



Juridical Analysis of The Application of Diversion in Child Crime Cases to Realize Restorative Justice at The Court Level: Case Study at Pasarwajo District Court

La Gurusi^{1*}

¹Faculty of Law, Universitas Muhammadiyah Buton, Indonesia

*Correspondence: lagurusi@gmail.com

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ABSTRACT

The problem to be investigated is how the application of diversion in realizing Restorative Justice at the Pasarwajo District Court level and the obstacles to the application of Diversion in realizing Restorative Justice at the Pasarwajo District Court level. The objectives and benefits to be achieved in this study are to find out how the application of Diversion in realizing Restorative Justice at the Pasarwajo District Court level and can help and provide input and additional knowledge for parties related to the problems studied. This research is an empirical juridical research that uses primary data as its study material. The result of this research is that the application of Diversion in realizing Restorative Justice at the Pasarwajo District Court still has obstacles.

Keywords: Diversion; Child Crime; Restorative Justice

1. Introduction

Every child has dignity, which should be upheld, and children's rights must be granted without exception. (Sulaiman, 2017) Protection is provided in all aspects, including social, economic, political, and legal aspects. A child is defined as anyone under the age of 18, including a child still in the womb (Article (1) paragraph (1) of Law No. 23 of 2002, as amended by Law No. 35 of 2014). According to the law on child protection, they have the right to be protected from violence and discrimination as a child (Article 4 of Law No. 23 of 2002).

In light of the principles of child protection, particularly the principle of non-discrimination, which prioritizes the child's best interests and right to life, a process for resolving child cases outside of a criminal mechanism, also known as diversion, is required, because correctional institutions are not the best way to solve problems, and there are many things that are not desirable in institutions. (Hidaya, 2019) As a result, Diversion, with its Restorative Justice approach, becomes a consideration as well as a solution when it comes to settling criminal cases involving minors. (Safrin Salam, 2020)

A child who commits a crime must be tried in a special children's court within the general justice environment, with a special process and special officials who understand children's problems, ranging from arrest, detention, adjudication and guidance in the juvenile justice process as regulated in Law No. 11 of 2012 concerning the Juvenile Justice System, in the perspective of criminal science, believes that the imposition of crimes against children tends to harm the mental development of children in the future.

Therefore, the Government of Indonesia has issued Law Number 11 of 2012 concerning the Juvenile Justice System called Diversion and Restorative Justice. It should be noted that diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system which aims to achieve peace between victims and children, settlement of children's cases outside the court process, preventing children from deprivation of independence, encouraging the community to participate and instilling a sense of responsibility. Responsibility to children carried out through a deliberation process involving

the child and his parents/guardians, victims and/or parents/guardians, community counselors, and professional social workers based on a Restorative justice approach. (Salam, 2019)

Settlement of criminal cases through diversion to obtain Restorative Justice can be completed at the investigation level so that the settlement of diversion to the Prosecution level and settlement at the Court level is no longer passed because Restorative justice has been realized, namely the realization of a peace agreement between the victim and the perpetrator, but in this case, it was carried out by children, the settlement of diversion at the level of Investigation and Prosecution cannot be realized later at the level of the Court, only then can the settlement of diversion be realized, namely the creation of a peace agreement between the two parties between the victim and the perpetrator as Restorative justice. (Muhammad Rizal lampatta, 2019)

From this problem, the author wants to analyze the process of resolving diversion applied by judges at the Pasarwajo District Court level so that Restorative Justice can be realized, the authors want to conduct research with the title: Juridical Analyst of Application of Diversion in Child Crime Cases to Realize Restorative Justice at the Level District Court (Case Study at Pasarwajo District Court, Buton Regency). The formulation of the problem in this study is how to apply diversion in realizing Restorative Justice at the Pasarwajo District Court level? and what are the obstacles to implementing Diversion in realizing Restorative Justice at the Pasarwajo District Court level?

2. Methodology

This research was carried out at the Pasarwajo District Court Office. This location was chosen because at the Pasarwajo District Court there was a juvenile criminal case that was resolved with a diversion approach by realizing Restorative Justice. The type of data used by the author in this study is primary data and secondary data. To obtain the data needed in this study, both primary data and secondary data used the Interview and Literature Study method. The data analysis technique used by the author is by using qualitative and interactive analysis techniques

3. Result and Discussion

3.1. Application of Diversion in Realizing Restorative Justice at the Court Level

The existence of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, and the process of resolving child cases at all levels, both at the Investigation level, at the Prosecution level and at the District Court level, must seek a Diversionary settlement. To provide special protection for children who are in conflict with the law in accordance with the provisions in Article 59 of Law Number 35 of 2014. There is almost no difference in the form of settlement of children's cases by diversion at the investigation level, prosecution level and court level. (Purwanti, 2019) In the diversion process involved in the deliberations are perpetrators, victims, families of perpetrators/victims, community counselors, and professional social workers to jointly seek a fair solution according to the principles of restorative justice. (Ananda, 2018)

The implementation of Diversion at the Prosecution Level failed in the sense that the diversion carried out at the Prosecution stage failed to obtain an agreement from both parties. The case was transferred to the State Court. After the District Court receives the delegation of the case from the Public Prosecutor, it is immediately submitted to the Criminal Registrar. The child case file is then submitted to the Head of the District Court for analysis whether the child's case is in the diversion category or not. Furthermore, the Head of the District Court determines the Judge or Panel of Judges to handle the child's case and no later than three days after receiving the case file from the Public Prosecutor (Article 52 paragraph (1) UUSPPA). According to the results of the interview with the juvenile judge MAMLUATUL MAGHFIROH, SH., on Thursday July 15th 2021 at the Pasarwajo Court. After the head of the District Court has appointed a Judge or Panel of Judges to handle children's cases, diversion at the court examination level must be carried out. Further diversion must be attempted to be carried out at the trial stage of the court no more than seven days after the determination of the judge or panel of judges by the head of the District Court (article 52 paragraph (2) UUSPPA). Diversion must be carried out by a judge who has been appointed by the Head of the District Court as a judge within a maximum period of thirty days (article 52 paragraph (3) of the UUSPPA). The diversion process can be carried out in the mediation room or in the courtroom available at the District Court.

In Perma No. 4 of 2014, after receiving the stipulation of the head of the court to handle cases that were resolved by diversion, the juvenile judge issued a decision on the diversion consultation, then within a period of

one week they immediately carried out diversion. At that time, the juvenile judge who acted as a facilitator in the settlement of children's cases through diversion ordered the public prosecutor to present all parties, both on the perpetrator's side and on the victim's side (article 4 PERMA Number 4 of 2014), which were presented, namely:

- a) Children as perpetrators
- b) Children as victims
- c) Parent/Guardian
- d) Law advisor
- e) Victim's parents/guardians
- f) Community Counseling Officer
- g) Sissy Worker
- h) Social Welfare Personnel
- i) Community Representative

Then the child judge, at the same time acting as a facilitator, holds a trial for the diversion process which takes place in the Mediation Room or the Court Session Room. All parties, both the perpetrators, the victims and all parties involved in it, sit together looking for a fair solution by being supported by the child judge as a facilitator with a family approach by emphasizing the restoration to its original state, which means that in return to the atmosphere as if there was no conflict between the two parties. (Lampatta, 2017)

In the process of resolving children's cases at the Pasarwajo District Court led by Child Judge Mamluatul Magfroh succeeded in reaching a Diversion agreement between the two parties. So that the Judge conveys the Diversion Report along with the Diversion agreement to the Chairman of the Pasrwajo District Court to make the determination of the Diversion Agreement. From the results of an interview with a juvenile judge on Thursday, July 15, 2021, he said that to reach an agreement in the process of resolving a child's case, it does require a special technique or method of approach that can touch the social sense of the family so that both parties are moved so that they want to make peace.

Considering, that because the Diversion Deliberation has obtained an agreement and the Chairman of the Pasarwajo District Court Has Issued A Stipulation Number 1/Pid.Sus-Anak/2021/Pn Psw Dated February 2, 2021, The Examination Process For Child I. Gimran Daeng Lalang Als. Gilang Bin Arifin, Son li. Arjuna Taba Als. Arjun Bin La Taba Ane, Child Iii. Sahrul Taba Als. Aman Bin La Taba Ane, Child Iv. Rafli Als. Cus Bin Raslan, Son V.Muh. Ardhan Amala Als. Ardhan Bin Arubi, Son Vi. Muh. Ridwan Bae Saleh Bin M. Saleh, Son Vii. Arif Fadil Als. Acong Bin Isnana Jaya And Son Viii. Adrian Saputra Als. La Leu Bin Samrin Must Be Stopped;

Taking into account the provisions of Article 12 paragraph (3), paragraph (4) and paragraph (5) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System;

- 1) Stop the case examination process Son I.Gimran Daeng Lalang Als. Gilang Bin Arifin, Son li. Arjuna Taba Als. Arjun Bin La Taba Ane, Child Iii. Sahrul Taba Als. Aman Bin La Taba Ane, Child Iv. Rafli Als. Cus Bin Raslan, Son V.Muh. Ardhan Amala Als. Ardhan Bin Arubi, Son Vi. Muh. Ridwan Bae Saleh Bin M. Saleh, Son Vii. Arif Fadil Als. Acong Bin Isnana Jaya And Son Viii. Adrian Saputra Als. La Leu Bin Samrin;
- 2) Order the Children to be released from Detention;
- 3) Order the Registrar or appointed official to send a copy of this stipulation to the Child, his/her Parents, Victim, Community Counselor and Public Prosecutor.

Settlement of child cases at the Pasarwajo District Court during 2019 to 2020. In 2019 the number of child cases at the Pasarwajo District Court was: 14 child cases, and in 2020 as many as: 21 cases of children. With details in the table as follows:

Table 1. child cases at the Pasarwajo District Court during 2019 to 2020

Year	Number of Cases	No Diversion	Unsuccessful Diversion	Successful Diversion
2019	14	13	1	
2020	21	9	7	5

Data Source: Pasarwajo District Court in 2021

From the data on children's cases at the Pasarwajo District Court, we can see that the cases that were entered in 2019 were 14 cases of children. There are 13 cases of children who do not meet the elements to be processed by diversion. One case that can meet the elements to be processed by diversion, but it turns out that the settlement by diversion is not successful, so the case is determined by the Head of the District Court for further processing. While in 2020 the number of child cases at the Pasarwajo District Court was 21 cases. Of the number of cases that do not meet the elements to be processed by diversion, there are 9 cases and 7 cases can meet the elements to be processed by diversion but it is not successful because at the time of holding a deliberation between the two parties there was no agreement and 5 cases were successfully resolved by diversion, meaning that when sitting together holding a deliberation in the mediation room of the Pasarwajo District Court led by a child judge as a facilitator, they succeeded in reaching an agreement between the two parties. So that the Head of the District Court decided that the child's case was stopped so that it would not be processed further. From the results of an interview with the juvenile judge MAMLUATUL MAGHFIROH, SH., Friday, July 16, 2021 at the Negeri Pasarwajo Court.

3.2. Fairness of Non-Litigation and Litigation Settlement Decisions

The sense of justice given to the non-litigation diversion process is more acceptable to the parties because it prioritizes peace and the peace clause can be determined by each party, so that in the future it is very good if a child's case can be resolved by deliberation in the diversion process considering the trial not very good for the psychological development of children. (Rosnida, 2019) The non-litigation process can also realize Restorative Justice because it is a process that involves perpetrators, victims, families of perpetrators/victims, and community leaders involved in seeking a just settlement by emphasizing recovery back to its original state. (Rizki A, Suhartono, & Salam, 2021) While the settlement of litigation given will incriminate the child both from the trial process and the implementation of the decision. because the nature of the criminal decision in the trial process if the child is guilty is punishing. According To The Results Of The Interview Delivered By The Child Judge Mamluatul Maghfiroh, SH., Friday, July 16, 2021 at the Neeri Pasarwajo Court.

In the application of Diversion to realize Restorative Justice according to the results of the study, there are two factors that become obstacles, namely Internal factors and External factors

a) Internal factors

In Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in article 6 paragraph (a), one of the objectives of implementing Diversion is to achieve peace. Article 8 of Law Number 11 of 2012 concerning the juvenile criminal justice system explains that:

- 1) The diversion process is carried out through deliberation involving children and their parents/guardians, victims and/or their parents/guardians, community advisors, and professional social workers based on a Restorative Justice approach.
- 2) If necessary, the deliberation as referred to in paragraph (1) may involve Social Welfare Workers, and/or the community.
- 3) The Diversion Process must pay attention to:
- 4) Victim's interest
- 5) Child welfare and responsibility

- 6) Avoidance of negative stigma
- 7) Retaliation avoidance
- 8) Community harmony and
- 9) Propriety, decency, and public order

To achieve peace in the deliberations on the settlement of children's cases involving both parties and all the elements involved in the diversion settlement, the role of the judge as a facilitator in controlling the course of the diversion deliberations in court is crucial. (Imron Rizki, Safrin Salam, 2019) Article 53 Paragraphs (2), (3), (4), (5) and (6) of the Juvenile Criminal Justice System Law provide an explanation that: Judges are obliged to seek diversion no later than seven days after being appointed by the head of the District Court as Judge. (3) The diversion as referred to in paragraph 2 is carried out for a maximum of thirty days. (4) The diversion process can be carried out in the mediation room of the district court. (5) In the event that the diversion process is successful in reaching an agreement, the judge submits the minutes of the diversion along with the diversion agreement to the head of the district court for an agreement to be made. (Nur Dahniar, Safrin Salam, 2021) (6) In the event that diversion is not successful, the case will proceed to the trial stage. In accordance with the results of interviews with juvenile judges at the Pasarwajo District Court, it was explained that the resolution of children's cases in the district court through the diversion of the role of the facilitator was very decisive.

b) External Factor

Implementation of diversion in the Pasarwajo district court, externally there are still obstacles, namely:

- 1) Due to the issue of sanctions, children in conflict with the law can be resolved through diversion if the threat of imprisonment must be below 7 years (article 7 paragraph (a) UUSPPA).
- 2) Due to the age issue, in the event that the child is not yet 12 years old, commits or is suspected of committing a criminal act, the investigator, Community Counselor and Community Social Worker take the decision to return the child to the parent/guardian for guidance (Article 21 paragraph 1 (a) UUSPPA).
- 3) The non-fulfillment of the requirements to be appointed as a judge in a child case in a district court (article 43 paragraph 2 (abc) UUSPPA).

In the event that the diversion is not successful, the case will proceed to the trial stage (Article 25 paragraph 6 of the UUSPPA).

4. Conclusion

Settlement of children's cases that come into contact with the law in district courts through the application of diversion in realizing Restorative justice, the role of the Facilitator is very decisive to reach a diversion agreement. In article 5 paragraph (4) PERMA Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System, it provides an explanation of the efforts that the Diversion Facilitator must take so that peace can be created between the two parties and all those related to the issue of the case. Children sit together as a family looking for a just solution by emphasizing the restoration to its original state. In 2020, the Pasarwajo District Court with the technique and method of the Facilitator was able to realize 5 cases of children in the diversion agreement.

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