

Application of Diversion in Perspective Justice

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ABSTRACT

The application of diversion from a justice perspective focuses on achieving case resolution that focuses more on recovery and rehabilitation, especially in cases involving children. In this context, diversion acts as an alternative to prevent children from formal criminal justice processes which tend to have negative impacts, such as stigmatization or trauma. Diversion is not just a transfer of case resolution, but is also part of a restorative justice approach. Thus, the application of diversion from a justice perspective is not only seen as a diversion from the legal process, but also as an effort to restore and provide opportunities for children to correct their mistakes, as well as reduce the negative impacts of involvement in the formal criminal justice system.

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INTRODUCTION

In accordance with Article 1 Paragraph (2) of the 1945 Constitution, Indonesia is a country with popular sovereignty, which shows a democratic nature because its citizens are involved in the formulation of public policies. As a legal state, Indonesia is required to carry out many aspects of national and state life in accordance with Indonesian law and the national legal system.

In order to overcome problems that arise in the nation and state from the smallest scale, namely the village, to the largest scale, namely the state, the Indonesian national legal system combines a number of legal aspects that support each other, so that each scope has a set of regulations that regulate it. Governments enact laws, or other types of state regulations, to control society and plan for the benefit of everyone as a whole. The Constitution of the Republic of Indonesia must be the basis and/or guideline for the implementation of all Government Law regulations, thus, all Laws and regulations enacted by the Republic of Indonesia must be based on and/or implement the 1945 Constitution.

Arranging a harmonious life is the goal of the law. Peace is what the law desires. By defending specific human interests-such as honor, liberty, life, property, etc.-against those who would harm them, the law upholds human peace. Against those who destroy it. If the law does not function as an arbiter to protect peace, conflicts between the interests of individuals and human groups will inevitably result in war between

everyone against everyone. Because the law can only achieve its goal of regulating peaceful interactions if it aims at fair rules - rules in which there is a balance between the interests protected and each person gets as much of his share as possible - the law must carefully weigh conflicting interests and strike a balance between them. both to maintain peace. Aristotle characterizes justice in the *Rhetorica* in this way.

Criminal law regulates violations and crimes in the public interest. These violations and crimes carry harsh punishments that amount to torture or suffering for the victims. Minor criminal offenses are called delicts, and are punishable by fines or imprisonment. Book III of the Criminal Code regulates all violations that fall into the category of criminal acts. Serious criminal offenses are called felonies. Apart from fines, prison sentences, and the death penalty, further punishments can include confiscation of certain items, revocation of certain rights, and publication of the judge's decision.

DIVERSION IN THE PERSPECTIVE OF LAW NUMBER 11 OF 2012

In criminal law, the definition of child essentially refers to the issue of the age limit for criminal liability. In the Juvenile Justice Act, the age limit for criminal responsibility is determined to be between 8 and 18 years old. Children in conflict with the law are children who are involved in legal problems or commit criminal acts. Considering their immaturity and ongoing development, children are not yet considered capable of accepting responsibility for their actions and have the right to obtain legal protection.

The rights and obligations of children - which will also affect their position in the eyes of the law - are that children, by definition, are different from adults in several respects. It was also stated in the discussion of Law Number 11 of 2012 regarding "The Juvenile Criminal Justice System that children are a trust and gift from God Almighty, who have within themselves the dignity and honor of being a complete human being." Children have special rights to obtain protection, most importantly legal protection from the legal system, in order to protect their honor and dignity. Retnowulan Sutianto believes that child protection is an inseparable aspect of national development. Looking after children means looking after humans and advancing humans to the fullest. The full development of Indonesian people with noble morals is the essence of national development which reflects this. Ignoring child protection issues will not advance national development. Lack of child protection will give rise to many social problems that can disrupt national development, law enforcement, order and security.

Diversion is used to achieve solutions that protect children. The idea of diversion arose from the observation that using the traditional criminal justice system to prosecute juvenile offenders did more harm than good. If children are placed in a resolution mechanism outside the criminal justice system, it is better to keep them away from the traditional criminal justice system because the legal system will stigmatize them for the activities they carry out as delinquent children.

Article 2 of Law Number 11 of 2012 states the following: The juvenile criminal justice system is implemented based on principles :

- a. perlindungan
- b. keadilan
- c. nondiskriminasi
- d. kepentingan terbaik bagi anak
- e. penghargaan terhadap pendapat anak
- f. kelangsungan hidup dan tumbuh kembang anak
- g. pembinaan dan bimbingan anak
- h. proporsional
- i. perampasan kemerdekaan dan pemidanaan sebagai upaya terakhir
- j. penghindaran pembalasan

Every legal state requires the application of the principle of legality in all its forms (due process of law), which requires that every government action must be based on valid and written statutory regulations. These written statutory regulations must exist and be implemented first before administrative actions or actions are taken.

Restorative justice methods need to be prioritized in the juvenile criminal justice system. The Juvenile Criminal Justice System consists of :

Children's crimes are investigated and prosecuted in accordance with the provisions of the Law, unless this Law provides otherwise;

The court carries out juvenile hearings in the general court environment;

Guidance, guidance, supervision and/or assistance is carried out during the process of carrying out the crime or action and after completing the sentence or action.

The application of restorative justice provides solutions to important issues in resolving criminal cases, namely: (1) criticism of a criminal justice system that does not provide opportunities, especially for victims (a criminal justice system that weakens individuals); (2) eliminating conflict, especially between

perpetrators, victims and the community (reducing conflict between them); and (3) the importance of overcoming feelings of helplessness arising from criminal acts to achieve recovery (to achieve improvement).

The basic principles of the Convention on the Rights of the Child (CRC) are in line with the concept of child protection, which places the best interests of children as the main priority in every decision taken by the government, social institutions, legislature and judiciary. This principle is known as the principle of the best interests of the child.

The most basic human rights of children, which are respected by the state, government, society, family and parents, are the rights to life, survival and development. The principle of respect for children's perspectives refers to respect for children's rights to participate and voice their opinions in decision making, especially those related to issues that have a direct impact on their lives.

Various external factors have a significant impact on children who break the law or are involved in criminal acts. The thoughts of legal and humanitarian experts encourage the creation of formal regulations to remove children who are suspected of violating the law from the general criminal justice process, by offering other, better alternatives for children, in order to protect them from the negative impacts of the formal criminal justice system.

Application of Diversion in a Justice Perspective

According to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, diversion is the transfer of the resolution of children's cases from the criminal justice process to a process that takes place outside criminal justice. Cases involving children as perpetrators often occur in society, and the resolution can be carried out through diversion mechanisms or actions, which allow children to be diverted from the formal justice process to other social service processes. This diversion mechanism is provided to law enforcers (police, prosecutors, judges and related institutions) to handle legal violations committed by children or those under age without going through a formal trial.

The implementation of diversion aims to reduce the negative impacts that arise as a result of children's involvement in the justice process. Juvenile justice is a justice system that prioritizes the principles of restorative justice, with a focus on meeting the needs and interests of children in the future. The stigmatization of children as "bad children," which often occurs, actually hinders children's opportunities to develop well. Detention of children in prison must also be avoided so as not to cause trauma, as well as ensuring children are not detained with adults. Handling children in prison can be extremely stressful after undergoing a legal sentence. To realize a criminal restorative justice system for children in conflict with the law, a legal umbrella is needed that regulates cooperation between related parties so that treatment can be carried out comprehensively.

Justice and equality are two different things. Fairness does not mean that everyone receives the same amount. This is also supported by Aristotle. He identified distributive justice and communicative justice as two types of justice. Distributive justice is the application of the law to each individual based on their abilities. This justice demands balance and not equality, which means no one has to receive the same portion. Justice that gives everyone the same amount without taking into account each person's unique merits is known as communicative justice. This relates to trade, trade in products and services, where everything traded must be equal as far as possible.

The primary focus of distributive justice is on the relationships between specific people. Some ideologies hold that justice is the sole purpose of law. These ideas hold that only our ethical awareness of what is right and wrong should influence the content of the law. These hypotheses are flawed. Their overestimation of the justice system stems from their inadequate consideration of the actual state of affairs. The law establishes general guidelines that guide public relations. The law cannot make general guidelines if its main aim is justice, namely giving each person what is his or her right. There cannot be a legal order without a written or unwritten social order. There is a lot of doubt about what is right or wrong because there are no general guidelines. People will always argue with each other as a result of this injustice, which will ultimately result in chaos and not order.

To the extent possible, legislatures have fulfilled this desire by crafting their rules in such a way that judges have wide latitude in interpreting the law in particular situations. This is especially true when legislators direct judges to consider justice when making decisions—a strategy that Aristotle had identified as a way to avoid injustice when broad rules are applied in certain situations.

Law has the aim of protecting human interests. Legal objectives must be achieved. The fundamental purpose of law is to provide balance and order in society. It is believed that when society achieves order, human interests will be protected. To achieve this, the law must divide responsibilities and rights among members of society, establish authority structures, establish procedures for resolving legal disputes, and maintain legal clarity.

Law cannot be formalized as a cultural concept. Law is focused on justice, or *rechtsidee*, as an alternative. Justice as a thought, as Aristotle pointed out, cannot express anything other than that equals are

treated equally, and unequals are treated unequally. We need to consider the finality of justice to give it real substance. There must be certainty to achieve justice and finality. According to Radbruch, there are three components to law: justice, finality, and certainty.

Since one of the aims of this rule is justice, according to the Institute of Justinian, "justice is a constant and perpetual aim given to each man as his own." The constant and persistent tendency to give each person what is his right is called justice (the constant and continuous disposition to give each person what is his or her right). The term "justice" refers to the interaction between the people and the government.

Justice for society, in Aristotle's view, can only be achieved if its members obey the general laws that govern them. In addition, it is stated that justice will be upheld if: (1) a person complies with the applicable legal provisions, which state that the law must not be violated and legal rules must be obeyed; and (2) someone does not take more than they should, which means that justice requires equal rights or equality. Equality or equity indicates that everyone must have the same rights and that other members of society will feel what is accepted and felt by one member of society.

Two guiding principles of justice comprise John Rawls's conception of justice: first, "everyone should have an equal right to the broadest basic liberties compatible with the same liberties for others"; and second, "social and economic inequalities should be regulated in such a way that they are both (a) reasonably expected to benefit everyone, and (b) attach to positions and titles open to everyone." Justice will be achieved if there is maximum use of goods for society, so that the greatest happiness for the greatest number will be realized, according to utilitarianism, which has Jeremy Bentham as its central figure. The important things that need to be understood from this utility theory are that happiness is subjective, not ordinary, and can only be achieved in the presence of other people who suffer. In the end, happiness turns into an invention with many underlying flaws.

Additionally, David Hume, John Stuart Mill, and J. Bentham all taught that the concept of happiness can be used to measure the justice of a legal system. The benefits of state institutions, including social and legal institutions, must be evaluated to determine their sustainability. This evaluation functions as a barometer or standard for legal compliance. "And the test of what law there should be, and what law ought to be, is utility," wrote John Stuart Mill. Only justice allows the proper application of the law. Justice is both a factual attribute of law and a moral requirement. Justice includes social justice and legal justice.

CONCLUSION

The application of diversion from a justice perspective focuses on achieving case resolution that focuses more on recovery and rehabilitation, especially in cases involving children. In this context, diversion acts as an alternative to prevent children from formal criminal justice processes which tend to have negative impacts, such as stigmatization or trauma. Diversion is not just a transfer of case resolution, but is also part of a restorative justice approach.

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