

Optimizing Diversion Policy Due to Overcrowding in Children's Special Development Institutions (LPKA)

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Abstract

Child convicts are separated from adult convicts so that they are placed in the Special Children's Development Institution (LPKA), where this is a place for child convicts, not as a place to administer punishment as we know in Correctional Institutions (Lapas) which contain adult convicts. The essence of diversion with a restorative justice approach is the "transfer" of the process of resolving criminal acts from inside to outside the court through the method of consensus deliberation by prioritizing "restoration", "improvement" of the original situation before the crime occurred and by meeting the needs of victims, perpetrators and the community. This is stated in Article 8 of the SPPA Law that diversion is carried out through deliberation involving many parties. The results of diversion are expressed in the form of a "diversion agreement" which generally takes the form of peace (with or without compensation), handover to parents/guardians, education/training at educational institutions or LPKS; or community services. Negative impacts arising from the decline of prison and detention center residents include burdening staff, deterioration of living conditions, lack of access to education, training and employment, quality of health and physical and mental comfort which triggers tension and violence, increasing the risk of disease transmission. , also has an impact on state finances, human rights issues, health issues, security and economic issues due to illegal levies, security for officers, and the effectiveness of coaching. Therefore, it is important to have policies to mitigate the impacts arising from the overcrowding that occurs in prisons and detention centers. _____

I. Introduction

Laws are generally created and enforced with the aim of regulating behavior and providing justice for individuals or groups, where it is hoped that the existence of law will give rise to positive behavior. This is in line with the teachings explained by Jeremy Bentham, that the purpose of law is to bring about the greatest happiness for the greatest number of people.¹ The existence of applicable law, with its coercive nature, should make every human being, whether individual, group or community, submit and obey every rule contained in that law. However, not every human being is able to obey and comply with existing laws, resulting in violating behavior and causing them to run afoul of the law.

Handling of children in the justice system is the main issue of this research. The main principle of child protection is the principle of non-discrimination, prioritizing the interests of children to have continued growth and development, and protecting their human rights. Based on this idea, the criminal justice system requires criminal mechanisms which are usually carried out conventionally. The main idea in protecting children as perpetrators of criminal acts is also contained in the provisions of the Convention on the Rights of the Child which was ratified by the Indonesian government. The content of the convention states that children in conflict with the law can be categorized as children with special situations, and this statement is supported by the publication of Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and Republic of Indonesia Law Number 11 of 2012 concerning Systems Juvenile Criminal Justice.

The idea of diversion, especially through the concept of restorative justice in handling juvenile crimes, can be taken into consideration to protect children. The importance of the diversion process in resolving cases of children as perpetrators of criminal acts needs to be optimized, in this case children in the teenage period, namely early adolescence (aged 12 to 16 years) and late adolescence (aged 16 to 18 years). In this age range, William Kay believes that as individuals, adolescents have developmental tasks, one of which is strengthening their ability to control themselves based on a scale of values, principles or philosophy of life.

According to the World Health Organization or what is commonly heard as the World Health Organization (WHO) in 2023, the adolescent population is larger than any other age group, with a global population of around 7.2 billion people, with more than 3 billion people aged under 25 years and 1.2 billion of the population are teenagers aged 10 to 19 years, which is equal to 18 percent of the world's population. Data from the Central Statistics Agency in 2023 recorded the number of teenagers aged 10 to 19 years in Indonesia at 44.25 million. Indonesia is the country with the fourth largest number of children in the world after China, India and the United States. Based on the numbers above, more than half of Indonesian children are concentrated in five provinces, namely West Java (18.6 percent), East Java (12.8 percent), Central Java (12 percent), North Sumatra (6.2 percent), and Banten (4.4 percent). Meanwhile, the other 46 percent are spread across 29 other provinces in Indonesia. In general, the number of children in 26 out of 34 provinces in the country exceeds

¹ Teguh Prasetyo. 2010. *Hukum Pidana*, Jakarta: PT. Raja Grafindo Persada, halaman 76.

the average number of children in Indonesia (30 percent). The regions with the highest number of children are in Riau Province (35.5 percent), East Nusa Tenggara (35.3 percent), and Southeast Sulawesi (35.1 percent).²

With the population of Indonesia as per the data above, it is not uncommon for crimes to be committed by adults, but this does not rule out the possibility of crimes being committed by teenagers. According to Law Number 35 of 2014 concerning Child Protection, a child is someone who is not yet 18 years old, including children who are still in the womb. Meanwhile, according to the UN Convention on the Rights of the Child, a child is anyone under the age of 18 years. Cases of children in conflict with the law, according to data from the Directorate General of Corrections, Ministry of Law and Human Rights, show an increasing trend in the period 2020 to 2023. As of August 26 2023, there were nearly 2,000 children in conflict with the law. A total of 1,467 children are in custody and are still undergoing the judicial process, while 526 children are serving sentences as correctional children.

As a sub-system of criminal justice, Correctional Institutions (Lapas) have a role in implementing the development of correctional prisoners and students through a correctional system based on education, rehabilitation and reintegration. In Law Number 12 of 1995 concerning Corrections, it is stated that the correctional system is implemented in order to form correctional inmates to become fully human, realize their mistakes, improve themselves, and not repeat criminal acts so that they can be accepted again by society. However, in its development, the coaching carried out was not optimal because of the complex problems that occurred in prisons. One of the roots of problems in prisons/detention centers is excess capacity (*over capacity*).

Child convicts are separated from adult convicts so that they are placed in the Special Children's Development Institution (LPKA), where this is a place for child convicts, not as a place to administer punishment as we know in Correctional Institutions (Lapas) which contain adult convicts. This was done deliberately because underage children who have made mistakes that violate the law still have a long future, therefore these child prisoners are separated from adult prisoners so that the process of developing child prisoners is more effective and efficient because there is no influence from other things. other thing. So that when child convicts have finished their term of care at the Special Children's Correctional Institution, they still have the opportunity to achieve their own future and not feel alienated by society.

2. Research Method

This research method is normative legal research (normative juridical). Normative Legal Research (normative juridical) is a legal research method carried out by examining library materials or secondary data. Normative juridical research refers to legal norms contained in laws and regulations as well as norms existing in Islam. The aim of this research is to provide legal solutions to increase the role of the community in monitoring fisheries

² Fransiska Novita dkk. 2021. Buku Ajar Hukum Perlindungan Anak dan Perempuan. Jakarta : madza media, halaman 45.

crimes. The stages that will be carried out are preparation and implementation of research by collecting data or field information for qualitative analysis.

3. Results and Discussion

Implementation of Diversion as an Effort to Protect Children in Conflict with the Law

The quality of protection for children should have a degree or level that is at least the same as protection for adults, because everyone has the same position before the law (equality before the law).³ Child protection is efforts that support the implementation of the rights and obligations of children themselves. Therefore, a child who obtains and maintains the right to grow and develop in life in a balanced and positive manner means being treated fairly and avoiding harmful threats. Efforts to protect children can be legal actions that have legal consequences, thereby preventing children from arbitrary parental actions.

The justice process for children often loses its essential meaning, namely as a mechanism that must end with efforts to protect the best interests of the child. Juvenile criminal justice is often a process that is only oriented towards formal law enforcement and is not oriented towards the interests of children.⁴

Handling cases of children in conflict with the law that prioritizes the best interests of the child is still far from expected. The government has issued special regulations that regulate the protection of the rights of children in conflict with the law, such as Law No. 3 of 1997 concerning Children's Courts which was later changed to Law Number 11 of 2012 concerning the Children's Criminal Justice System or Law no. 23 of 2002 concerning Child Protection and even the government has ratified the Children's Rights Convention (CRC) by issuing Presidential Decree Number 36 of 25 August 1990, and signing the Beijing Rules agreement, but it turns out that the provisions in these regulations are not the best solution for resolving cases of children in conflict with the law. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which became effective on July 31 2014, aims to maintain the dignity of children with a restorative justice approach, a child has the right to receive special protection, especially legal protection in the criminal justice system. Therefore, the Juvenile Criminal Justice System is not only focused on imposing criminal sanctions on children who commit criminal acts, but is also focused on the idea that imposing sanctions is intended as a means of realizing the welfare of children who commit criminal acts. This is in line with the objectives of implementing the Juvenile Criminal Justice System as desired by the international community.

The special criminal justice system for children certainly has a special aim for the future interests of children and society which contains the principles of restorative justice. Article 1 point (6) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that restorative justice is the resolution of criminal cases by involving the perpetrator,

³ Syamsu Haling, Paisal Halim, Syamsiah Badruddin, & Hardianto Djanggih, "Perlindungan Hak Asasi Anak Jalanan Dalam Bidang Pendidikan Menurut Hukum Nasional Dan Konvensi Internasional". Jurnal Hukum & Pembangunan, Vol.48, No.2, AprilJuni 2018, hal.362-363

⁴ Achmad Ratomi, "Konsep Prosedur Pelaksanaan Diversi Pada Tahap Penyidikan Dalam Penyelesaian Tindak Pidana Yang Dilakukan Oleh Anak", Jurnal Arena Hukum, Vol. 6 No. 3 Tahun 2013, hlm 395.

victim, family of the perpetrator/victim, and other related parties to work together to find an acceptable solution. fair by emphasizing restoration to the original state, and not retaliation. In the Juvenile Criminal Justice System as intended in Paragraph (2) letters a and b, diversion must be sought. Diversion is the transfer of resolution of children's cases from the criminal justice process to a process outside of criminal justice. The diversion approach in restorative justice regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is a new breakthrough that is not known in the conventional Criminal Justice System.

Juridically, it has been regulated that diversion must be carried out at all levels of examination (investigation, prosecution and trial). The imperative regulations in Articles 5 and 7 of the SPPA Law which require efforts to use diversion show that the widest possible gap is open for implementing diversion. This should be appreciated because in its totality it is trying to implement diversion, but it seems contradictory if we examine the provisions of Article 7 paragraph (2) of the SPPA Law which places restrictions on the implementation of diversion. Article 7 paragraph (2) of the SPPA Law limits the use of diversion by regulating that diversion can only be carried out in juvenile crimes which are punishable by imprisonment for under 7 (seven) years and not recidive (repetition of the crime). The consequence of this limitation is that there is case filtering ("filtering") which can be completed through discretionary channels. Firstly, in absolute terms, diversion can only be carried out for crimes that are not serious, namely crimes against children which are punishable by imprisonment for less than 7 (seven) years and is not a repetition of the crime (recidive) in this sense that the crime against children is committed by children who are not recidivists (same/dissimilar and criminal acts that have been completed through diversion). This confirms that diversion cannot be carried out on children who have committed crimes even if these crimes are resolved through diversion.

The essence of diversion with a restorative justice approach is the "transfer" of the process of resolving criminal acts from inside to outside the court through the method of consensus deliberation by prioritizing "restoration", "improvement" of the original situation before the crime occurred and by meeting the needs of victims, perpetrators and the community. This is stated in Article 8 of the SPPA Law that diversion is carried out through deliberation involving many parties. The results of diversion are expressed in the form of a "diversion agreement" which generally takes the form of peace (with or without compensation), handover to parents/guardians, education/training at educational institutions or LPKS; or community service. If the crime committed is a violation, minor crime, victimless crime, or the value of the victim's loss is no more than the local provincial minimum wage, the investigator can carry out diversion on the recommendation of the Community Advisor and the results of the diversion can be in the form of: compensation, medical and psychosocial rehabilitation, return to parents/guardians, education or training at educational institutions or LPKS or community services. The diversion agreement is then registered with the court to become a decision.

The Effects of Overcrowding in Correctional Institutions on the Quality of Guidance in

Special Child Development Institutions

The term correctional student is currently no longer used. This is in accordance with the applicable provisions in the SPPA Law, namely in article 1 letter 3 which reads "Children who are in conflict with the law, hereinafter referred to as Children, are children who are 12 (twelve) years old, but not yet 18 (eighteen) the year the person is suspected of committing a crime." So, in accordance with these provisions, the term Children in conflict with the law who are undergoing guidance are usually referred to as Correctional Students, with the enactment of the SPPA Law referred to as Children. In reality, the provisions regarding the placement of children separately from prisoners are not supported by an adequate number of LPKA in Indonesia. In Indonesia, currently only 18 provinces have LPKA, including North Sumatra, West Sumatra, South Sumatra, Riau, Jambi and Lampung. On the island of Java, minus DKI Jakarta, all provinces have LPKA, namely in Banten. LPKA was also only recently provided in West Java, in 2013. Other LPKA are in Central Java and East Java. Apart from that, there is only LPKA in Bali; in West Nusa Tenggara; in East Nusa Tenggara; in South Sulawesi; in North Sulawesi; in West Kalimantan; in South Kalimantan and in Batam. This means that there are 16 provinces in Indonesia that do not have LPKA.

The overcrowded condition of prison and detention center residents that has occurred so far is caused by various factors. According to Supriadi Widodo, the main and first thing that influences the high numbers in Indonesia is that the will is still oriented towards overcrowding the country which is imprisoned in every political process of making laws that contain criminal provisions. Drug laws often do not provide or make very limited provisions for alternatives to prison sentences, even for minor cases.⁵ The negative impacts resulting from the decline of prison and detention center residents include burdening staff, deterioration of living conditions, lack of access to education, training and employment.⁶ The decline in the quality of health and physical and mental comfort which triggers tension and violence, increases the risk of disease transmission⁷, also has an impact on state finances, human rights issues, health issues, security and economic issues due to illegal levies, security for officers, and the effectiveness of coaching⁸. Therefore, it is important to have policies to mitigate the impacts arising from the overcrowding that occurs in prisons and detention centers.

No one expects a disaster, calamity, disaster, risk or accident to occur. No one can guarantee that disaster will occur in the future. Humans with their scientific abilities are only able to predict, estimate, identify, measure or mitigate the occurrence of a risk or disaster. Management of disasters that occur either due to natural factors or due to human negligence raises the risk of loss of life and incalculable damage to various properties and possessions.

⁵ Komite Internasional Palang Merah (ICRC), Panduan Tentang Strategi Untuk Mengurangi Kepadatan Dalam Penjara, 30

⁶ Jenny Goldie, "Crowded out," New Scientist 171, no. 2310 (2001): 9-11

⁷ Komite Internasional Palang Merah (ICRC), Panduan Tentang Strategi Untuk Mengurangi Kepadatan Dalam Penjara, 11.

⁸ Novian et al., Strategi Menangani Overcrowding di Indonesia: Penyebab, Dampak dan Penyelesaiannya, 103-120

Various efforts are needed to reduce the impact of disasters. National Disaster Management Agency (BNPB)⁹ defines disaster risk reduction as a systematic effort to develop and implement policies, strategies and actions that can minimize the loss of life and loss or damage to assets and property due to disasters, either through disaster mitigation efforts (prevention, increasing preparedness) or efforts to reduce vulnerability (physical, material, social, institutional and behavior/attitude).

Mitigation is preparation and prevention efforts carried out to reduce and/or eliminate losses and victims that may arise as a result of a disaster. Both disasters due to natural factors (natural disasters) and disasters due to human factors (manmade disasters). Risk¹⁰(risk) According to the KBBI, it is defined as an unpleasant (harmful, dangerous) consequence of an action or action. Risk is also defined as uncertainty and the possibility that losses will occur in current activity processes or future events. Risk mitigation¹¹ According to the Big Dictionary, it is an effort to reduce the possibility of occurrence and impact of risks. Risk mitigation¹² is a development step in mitigation planning to manage, eliminate or reduce risks that may occur. The implementation of risk planning carries out a series of steps to carry out intensive monitoring so that necessary corrective actions can be taken. The first step to carry out risk mitigation is identifying risks, the second step is to assess or impact risks, the third step is to determine risk priorities, and the fourth step is to carry out risk mitigation planning.

4. Conclusion

The essence of diversion with a restorative justice approach is the "transfer" of the process of resolving criminal acts from inside to outside the court through the method of consensus deliberation by prioritizing "restoration", "improvement" of the original situation before the crime occurred and by meeting the needs of victims, perpetrators and the community. This is stated in Article 8 of the SPPA Law that diversion is carried out through deliberation involving many parties. The results of diversion are expressed in the form of a "diversion agreement" which generally takes the form of peace (with or without compensation), handover to parents/guardians, education/training at educational institutions or LPKS; or community service.

The negative impacts arising from the decline of prison and detention center residents include burdening staff, deterioration of living conditions, lack of access to education, training and employment, quality of health and physical and mental comfort which triggers tension and violence, increases the risk of disease transmission, and also has an impact on state finances, human rights issues, health issues, security and economic issues due to illegal levies, security for officers, and the effectiveness of coaching. Therefore, it is important to

⁹ Margeritha Agustina Morib, "Mitigasi Bencana Dan Analisis Resiko Gempa Pada Bangunan Gedung Di Yogyakarta," *Majalah Ilmiah UKRIM* (2013): 63–72.

¹⁰ Badan Nasional Penanggulangan Bencana, *Undang-Undang Negara Republik Indonesia Nomor 24 Tahun 2007 Tentang Penanggulangan Bencana* (Republik Indonesia, 2007)

¹¹ Tutik Sri Haryati, "Peranan Pembimbing 25 Kemasyarakatan Dalam Upaya Penanganan Overcrowded Pada Lembaga Pemasyarakatan," *Jurnal Ilmiah Kebijakan Hukum* 13, no. 3 (2019): 339–358.

¹² Nicholas Katende, "Implementing Risk Mitigation, Monitoring, and Management in It Projects," *The Computer Journal* 2, no. February (2019).

have policies to mitigate the impacts arising from the overcrowding that occurs in prisons and detention centers.

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