffic accidents which result in the victim's death being resolved amicably using a peace approach using the concept of restorative justice (Djamil, 2015).

Restorative justice is a diversion process where all parties involved in a particular crime work together to solve problems, and create an incident to make things better by involving child victims, children and the community in finding solutions to repair, reconcile, and reassure which is not based on revenge. Because traffic accident cases involving minors as perpetrators of criminal acts are legal subjects, the investigation process uses procedural law as regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. This is in accordance with the legal principles of *Lex Specialis Derogate Lex Generalis* (Kansil, 2002).

Law No. 11 of 2012 regulates the entire case process children who are in conflict with the law starting from the investigation stage to the coaching stage after serving a crime. At the investigative level, the police can determine the form of diversion in a child's case through police discretionary authority. Diversion is a transfer of the resolution of cases suspected of committing certain criminal acts from the formal criminal process to a peaceful settlement between the suspect/defendant/perpetrator of a criminal act and the victim, facilitated by the family and/or community, children's social counselors, police, prosecutors or judges (Djamil, 2015).

Based on what has been described above in law, the problem in this research is

- a) How is diversion implemented in the investigation of criminal acts in the field of traffic against children?
- b) Has the application of diversion by investigators been practical in handling children as perpetrators of criminal acts in traffic?

2. Methods

Research is a scientific activity systematically directed and aims, so the data or information collected must be relevant to the problem, meaning that the data is related, relevant, and appropriate. A method is a way of working or a tool to understand the object that is the target of the science. The technique is how a scientist studies and understands the steps involved (Soekanto, 2007).

The type of research used in this research is sociological juridical (empirical). According to Ronny Hanitijo Soemitro, Juridical Sociology is a type of research that aims to explain a statement in the field based on legal principles, legal rules, or applicable legislation and is

related to the problems that occur (Soemitro, 1998). This type of research is descriptive analysis using an empirical juridical approach formulated in the results of library research and the data obtained will be analyzed and studied in a structured research system so that conclusions will be drawn from the results and supplemented with suggestions.

The research location is in the jurisdiction of the Central Maluku Police, SBB Police, and Ambon and Lease Islands Police. Taking this location is considered that the data source is at that location. The types of data used in this research include primary and secondary data. The explanation is as follows:

a. Primary data

Primary data is data obtained through direct research at the research site or location, namely the results of observations, interviews, and documents related to the application of diversion in investigating criminal acts by children in the field of traffic.

b. Secondary data

The data needed by the author in this research is secondary data, which can be obtained indirectly, such as through official documents, books, journals, and other relevant literature (Soekanto, 1986). Based on this, the author will connect it with primary data obtained from research directly in the field. This secondary data can consist of primary and secondary legal materials, and/or tertiary data.

- 1) Primary Legal Materials are legal materials closely related to the problem to be studied. In this research, the primary legal materials that will be used:
- 2) Secondary Legal Materials are materials that provide explanations of primary legal materials, such as books, journals, scientific works relevant legal opinions, or other literature related to this research.
- 3) Tertiary legal materials provide instructions and explanations for primary legal materials or secondary legal materials, such as legal dictionaries and other library materials.

The data collection technique used in this research is the collection of data obtained and related to the problem under study, including interviews, observation, and literature study, where literature study is all efforts made to collect relevant information and legal materials related to the problem being discussed.

This research uses descriptive-qualitative analysis methods. Qualitative data analysis is a method of data analysis that can be in the form of words or sentences, which is carried out by analyzing, interpreting, describing, and interpreting oral or written data according to classification to conclude (Moeleong, 2013). So, this analysis has the character of describing or explaining the applicable regulations. The process of analyzing data obtained from field research sourced from primary data and literature studies sourced from secondary data and then analyzed qualitatively. The analysis results are then presented descriptively and analyzed and then compiled as conclusions in answering the problem formulation studied in this research.

3. Results and Discussion

Definition of child in the regulations per law

Children are the hope of the nation and the nation's future successors. In principle, children are one of the hopes for creating future generations. Children about the meaning as formulated in the statutory regulations, namely:

- a) Law no. 23 of 2002 concerning Child Protection states that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb.
- b) According to the Civil Code, Article 330 of the Civil Code states that immature people have not reached the age of 21 and have not previously been married. So a child is anyone

who is not yet 21 years old and is not yet married. If a child was married before the age of 21 and then divorced or left behind by her husband before the age of 21, then she is still considered an adult, not a child.

- c) According to the Criminal Code, children in Article 45 of the Criminal Code are children whose age has not reached 16 (sixteen) years.
- d) According to Law No. 4 of 1979 concerning Child Welfare, the definition of children according to statutory regulations can be seen as follows:
- e) According to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System
- f) According to Article 1 point 5 of Law Number 39 of 1999 concerning Human Rights, it is as follows: "A child is every human being under 18 (eighteen) years of age and unmarried, including children who are still in the womb if this is in their interests. "
- g) According to Law No. 44 of 2008 concerning Pornography Article 1 number 4 "A child is someone who is not yet 18 (eighteen) years old".
- h) According to Law no. 3 OF 1997 Concerning Children's Courts Article 1 number 1 "A child is a person who in the case of a Delinquent Child has reached the age of 8 (eight) years but has not yet reached the age of 18 (eighteen) years and has never been married"
- i) According to the Convention on the Rights of the Child, a child is any human being under the age of 18, unless in accordance with what applies to the child it is determined that the age of majority has been reached earlier.
- j) According to Law No. 39 of 1999 concerning Human Rights Article 1 number 5 "A child is every human being under 18 (eighteen) years of age and unmarried, including children who are still in the womb if this is in their interests."
- k) Thus, it can be concluded that a child is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old.

Application of diversion in the investigation of criminal acts in the field of traffic against children

- a) Investigation according to the Criminal Procedure Code
An investigation is a series of investigative actions in terms and according to the methods regulated in this law to search for and collect evidence that will shed light on the criminal act that occurred and to find the suspect.
- b) Investigating criminal acts in the traffic sector
Investigation of criminal acts in the traffic sector is a process or an initial step which is a process of resolving a criminal act that needs to be investigated and investigated thoroughly in the criminal justice system. From this definition, the components of criminal procedural law relating to investigations are provisions regarding evidence, provisions regarding the occurrence of an offense, examination of the scene of the incident, summons of suspects, suspects or defendants, temporary detention, searches, analysis, and interrogation of minutes, case deviations, delegation of cases to the public prosecutor and return to investigators to be perfected.

A traffic violation is an act or action committed by a person driving a public vehicle or motorized vehicle or pedestrian that is contrary to applicable traffic laws and regulations. Traffic is the movement of cars, people, and animals on the road. When carrying out traffic activities, rules are needed that can be used to guide the public in traffic, so that traffic violations do not occur. However, despite various regulations, traffic violations still happen frequently, some of which even cause traffic accidents. As is known, the definition of a violation is the act of violating a criminal offense that is lighter than a crime. Therefore, if someone has violated a regulation made by the government, for example, in the case of traffic violations, he will be subject to punishment by 34.

c) Enter a case example

Based on the research that has been discovered, observed, and studied, the results obtained by the research team are that several cases can be described, including.

Table 1

Cases Know 2022 and 2023

Year 2022						
No	Amount	Age	Work	Victim	Reason	Crime scene
1.	5 cases	15 yrs	Student	Minor injuries	High speed	Piru village
		15 yrs	Student	Minor injuries	High speed	Murnaten village, Taniwel
		16 yrs	Student	Minor injuries	High speed	Piru village
		17 yrs	Student	Minor injuries	High speed	Waimital Village, Keiratu
		17 yrs	Student	Minor injuries	Don't keep your distance	Piru village
Year 2023						
No	Amount	Age	Work	Victim	Reason	Crime scene
1.	4 cases	15 yrs	Student	Minor injuries	High speed	Kamarian village Kairatu
		16 yrs	Student	Minor injuries	High speed	Kamal Village, West Kairatu
		15 yrs	Student	Minor injuries	High speed night vehicle lights are abnormal	Seruawan village, Kairatu

Application of diversion by investigators in handling children as perpetrators of criminal acts in the field of traffic

a) Investigator according to the Criminal Procedure Code

b) Investigators conducted an investigation

c) Implementation of diversion for children in Article 7 of the Sppa Law.

Table 2

Implementation of Diversion

Year 2022						
No	Amount	Age	Work	Victim	Reason	Crime scene
1.	5 cases	15 yrs	Student	Minor injuries	High speed	Piru village
		15 yrs	Student	Minor injuries	High speed	Murnaten village, Taniwel
		16 yrs	Student	Minor injuries	High speed	Piru village
		17 yrs	Student	Minor injuries	High speed	Waimital Village, Keiratu

						Original Article
		17 yrs	Student	Minor injuries	Don't keep your distance	Piru village
Year 2023						
No	Amount	Age	Work	Victim	Reason	Crime scene
		15 yrs	Student	Minor injuries	High speed	Kamarian village Kairatu
		16 yrs	Student	Minor injuries	High speed	Kamal Village, West Kairatu
1.	4 cases	15 yrs	Student	Minor injuries	High speed night vehicle lights are abnormal	Seruawan village, Kairatu
		17 yrs	Student	Minor injuries	High speed	Waimital Village, Kairatu

4. Conclusion

The Application of Diversion in Investigating Traffic Crimes Against Children is a provision regulated in the Juvenile Criminal Justice System Law. Where children who commit traffic crimes during the investigation process must be diverted as regulated in Article 7 of the SPPA Law. The application of diversion by investigators in the process of investigating criminal acts in the field of traffic by children is not practical, this shows that the diversion carried out by investigators depends on the victim himself, so the application of this diversion does not provide justice in the handling of criminal acts in the field of traffic. The application of recreation in various criminal acts, such as traffic crimes, does not provide a sense of justice for the victim himself, so that if pursuit is carried out, the perpetrator is not harmed and feels happy, and the victim suffers a loss. Therefore, it is necessary to implement diversion to provide justice for the perpetrators and victims to guarantee legal certainty.

5. References

- Djamil, M. N. (2015). *Anak Bukan Untuk Dihukum*. Sinar Grafika.
- Evingrum, S. (2020). Educative Penalty System as a Protection Implementation for Children who Commit Crime. *Journal of Morality and Legal Culture*, 1(1), 38-44. <https://doi.org/10.20961/jmail.17i1.41087>
- Hasan Wadong, M. (2000). *Pengantar Advokasi Hukum Perlindungan Anak*. Gramedia Widiasarana Indonesia.
- Kansil, C. S. T. (2011). *Pengantar Ilmu Hukum Indonesia*. Rineka Cipta.
- Moleong, L.J. (2013). *Metode Penelitian Kualitatif*. Edisi Revisi. Bandung: PT. Remaja Rosdakarya
- Nurdiansyah, E. F. (2018). Application of Criminal Sanctions Against The Crime of Child Rape Linked with Article 82 of Act No. 35 of 2014 Concerning The Protection of Children. *Jurnal Daulat Hukum*, 1(3), 731-736.
- Quanjer, P. H., Stanojevic, S., Cole, T. J., Baur, X., Hall, G. L., Culver, B. H., ... & ERS Global Lung Function Initiative. (2012). Multi-ethnic reference values for spirometry for the 3–95-yr age range: the global lung function 2012 equations.
- Setiawan, M. (2015). *Karakteristik Kriminalitas Anak & Remaja*. Ghalia Indonesia.
- Soekanto, S. (1986). *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*. Rajawali Grafindo Persada.

- Soemitro, R.H. (1983). *Metodologi Penelitian Hukum*. Jakarta: Ghalia
- Soekanto, S. (2007). *Sosiologi Suatu Pengantar*. Jakarta: Rajawali Press
- Tärnfalk, M., & Alm, C. (2021). Social worker motivations and organisational prerequisites for care of children who commit crimes—the best interests of the child or the protection of society?. *European Journal of Social Work*, 24(1), 21-33.
<https://doi.org/10.1080/13691457.2019.1585334>
- Undang-Undang Republik Indonesia tentang Kepolisian Negara Republik Indonesia.
- Undang-Undang Republik Indonesia tentang Lalu Lintas & Angkutan Jalan.
- Undang-Undang Republik Indonesia tentang Sistem Peradilan Pidana Anak (UU SPPA).