

A LEGAL ANALYSIS OF POLICE DIVERSION IMPLEMENTATION TOWARDS CHILD PERPETRATORS OF INDEMNITY (A Study in the Jurisdiction of the Bandar Pulau Police Sector)

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ABSTRACT

The consideration of diversion by the court is the philosophy of the juvenile criminal justice system to protect and rehabilitate (protection and rehabilitation) child perpetrators of crimes. Diversion actions are also carried out as an effort to prevent a child perpetrator from becoming a criminal. The problem in this thesis is how the legal regulations regarding police diversion are for criminal acts of child molestation, how the police diversion is implemented for criminal acts of child molestation, what are the obstacles in the implementation of police diversion for criminal acts of child molestation. Based on the results of the study, it is known that the legal regulations regarding police diversion for criminal acts of child molestation through diversion have been implemented since the issuance of Perma No. 04 of 2014 dated July 24, 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System. Diversion is only carried out for crimes committed by children whose criminal penalty is under 7 (seven years) and is not a repeat of the crime. The application of police diversion to child molestation through diversion is that children are treated humanely by providing the best facilities for children by paying attention to special needs according to the child's age.

1. Introduction

One of the problems that frequently occurs in Indonesian society, along with the advancement of technology and culture, is that not only adults can violate societal values and norms, especially legal norms. Children can also violate legal norms, both consciously and unconsciously.

Violations of legal norms that place a child in the judicial system have prompted responses that law enforcement has not given special attention to child suspects. This demonstrates that Indonesian law is still insufficiently pro-child protection. As legal subjects, children should receive protection because they are entrusted by God and the next generation of their families, clans, tribes, nations, and countries, as well as the next generation of humanity. Child protection encompasses all efforts made to create conditions that allow every child to exercise their rights and obligations for the child's natural development and growth, both physically, mentally, and socially.



Criminal acts are not only committed by adults; many perpetrators of criminal acts are children. When children are treated like adults through criminal justice, the impact is ineffective. Instead of a deterrent effect, most children who have gone through the criminal justice process experience lasting trauma. Because children are psychologically different from adults, the concept of criminal justice, which places significant pressure on perpetrators of crimes, is inappropriate for children.

Considering that children are not the same as adults, both physically and psychologically, and that they are mentally vulnerable, they are not yet independent, do not yet have full awareness, and their personalities are not yet stable, for the benefit of children, who will become the successors to the state, it is appropriate for law enforcement officials to apply different treatment to children in conflict with the law.

Substantively, the law regulates children's rights, including the right to life, the right to a name, the right to education, the right to basic health care, the right to worship according to their religion, the right to express themselves, the right to think, the right to play, the right to be creative, the right to rest, the right to socialize, and the right to social security. The creation of these regulations clearly demonstrates the state's concern for and protection of children's rights. These children's rights must be upheld by everyone, and juvenile courts are established as a means of fostering and protecting children to ensure their complete, harmonious, and balanced physical, mental, and social growth and development. This principle positions the criminalization process as a last resort. It aims to enable children to improve themselves according to their wishes and best interests when they come into contact with the law. Criminalization is a powerful tool the state has in combating crime, but it is not the sole means of improving the situation; there must be a combination of repressive and preventive measures.

The criminalization commonly applied under the Criminal Code (KUHP) does not educate children to become better, but rather exacerbates the situation and can increase juvenile crime. Criminalization has become a paradigm of law enforcement officials who still view children in conflict with the law not as victims but as perpetrators, thus hindering children's psychological development and the ability to change when they are held accountable for their criminal actions under legal provisions like adults.

The current criminal justice system treats children as criminals, just like adults. Children are positioned as criminals deserving of the same punishment as adults in Indonesia. However, criminal justice is more oriented toward the individual perpetrator, often referred to as individual responsibility. The perpetrator is





viewed as fully responsible for their actions, while the child is not yet fully aware of their actions, as they are immature thinkers.

2. Research Method

This research method serves as a guideline and foundation for conducting research operations and writing a scientific paper. This study uses a qualitative research method that does not require a population or sample.

Given that the research object is positive law, the type of research used in this study is normative juridical, supported by empirical juridical research. As a normative legal study, this research is conducted by analyzing the law, both written in books (law as it is written in the book) and the law decided by judges through the judicial process (often referred to as doctrinal research).

In relation to the type of research used, namely normative legal and empirical legal, with the aim of obtaining qualitative results, the approach used is a statute approach, conducted through library research, namely reading, studying, and analyzing literature/books, laws and regulations, and other sources. Field research is also conducted through interviews.

The analysis of legal materials in this study will be conducted qualitatively, meaning "describing legal materials in a quality manner using orderly, coherent, logical, non-overlapping, and effective sentences, thereby facilitating interpretation of the legal materials and understanding the results of the analysis." Comprehensive means "conducted in-depth and from various aspects in accordance with the research scope." The analysis of legal materials in this study was conducted using descriptive techniques, legal construction, and argumentation. The analysis was then based on legal reasoning, namely by presenting doctrines and principles related to the problem.

Given that this research is descriptive and the data analysis used is qualitative, conclusions are drawn using the deductive method, namely "a way of thinking based on general theoretical formulations and then drawing specific conclusions."

3. Research Results And Discussion

Indecent acts (ontuchtige handelingen) are all forms of behavior, whether committed on oneself or on others, concerning and related to the genitals or other body parts that can stimulate sexual desire. For example, stroking or rubbing the penis or vagina, touching breasts, kissing someone on the mouth, and so on.

Indecent acts are acts that violate moral norms. Acts that violate moral norms include rape and adultery. Rape is generally defined as a man having sexual





intercourse with a woman with her consent, but this consent was obtained through threats of death or injury.

Criminal sanctions for rape are contained in Article 285 of the Criminal Code. In addition to rape, adultery is also classified as a crime against morality. According to the Great Dictionary of the Indonesian Language,¹⁷ adultery is defined as sexual intercourse between a man and a woman who are not married, and sexual intercourse between a man who is married to a woman who is not his wife, or a woman who is married to a man who is not her husband. Criminal sanctions for adultery are contained in Article 284 of the Criminal Code.

The legal basis for the crime of indecent assault is regulated in Chapter XIV, Book II, of the Criminal Code, namely Articles 289 to 296 of the Criminal Code, which categorizes such indecent assault as a crime against morality. Meanwhile, child molestation is regulated in Article 290 paragraphs (2) and (3), Article 292, Article 293, Article 294 paragraph (1), and Article 295 of the Criminal Code.

The definition of a child under statutory regulations varies due to the differing age limits within the laws themselves. The definition of a child, when viewed from a chronological age perspective, can vary depending on place, time, and needs, which also influence the determination of a child's age limit. The definition of a child is as seen from current statutory regulations.

Children, as part of the younger generation, are a potential human resource and the successors of the nation's ideals. They play a strategic role and possess special characteristics and traits that require guidance and protection to ensure complete, harmonious, and balanced physical, mental, and social growth.

Children, as the next generation, are often hailed as the nation's heirs, the young shoots of the nation's hope, and in every era have a responsibility to continue the nation's struggle to achieve national ideals as mandated by the 1945 Constitution.

Delinquency, in this context, is an act containing elements of reprehensible conduct that is considered a violation of the law, at a minimum, such an act can disrupt the peace of others or the surrounding community. As part of the younger generation, children are the successors to the nation's ideals and human resources for national development. Efforts to protect children face various challenges and issues that can directly and indirectly influence their behavior and conduct.

Changes in the lifestyles and attitudes of some communities have brought about fundamental social changes in community life, which undoubtedly impact children's values and behavior. Furthermore, children who receive little or no love, care, guidance, and development in developing attitudes, behavior, adjustment, and supervision from parents, guardians, or foster parents are easily drawn into unhealthy social and environmental influences that can be detrimental to their personal development.





Victims play a key role in the commission of a crime. It can be argued that there is no crime without a victim, who is the primary participant in the crime and fulfills the criminal's interests, resulting in the victim's suffering. Victims can be either passive or active participants in a crime, playing various roles that influence its occurrence. The role played by victims is influenced by specific circumstances, directly or indirectly. These influences vary from victim to victim.

Children are often victims of sexual abuse perpetrated by adults, and the victims are children. Therefore, understanding the factors that contribute to child sexual abuse is crucial. Understanding these factors can help anticipate and address the crime of child sexual abuse.

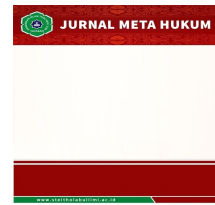
Without a victim, no crime would occur. In this case, the victim has consequences and impacts on themselves and others. The perpetrator and victim have a functional relationship. In some crimes, the victim is even considered responsible. Every crime has a victim, whether an individual or a group, because this is common for crimes to occur, regardless of whether the perpetrator is apprehended or not. Even if the perpetrator is apprehended and convicted, the losses suffered by the victim cannot be repaired, as in cases such as murder, assault, rape, sexual harassment, and others. Therefore, reparation for the consequences of the crime falls solely on the victim, including recovery and integration into normal social life.

Victims of crime can be caused by gender inequality. Gender is distinct from sex, as it refers to the differences between men and women in roles, functions, rights, responsibilities, and behaviors shaped by social, cultural, and customary values. For some, the term "gender" may be familiar and its meaning well understood. On the other hand, some may have heard the term frequently but still question its meaning, and many still haven't heard it, let alone fully understand its meaning.

Children in the context of sexual abuse cannot be considered as contributing parties to the crime. Children must be protected by the law, the government, their parents, and everyone else. The cause of child abuse is the perpetrator's mental state, which views the child as an object of abuse. Perpetrators hope that by using children as objects of sexual violence, their behavior will be covered up, as children are unable to resist, are easily threatened, and are reluctant to report it. Every victim has the same rights under the law to receive justice for their experiences. One of these rights is to receive protection for the safety of their person, family, and property, and to be free from threats related to testimony they will, are, or have given.

If the perpetrator of child molestation is suspected to be a child, they also need to receive protection and legal processing as stipulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, including consideration of





placing the child in a Social Welfare Institution (LPKS) or Temporary Child Placement Institution (LPAS) during the case process, or a Special Child Development Institution (LPKA) if the case has already received a final judge's decision.

The implementation of this method is enforced to achieve child welfare based on the principle of the child's best interests. In other words, diversion is based on child protection and fulfillment of children's rights (a child protection and fulfillment-based approach). The 1959 Declaration of the Rights of the Child can be referenced to define the principle of the child's best interests. The second principle states that children should enjoy special protection and be given opportunities and facilities through legal and other means to enable them to develop their physical, mental, moral, spiritual, and social well-being, enabling them to realize their freedom and dignity.

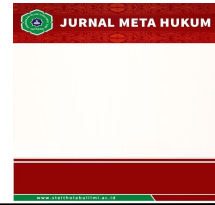
This principle can be found in two General Comments of the Human Rights Committee, specifically General Comments 17 and 19, as the Commission's legal interpretation of the principle of the child's best interests in cases of parental separation or divorce. Within this framework, a welfare approach can serve as the philosophical basis for handling juvenile violations. In principle, this approach is based on two factors: children are considered to not fully understand the offenses they have committed, thus appropriately granting reduced sentences, and differentiating punishments for children compared to adults. Compared with adults, children are believed to be easier to guide and educate.

The purpose of diversion is to find ways to handle violations of the law outside the courts or the formal criminal justice system. Discretionary purposes are similar to diversion. The implementation of diversion is motivated by the desire to avoid the negative effects on children's mental and development caused by their involvement with the criminal justice system. The implementation of diversion by law enforcement officers is based on the authority of law enforcement officers, known as discretion.

Based on this thinking, the objectives of the integrated juvenile criminal justice system emphasize the first (resocialization and rehabilitation) and third (social welfare) efforts. Sudarto stated that in the juvenile criminal justice system, case investigations and decisions are focused on the child's interests. Therefore, all activities carried out by the police, prosecutors, judges, and other officials must be based on the principle of the child's welfare and interests. Based on this objective of the juvenile criminal justice system, one approach is to implement restorative justice. Restorative justice is implemented to achieve restorative justice.

Dealing with and addressing juvenile delinquent behavior requires considering various underlying factors. Although children can determine their own actions





based on their thoughts, feelings, and desires, their surrounding circumstances can influence their behavior. Therefore, guidance and counseling from parents and the surrounding community are essential.

If there is a lack of identification between parents and children, they will live in their own worlds with little in common. Parents often don't know what their children are doing, and children don't know about their parents' activities. Therefore, a focused foundation is needed to create harmony in family life and create a generation with potential. Parents must be role models for their children; this is crucial for a child's sense of belonging. The moral code applied at home should not deviate from the moral code at school or in the community, so that children can understand and not seek the truth in their own way.

Children are an integral part of human survival and the continuity of a nation and state. The Indonesian Constitution clearly states that children have a strategic role, guaranteeing the right of every child to survival, growth, and development, as well as protection from violence and discrimination. Therefore, the best interests of children should be internalized as the best interests of humanity. The consequences of Article 28B of the 1945 Constitution of the Republic of Indonesia must be followed up by creating government policies aimed at protecting children.

4. Conclusion

Legal regulations regarding police diversion for child molestation crimes through diversion have been in effect since the issuance of Supreme Court Regulation No. 04 of 2014, dated July 24, 2014, concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System. Diversion is only implemented for crimes committed by children with a sentence of less than 7 (seven) years and is not a repeat offense.

The application of police diversion for child molestation crimes through diversion involves treating children humanely by providing the best facilities for children, taking into account their special needs, appropriate to their age. The implementation of diversion for children is based on a report and the investigators prepare a police report (BAP), then conduct a Community Research (Litmas) in the perpetrator's home environment, issue a recommendation letter regarding the feasibility of the diversion process, which is submitted to the investigators. The investigators then summon the parties involved to carry out the diversion. The results of the diversion are then written down in the form of a letter, the results of which are then submitted to the Court, which will then issue a decision that the diversion has been successful.





The obstacle to implementing diversion for child molestation crimes is the lack of time allotted by the law for law enforcement officers to attempt diversion. One obstacle to implementing diversion is not having parents because many children involved in molestation cases do not have parents, and the police and the Coroner's Office have difficulty implementing diversion.

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