



STRENGTHENING DIVERSION REGULATIONS AGAINST CHILDREN DRUG ABUSE

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Abstract: *Children are the nation's next-generation who must be protected from all forms of violence, discrimination and deprivation of liberty. The purpose of writing this article is to find out and analyze legal regulations in Indonesia, which seek to provide legal protection for children who abuse narcotics and how the sanctions can be imposed. The writing of this article uses the empirical normative juridical research method, which is a study that seeks to analyze a qualitative descriptive of events that are happening in the community, especially regarding the protection of children in conflict with the law. The results showed that children who dealt with narcotics abuse did not get diversion, such as the case in Court Decision Number 19/Pid.Sus-Anak/2019/PN.Smg, in which a fifteen-year-old child who uses Narcotics Category I is carrying one bag of a small plastic clip in the form of Methamphetamine and the urine turns out to be positive containing Methamphetamine is threatened with Article 114 paragraph (1) Juncto Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics with the threat of 5 (five) years imprisonment, this is contrary to the purpose of diversion as in Article 6 letter b of Law Number 11 of 2016 concerning the Criminal Justice System for Children which states, diversion aims to prevent children from being deprived of freedom. Children have the right to get their rights without asking for it. Based on Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, the child is sentenced to two years and work training for three months. Children should not be penalized and get Diversion.*

Keywords: Children; Diversion; Protection.

Abstrak: *Penulisan artikel ini bertujuan untuk mengetahui serta menganalisis peraturan hukum di Indonesia, yang berupaya memberikan perlindungan hukum terhadap anak penyalahguna narkotika dan bagaimana sanksi yang dapat dijatuhkan. Penulisan artikel ini menggunakan metode penelitian yuridis normatif dengan pendekatan empiris dan pendekatan kasus, data yang digunakan yaitu data primer dan sekunder, atas data tersebut kemudian dijelaskan secara diskriptif kualitatif. Hasil penelitian menunjukkan bahwa terdapat anak yang berurusan dengan hukum yaitu diduga menyalahgunakan narkotika dan dalam prosesnya tidak mendapatkan diversi, seperti kasus dalam Putusan Pengadilan Nomor 19/Pid.Sus-Anak/2019/PN.Smg, yang mana anak berumur lima belas tahun pengguna Narkotika Golongan I yaitu membawa satu kantong plastik klip kecil berupa shabu dan hasil urine positif mengandung Metamfetamina, diancam Pasal 114 ayat (1) Juncto Pasal 132 ayat (1) Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika dengan ancaman 5 (lima) tahun pidana penjara, dengan tidak dilakukannya diversi, dan dilakukannya penuntutan sebagaimana dimaksud jelas hal demikian tersebut bertentangan dengan tujuan diversi seperti dalam Pasal 6 huruf b Undang-Undang Nomor 11 Tahun 2016 tentang Sistem Peradilan Pidana Anak yang menyatakan, diversi bertujuan menghindarkan Anak dari perampasan kemerdekaan. Anak berhak mendapatkan haknya tanpa memintanya, berdasarkan Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang perlindungan Anak maka Anak dipidana dua tahun dan pelatihan kerja selama tiga bulan. Seharusnya Anak tidak dipidana dan mendapatkan Diversi.*

Kata Kunci: Anak; Diversi; Perlindungan.

A. Introduction

Children are the roots of the nation whose dignity must be upheld and must be protected from punishment. Children have the right to get their rights fairly without discrimination. Article 28B of the 1945 Constitution of the Republic of Indonesia formulates, *“Every child has the right to live, grow and develop and has the right to protection from violence and discrimination.”*

Definition of Child itself is someone who has not reached the age of 18 (eighteen) years, including children who are still in the womb. Meanwhile, the definition of a child who conflicts with the law is a child who conflicts with the law, a child who is a victim of a crime, and a child who is a witness to a crime. Children in conflict with the law from now on, referred to as Children, are children who have reached the age of 12 (twelve) years but have not reached the age of 18 (eighteen) years who are suspected of committing a criminal act.

Deviations in children's behavior against the law often disturb the community and repeatedly violate the law, which causes children to face the law. This is due to the negative influence of the rapid development of globalization in the field of communication. Advances in knowledge and technology have brought very basic changes in people's lives, which greatly affects the values and behavior of children and lacks guidance and attention from parents.

The Juvenile Criminal Justice System implements Diversion through Restorative Justice which must be given to children who conflict with criminal law where the purpose of providing diversion as intended, namely:

- a. Achieving peace between victim and child;
- b. Resolving children's cases outside the judicial process;
- c. Preventing children from being deprived of freedom;
- d. Encouraging the community to participate;
- e. Instilling a sense of responsibility to children. The definition of the criminal justice system is the entire process of resolving cases of children in conflict with the law, from the investigation stage to the guidance stage after serving a criminal.

The state has an important role in providing welfare for its citizens, namely fulfilling all the necessities of life in education, health, shelter for poor people, including legal protection for children who conflict with criminal law following the Convention on the Child's Rights. This law was ratified in Presidential Decree Number 36 of 1990 concerning the Convention on the Child's Rights in a Supplement to the State Gazette of the Republic of Indonesia Number 57. The Convention on the Rights of the Child or better known as the UN-CRC (United Nations Convention on the Rights of the Child) or the United Nations on the Convention on the Rights of the Child, is a human rights treaty that guarantees children's rights in the social, political, economic, health, and culture. This treaty was ratified through Presidential Decree No. 36 of 1990. Indonesia adopted this convention into the Law of the Republic of Indonesia Number 35 of 2014 in Supplement to the State Gazette of the Republic of Indonesia Number 5606 concerning Amendment Number 23 of 2002 concerning Child Protection. Diversion efforts are carried out at the level of investigation, prosecution and examination in court with the approval of the Victim, Child perpetrator of a criminal act, Family of the victim/perpetrator in conducting diversion or settling cases.

B. Research Method

This study uses a normative, empirical juridical research method. According to empirical normative juridical research starting from written positive legal provisions that are applied to legal events in concreto (legal regulations that apply in a country that are used to a case by a court) in society, there is a combination of two stages of study, namely: (1). Study of the applicable normative law, (2) Determination of events in concreto to achieve predetermined goals and be realized through his actions and legal documents. The application results will create an understanding of the realization of the implementation of the legal provisions that have been studied properly. (Muhammad Abdulkadir, 2004)

The type of data in this study uses secondary data consisting of primary legal materials, secondary legal materials, tertiary legal materials. Primary legal materials are data obtained from the law and direct analysis in the community in the field; secondary legal materials can be obtained from library materials, while tertiary legal materials come from websites, Indonesian dictionaries, and legal language dictionaries.

C. Discussion

Children who are the nation's next-generation are entitled to happiness, prosperity, and a bright future. They are treated with compassion and respect and are obliged to get legal protection from things that can destroy their lives, growth, and development. There were still more children who were convicted than those who received Diversion for committing criminal acts. The number of children in detention in Indonesia in 2017, there were 895 (eight hundred and ninety-five) boys and 15 (fifteen) girls, a total of 910 (nine hundred and ten) children. The number of children in Child Welfare Development Institutions/Correctional Institutions in Indonesia, namely 2,558 (two thousand five hundred and fifty-eight) boys and 41 (forty-one) girls, a total of 2,559 (two thousand five hundred and fifty-nine) children. 15 (fifteen) percent of children were given action, including 13 (thirteen) percent, namely 383.85 children returned to their parents, as much as 1 (one) percent namely 25.59 children undergoing medical and social rehabilitation, 56 (fifty-six) percent, namely 1,433.04 Children go to court and end up in prison. The criminalization of Children will only make them professional criminal due to the training of fellow prisoners who are far more experienced in committing crimes. (Institute Criminal Justice Reform, 2017)

In 2018, the number of 7000 children processed by the judiciary, 90 percent, namely 6,300 children, received a prison sentence, only 10 percent, namely 700 children who received diversion (Deny, 2018). So, it is necessary to provide legal protection following Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 on Child Protection. Legal protection for children in conflict with criminal law does not work optimally. For this reason, the government and society are obliged to provide special protection for children so that children are protected from being deprived of freedom.

Juvenile delinquency is an urgent problem for the government in dealing with criminal acts in Indonesia. Children should be an inseparable part of the survival of humans, the nation and the state. Juvenile delinquency is an act of violating norms, rules or laws in society that is carried out during the transition between childhood and adulthood. (Surbakti & Zuliandi, 2019).

A crime under the Indonesian dictionary, a criminal act is evil deeds (Suharso dan Ana Retnoningsih, 2017). Crime is behavior against the law and can harm others and is subject to legal sanctions against the person who commits it. Criminal sanctions aim to

create a deterrent effect on the child who is the perpetrator of a criminal offence but should be given if other alternative sanctions do not work in social service actions for the community.

The illustration in this research is Case Decision Number: 19 / Pid.Sus- Anak / 2019 / PN.Smg, on October 17 2019, at 19.00 WIB, Muhammad Fitroh Khadafi Bin Siswanto 15 (fifteen) years with Tri Seqtianto Bin Juwari, together they bought a small clip plastic bag containing white crystalline powder in the form of narcotic Methamphetamine, with a net weight of 0.16767 for IDR 200,000.00 and was caught red-handed by the police, based on the examination as stated in the Criminalistics Laboratory Minutes 2659/NNF/2019 dated October 29, 2019, the child's goods and urine, have been checked and tested positive for Methamphetamine registered in group I Serial Number 61 of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, the act is regulated and subject to punishment in Article 132 paragraph (1) Juncto Article 114 paragraph (1), is sentenced to a sentence of 2 (two) years and job training for 3 (three) months.

The elements of narcotics crime in Article 114 paragraph (1) of Law of the Republic of Indonesia, Number 35 of 2009 concerning Narcotics, include every person who, without rights or against the law, offers for sale, sells, buys, accepts, becomes an intermediary in buying and selling, exchange, or hand over narcotics class I. Diversion failure often occurs due to determining very high compensation for the child who is the criminal offender by the child victim and their family so that the child is unable to pay and ends up imprisoned. It is hoped that law enforcers will monitor Diversion's operation so that there is no extortion against the perpetrators. According to Azwad Rachmat Hambali, one form of legal protection through Diversion is intended to avoid and keep children away from the formal judicial process so that they can prevent stigmatization and are expected to return to the social environment naturally (Hambali, 2019). The diversion will not run without the participation of the community, law enforcers, and government. Diversion is often carried out with very high compensation by the perpetrator against the victim.

The types of diversion consist mainly of warning, informal and formal. The Police give warnings for minor offences, Informal for minor offences where it is deemed insufficient if notice is given, meanwhile formal is used to make the victim and the perpetrator meets face to face, namely an event known as Restorative Justice (Keadilan Restoratif). (Hartono, 2015) Protection of children can be applied if they uphold children's rights without discrimination. All their needs are fulfilled in health, education, shelter, adequate nutrition and so on.

Article 14 paragraph (1) of Law Number 12 of 1995 concerning Penalization regulates the rights of prisoners, namely stating, "Prisoners have the right to :

- a) performing worship according to their religion and belief;
- b) receiving physical and spiritual care;
- c) getting education and teaching;
- d) getting proper health services and food;
- e) submitting a complaint;
- f) obtaining reading material and follow other mass media broadcasts that are not prohibited;
- g) getting a wage or premium for the work performed;
- h) receiving family visits; law advisor; or certain other people;
- i) getting a reduction in the sentence (remission);

- j) getting the opportunity to assimilate, including leave to visit family;
- k) getting parole;
- l) obtaining other rights following the prevailing laws and regulations.”

The government's rights must grant to assisted residents in correctional facilities are regulated in Article 3 of Government Regulation Number 31 of 1999 concerning Guidance and Guidance for Community Assisted Citizens, including: (a) devotion to God Almighty; (b). awareness of the nation and state; (c). intellectual; (d). attitudes and behavior; (e). physical and spiritual health; (f). Legal awareness; (g). Healthy reintegration with society; (h). job skills; and (i). Work and production training.

Enforcement of criminal law in the current context in preventing and anticipating various developments in crime needs to develop missions that support efforts to reform the formation of criminal law. (Rusli Muhammad, 2019) Criminal law reform aims to adapt to the times because crime is growing rapidly and is rampant and cannot be overcome by the old criminal law regulations, so it must be following the mental, physical condition of the child, as best as possible the child who commits a criminal act is not imprisoned but is given a sanction of social community service.

Synonym for law enforcement is the process of making efforts to uphold or function legal norms as a guide for behavior in traffic or legal relations in public and state life.(Jonaedi Efendi dan Ismu Gunadi Widodo, 2018) The purpose of law enforcement is to create a sense of justice, legal certainty, benefit to protect society from the crimes of others and arbitrariness. According to Roeslan Saleh, criminal law enforcement as the implementation of criminal law politics must go through several policy stages, namely: 1). The formulation stage is the stage of enforcement of criminal law in abstracto (regulations that apply in a country that have not been used in a case in court) by a law-making body, 2). The Application Stage is the stage of criminal law enforcement in the form of the stage of criminal application by law enforcement officials, 3). Execution Stage, namely the stage of law enforcement (implementation) in a concrete manner by the criminal executing apparatus. (Roeslan Saleh, 1986)

Law enforcement is obliged to protect children in conflict with criminal law, namely by seeking legal sanctions with Diversion and replaced with sanctions for those who are threatened with imprisonment under seven years and for children who commit repetition of criminal acts. Criminal theories in criminal law enforcement can be categorized as follows:

a. Absolute theory (Retributive Theory)

According to Leden Marpaung (Leden Marpaung, 2009), the purpose of punishment is retaliation for mistakes committed by being oriented to an act and lies in the crime itself. Retaliation against children who commit a criminal act aims to deter the perpetrator and not repeat the offence again.

b. Relative Theory (Goal Theory)

Samidjo quoted Anselm Van Fuerbach as saying that the threat of punishment alone would not be sufficient, but instead, it required the imposition of a criminal on a criminal. Imposition of penalty should be imposed on the child who is the perpetrator of a serious crime. However, efforts are made for diversion without any violent discrimination. (Samidjo, 1985)

c. Combined Theory

The combined theory between absolute and retributive theories require punishment to provide physical and spiritual suffering to the perpetrators of crime,

formation and education. The combination of absolute theory and relative theory is aimed at the actions of the perpetrators of criminal acts. (Samidjo, 1985)

Children have the right to special protection, especially legal protection in the juvenile justice system based on the values of Pancasila, namely Almighty Godliness and Humanit, Just and Civilized Humanity, so as a nation with dignity and upholding religious values.(Angger Sigit Pramukti dan Fuady Primaharsya, 2015)

Diversion through the Restorative Justice approach is mandatory for children who conflict with the criminal law with equal compensation for crimes caused by the child. Law Number 11 of 2012 concerning the Juvenile Justice System means Restorative Justice and Diversion. Article 1 paragraph (6) formulates, "Restorative Justice, namely the settlement of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and related parties to jointly seek a fair settlement by emphasizing restoration of the original state, and not retaliation." Meanwhile, Article 1 paragraph (7) states, "Diversion is the settlement of cases of children from the criminal justice process outside the criminal court."

Law of the Republic of Indonesia Number 4 of 1979 concerning Child Welfare in a Supplement to the State Gazette of the Republic of Indonesia Number 3143 states that the right of the child in Article 2 paragraph (3), the child has the right to care and protection, both during pregnancy and after birth. Protection of children aims to prevent children in conflict with the law from being deprived of their liberty. Legal protection for children in conflict with the law is contained in the goal of the Indonesian state, namely protecting the entire nation and all Indonesian bloodshed, advancing public welfare.

Government Regulation of the Republic of Indonesia Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Not Aged 12 (twelve) Years Old in Supplement to the State Gazette of the Republic of Indonesia Number 5732. Article 67 states that if the child is not yet 12 (twelve) years old, committed or suspected of committing a criminal act, the Investigator, Community Advisor and Professional Social Worker make decisions to: a). Returning to parent/guardian, or b). Participating in education, coaching, mentoring programs in Government Agencies or LPKS in Agencies that handle social welfare at both the central and regional levels for a maximum period of 6 (six months).

If the Diversion Agreement does not agree between the victim and his family, the criminal process will continue. According to Article 9 paragraph (2), it reads that the Diversion Agreement must obtain an agreement between the Victim and/or the Child Victim's family and the willingness of the Child and his/her family, except for: a). a criminal act in the form of a violation; b). minor criminal offence; c). a crime without victims; d). the value of the victim's loss shall not be more than the minimum rupiah value of the local province.

The implementation of the Diversion is in the form of an apology to Anak Koban for criminal acts and family, compensation, and promising not to repeat it. Diversion must be attempted repeatedly by law enforcers to the maximum extent possible to be successful. Based on the Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Supplement to the State Gazette of the Republic of Indonesia Number 1052 Article 2 states, and Diversion Obligations according to the Supreme Court Regulation Number 4 of 2014, it explains that Diversion is applied to children who have reached the age of 12 (twelve) years old but not yet 18 (eighteen) years old or 12 (twelve) years old, even

though they have been married but not yet 18 (eight) years old, which is suspected of having committed a criminal act.

The cause of the occurrence of a child repeating a criminal act or a recidivist is committing a criminal act to be repeated with certain conditions that have implications for the weight of the sentence for him. Repetition of criminal acts is carried out due to the failure of community institutions, parents, society, and the government in fostering prisoners. (Prianter Jaya Hairi, 2018)

Child Prisoners Get More Professional Education from Prisoners, both their fellow prisoners and adult prisoners. The number of Child Welfare Development Institutions in Indonesia is insufficient to accommodate children in conflict with the law. According to Muhammad Fakri Ramadhani, Christoper Desmawangga, and Rahmat Taufik, there is still a mixture of child and adult prisoners in the Correctional Institutions (Lapas) or State Prisoners (RUTAN), which can have a more negative impact on child prisoners. This system also does not cover the possibility that child prisoners will learn and share the experience with adult detainees in the correctional institutions, which can cause information exchange and knowledge of a crime. (Muhammad Fakri Ramadhani, Christoper Desmawangga, 2016) Children in prison must be separated from adults not to get negative input about crimes from adult prisoners.

The diversion process must be attempted at every stage of an investigation, prosecution or examination in a court session. The Diversion process can only be carried out against children who are subject to imprisonment for under 7 (seven) years and does not constitute a repetition of criminal acts, whether of the same or not. Children who are not yet 12 (twelve) years old cannot be filed in court. Based on sociological, psychological, pedagogical considerations, children are deemed unable to be accountable for their actions. This is as regulated in the Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children who are not yet 12 (twelve) years old. Therefore, for children aged 12 (twelve) who commit or are suspected of committing a criminal act, education, guidance and guidance are carried out by parents or guardians or institutions/agencies and the Social Organizing Agency (LPKS).

Factors that cause prisoners to commit repeat offences (recidivists) include a). Social inequality factors, differences in treatment due to social inequality can trigger criminal acts, b). The unemployment factor increases. Someone who is unemployed needs funds to meet their daily needs, so there is no other choice but to commit crimes, c). Social conflicts are caused by societal differences, from ways of thinking, point of view and differences of opinion, d). Personal revenge, revenge is the cause of criminal acts committed, which tend to be sadistic and take victims, e). Cultural assimilation, westernized style of dress are some of the reasons for rampant sexual harassment crimes. (Puput Purwanti, 2018)

The types of re-criminal offences can be classified into: a). General Recidivist does not pay attention to a repeated criminal act, meaning that it is still classified as a repetition if he repeats the previous criminal act., b). Special Recidivist, the nature of the repeated criminal act is very concerned, meaning that the repeated action must be of the same type as the previous act, for what action the person has ever served a sentence.

Diversion must be pursued at the level of investigation, prosecution and examination of cases of children at the District Court as stipulated in Article 7 paragraph (1). Diversion is carried out if the criminal act committed is a). Is punishable

by imprisonment of less than 7 (seven) years and b). Not a repetition of a criminal act. Diversion aims to: a). Achieving peace between victims and children, b). Resolving children's cases outside the judicial process, c). Preventing children from being deprived of liberty, d). Encouraging the community to participate, e). Instilling a sense of responsibility to children.

Law Number 11 of 2012 concerning the Criminal Justice System for Children and Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Not Aged 12 (Twelve) years old states that the Diversion agreement must obtain the consent of the victim and/or the victim's family and willingness of the children and their families, except for criminal acts in the form of violations; minor criminal offence; a crime without victim; or the value of the victim's loss is not more than the local, provincial minimum wage.

Settlement of criminal acts in the form of offences, minor crimes, crimes without victims, or the value of the victim's loss of not more than the local, provincial minimum wage can be carried out by the investigator with the perpetrator and/or his family, community counsellors, and involving local community leaders, preferably added by advocates, workers. Professional Social and Social Welfare Workers. Before entering the court, law enforcers, families, and communities must seek solutions outside the court route through Diversion and Restorative Justice.

Children who are not yet 12 (twelve) years old cannot be filed in court, because based on sociological, psychological, pedagogical considerations, children are deemed unable to be accountable for their actions, as regulated in Government Regulation Number 65 of 2015 concerning Guidelines for Implementation of Diversion and Handling of Children who are not yet 12 (twelve) years old. Therefore, for children aged 12 (twelve) who commit or are suspected of committing a criminal act, education, guidance and guidance are carried out by parents or guardians or institutions/agencies and the Social Organizing Agency (LPKS).

This study uses the post-positivism paradigm, which is the opposite of positivism, which is a way of thinking about reality, subjective truth and depending on the context of values (values), culture (culture), traditions, habits, and beliefs, natural and more humane. (Muhammad Muslih, 2006) Post positivism is an improvement in positivism that is considered to have weaknesses and is considered to only rely on observing the object under study directly. Ontologically, this flow is critical of realism and considers reality to exist following natural laws. Epistemologically, the relationship between the researcher and the truth being studied cannot be separated but must be interactive and subject to a minimum.

Judges in making decisions are sometimes not following the prevailing laws and regulations. The result can be detrimental to the perpetrator, especially in making decisions against children who should receive special protection and attention to continue to grow and develop as the next generation after the nation, in the context, it is often considered unfair to the children. (Pratama et al., 2016)

Comparative laws in this study use legal comparisons between Vietnam, English, India, and Indonesia. According to Aleta Nieva Nishimori, in Vietnam, the current age of criminal responsibility is 14 (fourteen years), violations of children aged 14 years or over are responsible for very serious crimes. In comparison, children aged 16 years or older are responsible for anything. Children should not be treated arbitrarily. Children must be respected for their dignity. Diversion must truly reflect a sense of humanity and

not burden the child who is the perpetrator of a criminal offence and their family, and be carried out in a friendly manner. (Aleta Nieva Nishimori, 2019)

In Vietnam, Diversion measures include one or more of the following obligations to attend a school or vocational training, spend a specified number of hours with his family, serve the community, attend a program to keep children out of the stigma, stay in a certain place for a certain period or make compensation for damages caused to the victim. (DK, 2017) The implementation of the Diversion must be carried out with good intentions. If the Diversion is successful, but due to something that causes the Diversion to fail due to an intentional action by an individual, that person must be given an administrative penalty. Criminal liability can be prosecuted and issued legal sanctions against children of criminals in the UK, namely the age of 12 (twelve) years under 18 years. ("The Age of Criminal Responsibility," 2020) Regulations for a higher age of accountability for children tend to use welfare and restorative models to manage juvenile offenders and include incarceration in the UK who are below and bear the age of child responsibility. Children have the right to protection and a good future to become the backbone of the nation. Their dignity must be protected from being deprived of freedom.

According to Maharukh Adenwalla, Juvenile Justice (Care and Protection of Children) of Act of 2015 (Law on Child Courts (Concern and Protection of Children)) of 2015 states the principles of justice and follows the Juvenile Justice Agency to release the rights of children over the age of 16 years that have committed heinous offences under the criminal justice system. This means that the rehabilitation of juveniles depends on the type of offence committed in the situation. (DK, 2017) Rehabilitation that is appropriate for children is in the form of providing useful skills as provisions. It is hoped that after the child has finished serving imprisonment, he can live independently so that he does not commit another crime.

Section 83 of the Indian Penal Code of 18601 (Article 83 of the Indian Criminal Code) protects children aged between 7 (seven) to 12 (twelve) years, over 12 (twelve) years of age who do not receive protection from error due to limit reasons age. Child prisoners must be separated from adult prisoners to avoid violence and be educated on a more professional crime. Based on Article 5 of Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, resolve cases of children through Diversion through an approach to prevent children from being convicted. Children aged 14 (fourteen) can be subject to criminal sanctions.

Legal protection for children in conflict with criminal law does not work optimally. For this reason, the government and society are obliged to provide special protection for children so that children are protected from deprivation of liberty. According to Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection in Article 1 number (2), "Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop. and participate optimally following human dignity and protection from violence and discrimination." Meanwhile, Article 1 point (15) states, "Special protection is a form of protection received by children in certain situations and conditions to guarantee a sense of security against threats that endanger themselves and their lives in their growth and development."

Law of the Republic of Indonesia Number 4 of 1979 concerning Child Welfare in Supplement to the State Gazette of the Republic of Indonesia Number 3143. The child's rights in Article 2 paragraph (3) state that the child has the right to care and protection,

both during the womb and after birth. Protection of children aims to prevent children in conflict with the law from being deprived of their liberty.

Human rights. Article 52 paragraph (1) of Law Number 39 of 1999 concerning Human Rights in Supplement to the State Gazette of the Republic of Indonesia Number 3886 reads, "Every child has the right to protection by parents, family, society and the state." Children must be given guidance and education at home and outside to have noble character and good behavior and avoid the bad influence of their friends.

The theory in this study uses a grand theory in the form of welfare theory by Franz Magnis Suseno, a middle theory using legal system theory by Lawrence Meir Friedman and Applied Theory using the theory of legal protection by Phillipus M. Hadjon and the theory of justice by Hans Kelsen. The state policy in casu (in this case) the government which sided with the poor or what is commonly called the option for the pro-poor, should be an implementation of Pancasila as the state philosophy, especially the Fifth Precepts (Social Justice for All Indonesians) and Second (Just and Civilized Humanity), the Preamble of the Fourth Alenia and Article 33 and Article 34 of the 1945 Constitution must be reflected in various public policies in the form of legislation. (Franz Magnis Suseno, 1992) A public policy is a government action that aims to save people from poverty so that people prosper.

Lawrence Meir Friedman explained that the success or failure of law enforcement depends on three elements of the legal system, namely: legal structure (structure of law) concerning law enforcement officers is a living law that is adhered to in a society, the substance of the law includes laws and legal norms, and legal culture is human attitudes towards law, legal system, beliefs, values, thoughts, hope as a law that is expected to provide welfare to the society. (Lawrence Meir Friedman, 2009) The definition of legal structure is law enforcement carried out by law enforcement officials. The substance of the law is legal regulations that are binding for anyone, legal culture, the nature of community behavior that upholds the law.

Phillipus M. Hadjon argues legal protection for the people is preventive and repressive government action. Preventive legal protection aims to prevent disputes that lead to prudent government action in making decisions based on discretion. Repressive legal protection to provide legal protection reflects the functioning of a legal function trying to prevent disputes, including their handling in a judicial institution. (Phillipus M. Hadjon, 1987) Legal protection for children in conflict with the law prevents children from being deprived of their freedom without violence and discrimination.

Hans Kelsen stated that law could be declared fair if it can be human in a satisfying way to find happiness in regulating its actions. Justice is not partial. It does not differentiate between race, religion, culture, nation, and social status in upholding the law. If justice, legal certainty, and opposite benefits, justice should be prioritized. (Timasheff, 1946)

D. Closing

Children are the successors of the nation's generation who are obliged to obtain legal protection, especially from the criminal justice system. Child Protection means all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally following human dignity and protection from violence and discrimination. Meanwhile, special protection is a form of protection received by children in certain situations and conditions to guarantee a sense of security against threats that endanger themselves and their lives in their growth and development.

Diversion through the Restorative Justice approach is a form of legal protection for child criminals. Restorative Justice, namely the settlement of criminal cases, involves the perpetrator, the victim, the family of the perpetrator/victim, and related parties to seek fair compensation by emphasizing restoration of the original state and not retaliation. Diversion is the transfer of settlement of children's cases from criminal justice processes to processes outside of criminal justice.

Diversion using the Restorative Justice approach often fails because there is no peace agreement between the child perpetrators of the crime and the victim and the family of the perpetrator/victim. For this reason, law enforcers are obliged to make efforts for Diversion to be successful, which is done repeatedly up to three times. It is better if criminal sanctions are replaced with sanctions for action.

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