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Juridical Review of the Implementation of the Fulfillment of Victims' Rights in the Implementation of Diversion in the Juvenile Criminal Justice Process

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ABSTRACT

In accordance with Law No. 11 of 2012 on the Child Criminal Justice System, Diversion is intended as an alternative approach to handling juvenile criminal cases, aiming to reduce recidivism rates among young offenders in Indonesia. Although the implementation of diversion in the judicial process—at the investigation, prosecution, and trial stages—has proven relatively effective, technical challenges remain, particularly when juvenile offenders deny or default on the terms of diversion agreements. This issue was highlighted in case Number 1/Pid.Sus-Anak/2017/PN.Cbn, where the perpetrator failed to honor the agreement, leading to the re-trial of the case despite the earlier diversion decision. The main objectives of this study are to examine the implementation of diversion in the juvenile justice process according to Law No. 11 of 2012 and to analyze the legal consequences when victims' rights are not fulfilled during diversion. The research uses a normative legal approach, focusing on existing literature and legal frameworks. The findings reveal that if a diversion agreement is not executed within the stipulated time—particularly regarding victim compensation, restoration, or community service—the judge's decision with legal force may be annulled. As demonstrated in the aforementioned case, failure to fulfill diversion terms leads to default, causing the criminal process to resume. This study highlights the need for stricter enforcement of diversion agreements to ensure effective implementation and protection of both the rights of the victims and the integrity of the diversion process.

Keywords: Restorative Justice, Child Criminal Justice System, Diversion

INTRODUCTION

Legal protection for victims of crime in the national legal system and law enforcement process has not received adequate protection. In fact, in the concept of the *state of law*, it should be a form of protection for victims that must receive a large portion as a form of state protection for the community (Amalia & Pratiwi, 2022; Esfandiari & Widianto, 2024; Pardede, 2014; Young et al., 2017). However, in its implementation, victims are often sidelined in obtaining justice.

Every criminal must be held accountable for his actions, where legal norms are made to be complied with so that anyone who violates them will be sanctioned. The existence of an imbalance between the protection of crime victims and the perpetrators of crime is essentially a denial of the principle of *equality before the law* (*equalities di hadapan hukum*) (Albariansyah et al., 2022; KIM, 2022; Shim, 2022; Trisna et al., 2020; Yulianti & Sulchan, 2021).

Legal protection for victims should be explicitly regulated in the *Criminal Code* (*Kitab Undang-Undang Hukum Pidana*). For example, when imposing a criminal sentence on the perpetrator, it is also necessary to consider the losses suffered by the victim or the victim's family, so that the perpetrator may be given a criminal compensation which may be more beneficial to the victim (Angkasa et al., 2023; Hufron & Syofyan Hadi, 2023; Koto et al., 2022; Novika et al., 2020; Sarjono, 2023).

According to Dikdik Arief, the need to provide protection is not only a national issue but also an international issue. Therefore, this issue needs to receive serious attention. The importance of protecting victims of crime can be seen from the declaration of Milan, Italy, in September 1985. In one of its recommendations, it is stated that the form of protection provided has been expanded not only for victims of crime (*korban kejahatan*), but also for victims due to abuse of power.

The problem of justice in relation to the enforcement of criminal law is indeed not a simple task. Many events in people's lives do not receive serious attention from the government or the authorities, even though the issue of humanity and justice has a very important place in *Pancasila* as the philosophy of life of the Indonesian nation. This issue reflects the precept of *Humanity that is Just and Civilized* (*Kemanusiaan yang Adil dan Beradab*) and the precept of *social justice for all Indonesian people* (*Keadilan Sosial bagi seluruh rakyat Indonesia*).

One example of the lack of attention to justice issues in criminal law enforcement is related to legal protection for victims of crime. Victims of crime, who are the most suffering parties in a criminal act, do not receive as much protection as the law provides to the perpetrators of crimes. Even though the problem of justice does not only apply to the perpetrators of crimes, but also to the victims of crime.

In every handling of criminal cases, law enforcement officials are often faced with protecting two interests that seem to be opposite: the interests of the victim, who must be protected to recover from the consequences of the crime, and the interests of the perpetrator, who, even if guilty, must have their human rights respected. Especially when there has been no judge's decision stating that the perpetrator is guilty, the perpetrator is considered innocent.

In the settlement of criminal cases, the law often prioritizes the rights of the perpetrator, while the rights of the victim are ignored. In discussions about criminal procedure law, especially those related to human rights, there is a tendency to focus on the rights of the suspect without paying attention to the rights of the victim.

The victim is not given authority and is not actively involved in the investigation and trial process, so they lose the opportunity to fight for their rights and recover their situation due to the crime. For example, if the perpetrator of a motorcycle theft is successfully arrested by the police and will then be criminally processed, but it turns out that the stolen motorcycle has been sold and used to splurge with his friends, the arrest of the perpetrator brings joy to the victim. However, when the victim finds out that the motorcycle has been sold, it no longer means anything to them because the most important thing to the victim is how to recover the motorcycle.

In criminal law, there are three aspects of discussion: the issue of acts, liability, and criminality in terms of sanctions given if the regulation is violated. The relationship between the three discussions, both theory and practice, cannot be mixed because they are different elements that are united in one part, namely criminal law. A person is said to have violated criminal law if the act committed is not in accordance with the applicable norms and rules. This is included in the *Criminal Code* (KUHP) as stated in Article 1, paragraph (1), which reads: "No act may be punished, except on the strength of the criminal provisions in the law, which precede the act."

The meaning of the above article is commonly known as the *principle of legality*, which almost all countries that declare themselves as a state of law adhere to, with the aim of protecting citizens from arbitrary rulers.

Crime is a complex issue that occurs in society because every time a crime happens, it almost certainly causes losses to the victims. Victims of crime not only bear material losses in the form of lost property, economic resources, and even lives, but also lose immaterial things such as psychological pressure, including fear, sadness, and prolonged trauma. It is not uncommon for someone to experience suffering due to a criminal act but refuse to use the rights they should receive for various reasons. For example, the fear of the public knowing about the incident or the disgrace it causes for them or their family may lead the victim to prefer to hide. Or, the victim may refuse compensation because they fear the process will be long and protracted.

Victim protection can include both abstract (indirect) and concrete (direct) forms of protection (Mahfud, 2020; Noyori-Corbett & Moxley, 2017; Wibawa Putra & Rusmini Gorda, 2024). Abstract protection is a form of protection that can only be enjoyed or felt emotionally (psychologically), such as satisfaction (*kepuasan*). Meanwhile, concrete protection is a form of protection that can be enjoyed in real terms, such as material or non-material gifts. Material gifts can be in the form of compensation or restitution, exemption from living expenses, or education. Non-material protection can be in the form of liberation from threats or degrading news.

In general, the cause of crime is first, internal to the perpetrator, where what influences a person to commit a crime arises from within the perpetrator based on hereditary and psychiatric factors. The second factor is external, where what influences a person to commit a crime arises from household and environmental factors, as well as the life of the city community that modernization causes negative sides such as social disparities between communities.

From the above description, it must be admitted that crime has increased over the years, in line with the development of modern society. Modernization can foster a belief that a very complex modern society encourages high material aspirations, often accompanied by unhealthy social ambitions. The need for material fulfillment without the ability to achieve it reasonably encourages criminal actions. In other words, when expectations do not align with reality, it can lead to problems or crimes.

Previous studies have addressed the need for legal protection for victims of crime, but many have failed to provide a comprehensive analysis of the practical challenges faced by victims during criminal proceedings, particularly in relation to juvenile offenders and diversion programs. For instance, Husain et al. (2022) focus on the legal and ethical protections for victims of crime in Indonesia, but they do not fully examine the implementation and limitations of diversion, especially in terms of fulfilling victims' rights during the process. Additionally, Prasetyo (2023) highlights the role of diversion in juvenile justice systems but fails to delve into the legal consequences when victims' rights are overlooked or unfulfilled during the diversion phase. This research fills a crucial gap by analyzing the implementation of diversion as outlined in Law No. 11 of 2012 and the legal consequences when the victim's rights are not met at this stage, providing both theoretical insights and practical implications for improving the juvenile justice system in Indonesia.

The objective of this research is to evaluate how diversion is implemented in juvenile justice processes under Law No. 11 of 2012, specifically examining the legal consequences when the rights of victims are not fulfilled during diversion. The findings will benefit policymakers, legal practitioners, and stakeholders in the juvenile justice system by offering insights on how to enhance the effectiveness and fairness of diversion, ensuring the protection of victims' rights while promoting restorative justice.

RESEARCH METHOD

This study employs a normative approach, as the primary data consists of secondary data, specifically court decisions related to child offenders who have undergone the diversion process. The study's focus is on analyzing how the judicial process handles cases of juvenile offenders reconciled through diversion, providing insights into the implementation and challenges of the practice. The research is descriptive and analytical, aiming to describe in detail the cases of children tried under diversion agreements and analyze the legal and procedural outcomes from the selected cases.

The data used in this research is secondary data, derived from specific judicial decisions, including Case No. 2/Pid.Sus.Anak/2016/PN.Cbn, Case No. 1/Pid.Sus Anak/2017/PN.Cbn, and Case No. 231/Pid.Sus/2017/PN.Cbn. These cases are examined to understand the implementation of diversion and the legal consequences when the terms of the diversion agreement are not fulfilled. The data sources include interviews conducted with key informants, such as the *Cirebon City Police Investigator*, the *Prosecutor at the Cirebon District Attorney's Office*, and the *Judge at the Cirebon District Court*. This combination of judicial decisions and interviews allows for a comprehensive analysis of the diversion process in juvenile justice.

The object of this research is the decision of the *Cirebon District Court* in Case No. 2/Pid.Sus.Anak/2016/PN.Cbn, which serves as the primary focus for understanding the application and impact of diversion in the juvenile justice system. The analysis will focus on how the court handled the case, the role of diversion, and the legal consequences that arose from the process.

RESULT AND DISCUSSION

Implementation of Diversion in the Judicial Process of Children of Criminal Offenders According to Law Number 11 of 2012 concerning the Criminal Justice System

Research conducted at the Investigation level at the Cirebon City Police found that the implementation of diversion at this level achieved more than 50% success.6 The success of the implementation of this diversion is inseparable from the efforts that have been made by the Cirebon City Police. In an effort to implement diversion at the investigation level, the Cirebon City Police provides 7 (seven) investigators who have met the criteria contained in article 26 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, namely:

1) Have experience as an investigator
2) Have an interest, attention, dedication and understanding of the child's problems, and
3) Have attended technical training on juvenile justice

In addition to the existence of investigators who have met the criteria and adequate number mentioned above, the Cirebon City Police also as conveyed by the investigator that the purpose of holding diversion at the investigation level is also in accordance with Article 68, namely:

1) Achieving peace between victims and children
2) Resolving children's cases outside the judicial process
3) Protecting Children from Deprivation of Liberty
4) Encourage the public to participate and
5) Instilling a sense of responsibility in children

Diversion in the investigation level at the Cirebon City Police is carried out through deliberation involving children and their parents/guardians, victims and/or parents/guardians, community supervisors and social workers. Although there is no Government Regulation that regulates the guidelines for the implementation of the diversion process, at the investigation level, in accordance with the mandate of the Secret Telegram of the Kabareskrim of the National Police Number 1124/XI/2006 concerning Guidelines for the Implementation of Diversion for the Police, at the level of investigation, the investigator can develop the concept of diversion contained in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. However, with the consideration of investigators in conducting diversion, the Cirebon City Police as contained in Article 9 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Justice System has considered the category of criminal acts, the age of the child, the results of community research from Bapas and support from the surrounding community. Meanwhile, in the process, the investigator also pays attention to the interests of the victim, the welfare and responsibility of the child, the avoidance of negative stigma, the avoidance of retaliation, community harmony and propriety, decency and public order as contained in Article 8 (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

As explained in the previous chapter, to know the extent of the effectiveness of the law, the first thing to do is to the extent to which the law is obeyed by most of the targets. Regarding some of the things mentioned above which are the results of research, it can be concluded that the application of diversion with all its obstacles has been fairly effective at the investigation level, in this case the Cirebon City Police.

The Diversion Agreement must be stated in the Diversion Minutes and must mention the names of the Investigator and 2 (two) Assistant Investigators, the Parties to the Diversion process and the contents of the Peace Agreement which usually consists of:

1) That both parties (the Reporting Party and the Reported Party) have succeeded in reaching an agreement/deliberation;
2) That the Complainant did not proceed this case to the Prosecutor's Office;
3) The reported person will be returned to his parents to be guided and educated so as not to repeat the act considering that the reported person is still a child.

With the reaching of a peaceful agreement from the parties (Reporter, Reported Party, Parents/Guardian of the Complainant/Reported Party) witnessed by the Father, the Reported Lawyer and 2 (two) Witnesses, the Investigator sends the Diversion Minutes to the Public Prosecutor who will submit an application for Determination to the Cirebon District Court.

The concept of diversion at the Cirebon District Attorney's Office results in several things related to the application of diversion at the prosecution level. Regarding the number of Prosecutors in the Cirebon District Attorney's Office, there are twenty-eight people, all of whom are also Prosecutors for child criminal cases. Although all prosecutors in the Cirebon District Attorney's Office are Child Prosecutors, the criteria for all prosecutors meet the criteria contained in Article 41, especially those contained in paragraph (2) of Law Number 11 of 2012 concerning the Child Criminal Justice System, which requires that the prosecutor in children's cases has experience as a public prosecutor, has an interest, Attention, dedication and understanding of children's issues, and have attended technical training on juvenile justice. Regarding the perception of the prosecutor regarding the purpose of the diversion process, it is no different from the investigator at the Police Station, namely in carrying out diversion at the prosecution level also has objectives in accordance with Article 6, namely:

1) Achieving peace between victims and children
2) Resolving children's cases outside the judicial process
3) Protecting Children from Deprivation of Liberty
4) Encourage the public to participate and
5) Instilling a sense of responsibility in children

As stated by the investigator that until now there has been no Government Regulation (PP) as a guideline for the implementation of the diversion process as mandated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, at the level of prosecution in carrying out the technical diversion process equipped with guidelines issued by the Attorney General of the Republic of Indonesia, this guideline with the title "Prosecution in the Juvenile Criminal Justice System" was published in 2012. 2015 as a collaboration between the Deputy Attorney General for General Crimes and the Bureaucratic Reform Assistance Team of the Indonesian Prosecutor's Office. There is also no difference regarding the consideration of the prosecutor in conducting diversion, as well as the considerations made by investigators at the investigation level. In the level of prosecution of the prosecutor's consideration in conducting diversion, the Cirebon City Police as contained in Article 9 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Justice System has considered the category of criminal acts, the age of the child, the results of community research from Bapas and support from the surrounding community. In addition to the considerations that must be made based on these laws and regulations, the prosecutor also emphasizes more consideration of the interests of the child both as the perpetrator and the victim.

As stated in Article 8 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System during the prosecution process, the prosecutor also considers the interests of the victim, the welfare and responsibility of the child, the avoidance of negative stigma, the avoidance of retaliation, community harmony and propriety, decency and public order. In addition to paying attention to the things that should be as contained in the article, the prosecutor emphasizes more on the child's psyche both as the perpetrator and the victim. In this case, the prosecutor will try hard to pay attention to the losses for the acts that may be caused by the criminal act committed by the child. If you look at the efforts that have been made by the prosecutors at the prosecutorial level at the Cirebon District Attorney's Office in carrying out the diversion mandated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it has been effective, although in practice it is still technically constrained, namely having to always pick up the parties involved in the diversion process, especially the reported and parents/guardians and witnesses.

The concept of diversion at the judicial level at the Cirebon District Court states that in implementing and seeking diversion, as mandated by Law Number 11 of 2012 concerning the Child Criminal Justice System, it has tried its best, this can be seen from the existence of judges who have criteria in accordance with Article 43 paragraph (2) of the Law, namely having experience as judges in the general judicial environment, have an interest, attention, dedication and understanding of children's problems and have participated in technical training on juvenile justice. Although the Cirebon District Court has Judges in accordance with these criteria, the number is still very lacking, namely 1 (one) person. So that in its implementation, one judge is always the Chairman of the Panel in the Juvenile Criminal Trial, while the Member Judge can be from judges who do not have a certificate as a Child Judge. In understanding the purpose of the diversion process, in addition to being in accordance with what is stated in Article 6, namely:

1) Promoting reconciliation between young offenders and those harmed
2) Handling juvenile cases through non-judicial means
3) Safeguarding children from being subjected to detention
4) Fostering active community involvement in the resolution process
5) Developing accountability and awareness of consequences in children

At the judicial level, the purpose of diversion, according to the juvenile judge, is to avoid the child from the judicial process as much as possible, this is because the judicial process will disturb the child's psyche. In conducting diversion at the judicial level, the judge at the Cirebon District Court will pay attention to the type of criminal act committed, the age of the perpetrator and the criminal threat, in addition to the determination of the trial day and diversion is carried out on the same day, this is done as a last diversion effort until a diversion agreement is found or not, if the diversion agreement is not obtained, then on the same day the judicial process will be held. In this process, the judge will bring in the victim, the perpetrator, the guardian of both parties, Bapas.

The Cirebon District Court in 2016 out of 12 (twelve) cases was not successfully resolved through the Diversion process. In 2017, it succeeded in issuing diversion determinations at the judicial level in a total of sixteen cases or 43.25% of the total juvenile criminal cases out of thirty-seven cases that entered the Court after diversion at the prosecutor's level was unsuccessful. Meanwhile, the determination of the diversion process in 2016 which came from the Public Prosecutor or the Prosecutor's Office amounted to 7 (seven) determinations, in 2017 there were 7 (seven) determinations.

The diversion process mentioned above is in accordance with the mandate of Law Number 11 of 2012 concerning the Juvenile Criminal Justice system, especially Article 8 which requires the diversion process to be carried out through deliberation. For more details, the mandate in Article 8 is as follows:

(1) The Diversion Process is carried out through deliberation by involving the Child and his parents/guardians, victims and/or parents/guardians, Community Counselors, and Professional Social Workers based on the Restorative Justice approach.
(2) In the case of need, deliberation as intended in paragraph (1) may involve Social Welfare Personnel, and/or the community. Government regulations that should exist and are mandated by Law Number 11 of 2012 which until now do not limit and reduce the essence of the application of diversion.

In the absence of this Government Regulation, the Supreme Court issued Perma with Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System. In carrying out the diversion, the Cirebon District Court Judge considers the provisions contained in Article 9, including the type of criminal act, the age of the child, the results of community research from Bapas and the support of the family and community environment, the Judge must also consider the policy of the Chief Justice. This means that even though the diversion process is declared successful, as the Chief Justice can reject the agreement if it is felt that it is contrary to the provisions contained in the laws and regulations. So that diversion is only fixated on the provisions contained in Law Number 11 of 2012.

During the diversion process mentioned above, the judge also pays attention to the interests of the victim, the welfare and responsibility of the child, the avoidance of negative stigma, the avoidance of retaliation, community harmony as well as propriety, decency, and public order, which is the mandate of Article 8, especially paragraph (3). Research conducted at the Malang District Court also found that the Court already has a special courtroom for children, where the perpetrator and the victim are separate but can still be monitored at the same time. Looking at the facts obtained during the study, it can be concluded that the application of diversion at the judicial level is quite effective even though there are still many shortcomings and technical obstacles and judges' resources. After receiving the Request for Determination from the Public Prosecutor of the Kepanjen District Attorney's Office, the Cirebon District Court issued a Determination of Diversion which reads as follows:

First: The general considerations are as follows:

a. Application Letter from the Cirebon District Attorney's Office;
b. Community Research (Litmas) from the Cirebon Class I Correctional Center (Bapas);
c. A written Statement and Peace Agreement made by both parties;
d. Diversion Report made by the Public Prosecutor at the Cirebon District Attorney's Office.
e. Diversion Agreement made by both parties in front of the Facilitator and Community Supervisor.

Second: Consideration of the achievement of Diversion between the parties by citing the contents of the Diversion Agreement made by the parties mentioned above. Third: The content of the Determination in general is as follows:

a. Granting the Public Prosecutor's Application to the Cirebon District Attorney's Office;
b. Stipulating the Agreement as the Minutes of Diversion and the Diversion Agreement made by the Public Prosecutor at the Cirebon District Attorney's Office and the Diversion Agreement made by both parties in front of the Facilitator and the Community Supervisor are valid according to the law;

c. Ordering the parties to submit and comply with the contents of the Peace/Diversion Agreement mentioned above;
d. Continue the negotiation process if the parties do not implement the agreement mentioned above;
e. Ordering the Prosecutor/Public Prosecutor of the Child to stop the prosecution process in the case, after the Diversion agreement is fully implemented;
f. Ordering the Prosecutor/Public Prosecutor to be responsible for the evidence until the Diversion agreement is fully implemented;
g. Ordering the Prosecutor/Public Prosecutor of the Child to send a copy of the Determination to the Father, the child/parent, the victim and the witnesses in the Diversion Peace Agreement.

The Cirebon District Court Determination Letter was signed by the Chairman of the Cirebon District Court. In essence, if in the investigation process which was then forwarded to the Application for the Determination of the Public Prosecutor, an agreement/peace was successfully implemented, then the trial of the child in the District Court was canceled.

Children play a vital and inseparable role in the continuity of human life as well as in the progress and sustainability of a nation. The Indonesian Constitution recognizes this by explicitly affirming the state’s obligation to ensure every child's right to life, development, and protection from all forms of violence and discrimination. Therefore, prioritizing the best interests of the child is inherently aligned with securing the future of society and the country.

According to Law No. 35 of 2014 on Child Protection, a child is defined as any person under the age of 18, including those still in the womb. Children's rights are considered an integral part of human rights and must be respected, protected, and fulfilled by parents, families, communities, the government, and the state. Legal protection for children is one of the essential dimensions in ensuring their rights are upheld. To ensure these protections are implemented in a structured, consistent, and accountable manner, legal frameworks are required—frameworks that are responsive to the evolving social landscape and grounded in the values of Pancasila and the 1945 Constitution.

On the other hand, subjecting children who come into conflict with the law to the formal criminal justice process often results in long-lasting negative stigma. Such experiences can lead to psychological trauma and significantly hinder the child's future prospects. In response to these concerns, many stakeholders advocate for alternative approaches to handling juvenile offenders. One such approach is Restorative Justice, which emphasizes repairing harm rather than imposing punishment, and is operationalized through the diversion mechanism.

Diversion is an alternative legal process applied to children between the ages of 12 and 18, including those who are legally married but still under 18, when they are suspected of committing a criminal offense. The aim is to resolve cases outside of the court system in a way that is more supportive of the child’s development and future, thereby preventing the harmful effects associated with conventional criminal proceedings.

Legal consequences that occur when the rights of victims at the diversion level are not fulfilled

Diversion aims to: a. achieve peace between the victim and the child; b. resolving the child's case outside the judicial process; c. to prevent children from being deprived of their liberty; d. encourage the community to participate; and e. instilling a sense of responsibility to the Son.

Every investigator, public prosecutor, and judge in examining children is obliged to seek diversion, in the event of a criminal act committed: a. threatened with imprisonment of less than 7 years; and b. is not a repetition of a criminal act," reads article 3 paragraphs 1 and 2 of Government Regulation (PP) number 65/2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 12 Years of Age.

In the event that diversion is not sought even though the conditions have been met, according to this PP, in the best interests of both children, community counselors (functional officials of law enforcement) can request the diversion process to law enforcement.

The diversion process, explained this PP, is carried out through deliberation by involving the child and his parents/guardians, victims or children of the victim and/or their parents/guardians, community supervisors, and professional social workers based on a restorative justice approach. In the event of need, the deliberation as intended can involve social welfare workers and/or the community," reads article 5 paragraph 2 of Government Regulation Number 65/2015.

The diversion process must take into account: a. the interests of the victim; b. the welfare and responsibilities of the child; c. avoidance of negative stigma; d. avoidance of retaliation; e. community harmony; and f. propriety, decency, and public order.

The results of the diversion agreement can take the form of, among others: a. peace with or without compensation; b. handover back to parents/guardians; c. participation in education or training in educational institutions or social welfare institutions (LPKS); or d. community service.

According to this PP, the diversion agreement can be made without the consent of the victim and/or the victim's child's family, if: a. a criminal act in the form of a violation; b. Minor offenses; (c) A non-violent crime; or d. the value of the victim's losses is not more than the value of the local province's minimum wage.

In the event that the diversion agreement requires the payment of compensation or return to its original state, according to this PP, the diversion agreement is carried out within the period agreed in the diversion, but it must not exceed 3 months.

The results of the diversion agreement are stated in the form of a diversion agreement letter, which must be determined by the chairman of the district court in the area where the case occurred or in the area where the diversion agreement was made," reads article 9 of the PP while stating that in the event that the diversion process is unsuccessful, the juvenile justice process will be continued.

During the diversion process, according to this PP, the child is placed with the parents/guardians, and in the event that the child does not have a parent/guardian, the child is placed in the LPKS. However, by considering the best interests of the child, children who have parents can be placed in LPKS.

According to this PP, the investigator notifies the diversion attempt to the public prosecutor within a maximum period of 1x24 hours from the start of the diversion effort.

Meanwhile, the investigator has 1x24 hours from the time the investigation warrant was issued to deliver the notice of the start of the investigation to the public prosecutor.

Furthermore, within a maximum period of 7x24 hours from the start of the investigation, the investigator notifies and offers the child and/or person/guardian, as well as the victim or the victim's child and/or parent/guardian to resolve the case through diversion.

In the event that the child and/or parent/guardian, as well as the victim or the victim's child and/or parent/guardian do not agree to carry out diversion, the investigator continues the investigation process, then submits the case file and minutes of the diversion attempt to the public prosecutor," reads article 14 paragraph 3 of the PP.

The diversion process, according to this PP, is carried out within a maximum period of 30 days from the date of the start of the diversion. The diversion deliberation as intended is led by the investigator as a facilitator and community guide as a deputy facilitator, and is attended by the child and/or parent/guardian, victim, or child of the victim and/or parent/guardian, and/or professional social worker.

In the event that a diversion agreement is reached, the investigator issues a letter of determination to terminate the investigation within a maximum period of 3 days from the date of receipt of the court determination. In the event that the diversion agreement is not implemented within a predetermined period of time (especially related to the payment of compensation, return to its original state, or community services), according to this PP, the community supervisor reports in writing to the investigator's direct supervisor for follow-up in the criminal justice process with a copy to the chairman of the local district court.

Diversion is basically an agreement between the two parties in terms of agreeing to settle criminal cases out of court which is outlined in the form of a written agreement whose content is the liability of the perpetrator of the crime to the victim in material and non-material form.

If the content of the agreement in the Diversion has been agreed upon by both parties and the agreement has been signed and witnessed by the authorities, and if the Diversion is granted by the judge, then the agreement contained in the Diversion agreement must be implemented by the criminal if it is not carried out by the criminal perpetrator, the criminal case will be resubmitted by the victim on the grounds that the perpetrator of the crime reneges on the content of the agreement that contained in the Diversion and in the end the first judge's decision or the diversion decision becomes null and void and will be re-tried in court without using Diversion.

Denial of the content of the agreement in diversion as in the case of determination Number 1/Pid.Sus-Anak/2017/PN.Cbn where the first party Dhewana Alnafis Han Bin Deni Rohmawan as the perpetrator of the crime in the case of a traffic accident is willing to provide compassionate assistance to the victim Alm Soni Wijaya bin Muhidin in the amount of Rp.85,000,000 (eighty-five million rupiah) whose surrender is carried out as follows:

1) The 1st handover amounted to Rp.50,000,000 (fifty million rupiah) at the time of signing the agreement letter.
2) The 2nd submission amounted to Rp.10,000,000 (ten million rupiahs) on April 20, 2017 at the Cirebon District Court.

3) The 3rd submission of Rp.25,000,000 (twenty-five million rupiah) no later than July 4, 2017 at 16.00 WIB at the Cirebon District Court.

The first party and the second party agreed that Dhewana Alnafis Han Bin Deni Rohmawan was handed back to his parents, but after the determination of the diversion by the Cirebon District Court, the first party only carried out its obligation, namely the 1st handover of Rp.50,000,000 (fifty million rupiah) at the time of signing the agreement letter and the first party denied the 2nd and third proposals in the determination of the diversion.

Because the first party reneged on the agreement that had been agreed upon where the first party still had an obligation of Rp. 35,000,000., which did not want to be paid on the grounds that it no longer had money and because it was considered inconsistent with the diversion agreement, the second party as the victim reported this case again for retrial because the second party felt aggrieved.

Basically, diversion is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System ("SPPA Law") and Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under the Age of 12 (Twelve) Years (PP 65/2015).

Diversion is a form of transfer of the settlement of children's cases from the criminal justice process to the process outside the criminal court. The diversion process must be pursued in every stage of the juvenile criminal justice system, starting at the stage of investigation, prosecution, or examination at a court hearing. However, there are several important requirements in terms of the implementation of diversion. Article 7 of the SPPA Law states that:

(1) At the level of investigation, prosecution, and examination of children's cases in district courts, Diversion must be pursued.

(2) Diversion as intended in paragraph (1) shall be carried out in the event of a criminal act committed:

a. threatened with imprisonment of less than 7 (seven) years; and

b. does not constitute a repetition of a criminal act.

So diversion cannot be carried out in the event that the child is charged with a criminal threat of imprisonment of 7 years or more. In connection with the 7-year criminal threat, it should be noted that the detention of children should not be carried out unless the child is 14 years old or older; and is suspected of committing a criminal act with a criminal threat of imprisonment of 7 (seven) years or more.

Basically, the diversion agreement is like an agreement in general, which means that the provisions for the cancellation of Article 1320 of the Civil Code ("Civil Code") apply to the agreement. The following are the legal conditions of the agreement based on Article 1320 of the Civil Code:

1. Agreement of the parties to the agreement
2. Competence of the parties to the agreement [capacity]
3. Certainty of terms
4. Reasons that are halal [considerations]

Except for the element of agreeable objects regulated in Article 1332 of the Civil Code (where the object of the agreement must only be tradable goods), this does not apply to diversion agreements because it is further regulated in Article 11 of the SPPA Law as follows:

The results of the Diversion agreement can take the form of, among others:

a. peace with or without compensation;
b. handover back to parents/guardians;
c. participation in education or training at educational institutions or LPKS for a maximum of 3 (three) months; or
d. community services.

The element of proficiency also does not refer to Article 1330 of the Civil Code because the purpose of the SPPA Law is to protect and guarantee the rights of the suspect, namely the child himself, as written by Bambang Waluyo in his book Victimhood Protection of Victims and Witnesses. If Article 1330 of the Civil Code prohibits minors/still under custody from making agreements, in the diversion agreement, the child who is the suspect and/or victim is also taken into account in making a diversion agreement. However, the diversion process must still involve adults such as the child's parents/guardians. In this case, the relationship between the SPPA Law and the Civil Code applies adegium "Lex specialis derogat legi generalis" or special law overrides general law.

For criminal acts in the form of violations, minor criminal acts, without victims, or the value of the victim's losses does not exceed the minimum wage value of the local province, the Diversion Agreement does not have to obtain the consent of the victim and/or the victim's child's family and the willingness of the child and his family. Article 13 of the SPPA Law stipulates as follows:
The juvenile criminal justice process is continued in the following cases:

1. The diversion process does not result in an agreement; or
2. The Diversion Agreement is not implemented.

So, like an ordinary agreement, a diversion agreement can be demanded to be canceled or null and void if the agreement violates the legal terms of the agreement as stipulated in Article 1320 of the Civil Code, including if it only violates the elements of the agreement (for example, if the victim does not agree to the outcome of the diversion agreement). As a result of the cancellation of the agreement, the child's criminal case will be continued in the juvenile criminal justice process and the file will be forwarded to the Public Prosecutor in accordance with the provisions of the SPPA Law.

However, it should also be noted that in practice, the provisions of the SPPA Law are not fully enforced as they should be. There are still many uncertainties surrounding the implementation of the SPPA Law. Regarding this.

CONCLUSION

The research conducted in three institutions, each of which represents a stage of the juvenile criminal justice process, can be concluded as follows: The implementation of diversion in the juvenile justice process for criminal offenders at the levels of investigation, prosecution, and justice has been quite effective, even though it is still constrained by technical, infrastructure, and resource limitations. The lack of a representative place to temporarily place and guide the children of criminal offenders is the main obstacle to effectively implementing the concept of diversion at the investigation, prosecution, and judicial levels. In addition, internal factors such as the difficulty of presenting perpetrators, victims, and witnesses also pose obstacles in carrying out the diversion process, although they can be overcome by picking up participants at each stage of diversion.

As a legal consequence, if the victim's rights at the *Diversion* level in terms of diversion agreements are not implemented within a predetermined period of time (especially related to the payment of compensation, return to the original state, or community services), then the judge's decision, which already has legal force, will still remain unfinalized because the victim may file a lawsuit again with the court. This occurs when the perpetrator does not keep his promise or defaults on the diversion agreement, as seen in the case of *Case No. 1/Pid.Sus-Anak/2017/PN.Cbn*, where the first party, Dhewana Alnafis Han Bin Deni Rohmawan, as the perpetrator of the crime in the traffic accident case, committed a default.

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