Protecting Children Rights through the Juvenile Criminal Justice System in Indonesia: Issues and Challenges

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Abstract
The Juvenile Criminal Justice System is established to uphold justice for children who engage in criminal proceedings, especially those who perpetrate criminal offense. The System sets up various measures in order to protect the rights of these children. This article aims at evaluating the operation of the Juvenile Criminal Justice System in Indonesia with special concern on the fulfilment of the rights of children who are in conflict with the law. The type of research is that of normative legal research which relies on secondary data in the form of primary and secondary legal material. This normative legal research employs statutory approach. It is found that the rights of children who are in conflict with the law is primary protected through the employment of diversion, the initial step for settling the criminal case outside the judicial system. The operation of the Juvenile Criminal Justice System comes across some obstacles in field, including with regard to the employment of diversion. Therefore, improvement in employing diversion seems to be necessary to achieve better quality of children rights protection.

Keywords: Children Rights; Juvenile Criminal Justice System; Diversion; Restorative Justice.

INTRODUCTION

In response to the increasing number of children involving in criminal activities, in July 2012, the Indonesian government enacted the Act Number 11 of 2012 on Juvenile Criminal Justice System. This Act serves as the legal basis for establishing a more reliable juvenile criminal justice system in Indonesia. The Juvenile Criminal Justice System is established mainly to uphold justice for children who engage in criminal proceedings, especially those who perpetrate criminal offense. The System sets up various measures in order to protect the rights of these children.

An important topic of discussion relating to children and criminal activities is how well the existing legal system protects the rights of these children. Children are a vulnerable group that need special attention in order to protect their rights and ensure their growth and development. Approach to children committing a crime should be different from adults who commit the similar conduct. Rehabilitation should be the ultimate concern rather than punishment and for this reason the Juvenile Criminal Justice System is there. Juvenile Criminal Justice System lays down a series of legal procedures and guideline specifically designed to achieve that goal. (Purwati, 2020).

The Juvenile Criminal Justice System aims to protect the rights of children who engage in criminal cases, either they stand as perpetrator (child perpetrator), as victim of crime (child victim) or as witness of crime (child witness). The System protects the child perpetrators by implementing restorative justice approach in settling the relevant criminal cases. For this purpose, the System introduces diversion, a procedure to divert the settlement of a criminal case from litigation process to a non-litigation mechanism.

Being diverted, the criminal case in hand is then settled through an amicable method in the form conference. This conference facilitates the personal communication between the child perpetrator and the child victim. Both are accompanied with their respective parents or guardians and the process is attended by related third parties from relevant institutions.

It is expected that this conference will help the child perpetrator build the sense of guilty and promote repentance. Furthermore, it is also expected that the conference will encourage empathy to the child victim and the sense of responsibility. On the other side, the child victim will learn to give mercy and pardon. As such, the conference may secure the future relationship between both parties.

Based on above explanation, it is clear that through the diversion process the child perpetrator may escape from unfavorable experience as well as negative stigma of being tight with the criminal proceedings. Therefore, it has been in place that the Act promotes the use of restorative justice approach and advice the employment of diversion in any step of examination.

Unfortunately, the implementation of diversion sometimes comes across various obstacles which lead to unexpected criminal prosecution. The failure of diversion is not the only issue relating to child protection. The rights of children who engage in criminal proceeding due to either the failure of diversion or the exclusion from diversion are affected by numerous causes. This paper aims at investigating issues and challenges in the operation of the Juvenile Criminal Justice System in Indonesia with special reference to children rights protection.

RESEARCH METHODS

The type of research is that of normative legal researches which employs statutory approach. This normative legal research relies on secondary data in the form of legal material which consists of
both primary and secondary legal material. The legal materials were collected through library-based study. Relevant legislations have been studied to comprehend how the Juvenile Criminal Justice System should be properly operated and how the rights of children should be optimally protected. Previous related researches have also been studied to identify issues and challenges relating to the operation of the Juvenile Criminal Justice System and how to improve this system. Finally, all collected data were analyzed using the descriptive and qualitative method to help make valid conclusion.

RESULTS AND DISCUSSION
Child Protection within the Juvenile Criminal Justice System

The best way to deal with children has been a topic of continuous discussion ever since it is found that they commit crimes as well. The phrase "child in conflict with the law" has been used internationally to describe a minor who breaks the law. (Candra, et al., 2019)

Criminologists suggest the term juvenile delinquency instead of crime to call the violation of criminal law by young people. This label implies the importance to view children perpetrating a crime in different perspective, not to see them merely as criminals but to some extent it is relevant to see them as victims as well. In most cases, these children are victims of unfavourable economic, social, and event political condition. It is true that some unfavourable external factors have encouraged them to engage in criminal activities including peers, broken family, and bad education. Therefore, different approach should be employed to deal with such children. (Candra, et al., 2019)

There are many different types of interventions for children who enter into the criminal justice system, but the majority place a strong emphasis on detention and punishment, regardless of the severity of the crime or the age of the child. Later, it has been realized that children who engage in criminal activities also deserve legal protection as many other children. They have some fundamental rights that should be protected. A formal guideline has been developed to protect children from harmful effect of the operation of the criminal justice system. The most reasonable option is to remove children from criminal proceedings. This procedure is technically called diversion. Diversion has been recognized globally as the finest and most efficient procedure for handling minors who involve in a crime. (Candra, et al., 2019).

The following are the purposes of diversion as identified by Candra et al:
- Avoiding children from imprisonment;
- Avoiding children from being labeled as a criminal;
- Enhancing life skills;
- Raising the sense of responsibility;
- Deterring children from committing criminal activity;
- Increasing victim assistance without following official procedures;
- Preventing children from entering into the criminal justice system;
- Shielding children from the harmful effect and negative influence of the court system. (Chandra, et al., 2020).

Under the Act Number 11 of 2012 on the Juvenile Criminal Justice System, diversion is specifically governed in Section 6. This statutory provision provides guideline for the law enforcement officers to handle criminal cases involving children. According to the mentioned Section, diversion is most favorable for criminal cases involving children especially when: (1) the crime is punishable with less than 7 years of imprisonment; and (2) it is not a repeat crime.

According to section 6, diversion serves various purposes as follows:
- To achieve peace between victim and child perpetrator;
- To settle the criminal case outside the court system;
- To avoid child from the deprivation of liberty;
- To encourage participation from the society; and
To promote sense of responsibility to the child.

Section 8 (3) highlights that in carrying out diversion, investigators, prosecutors and judges should take into account the following aspects:

a. The victim’s interest;
b. Child welfare and responsibility;
c. Avoiding the negative stigma;
d. Avoiding retributive measure;
e. Social harmony; and
f. Existing social norms.

Replacing the Act Number 3 of 1997 on Juvenile Court, the Act Number 11 of 2012 on the Juvenile Criminal Justice System offers better legal protection for the rights of children who involve in a crime. In addition, the enactment of this Act constitutes a reasonable effort to prevent and overcome the phenomena of juvenile delinquency in Indonesia (Hambali, 2019).

The Juvenile criminal court shall provide due process for children who commit crime due to their unique qualities. Section 3 governs the rights of child perpetrator in criminal proceedings that consist of: (a) to be treated humanely in accordance with his age; (2) to be separated from adult; (3) to get legal and other relevant assistance; (4) to get recreational activities; (5) to be free from torture, punishment and any degrading treatment; (6) to be exempted from death penalty and long life imprisonment; (7) to be neither arrested, detained or imprisoned except as the last resort; (8) to get justice before the objective and impartial court trial which is close for public; (9) to be free from disclosure of identity; (10) to be accompanied by parents or guardians or trusted person; (11) to get social advocacy; (12) to enjoy personal life; (13) to get accessibility especially the disable; (14) to get education; (15) to get healthcare service and other relevant rights.

Juvenile criminal justice should consider restorative justice approach. Restorative justice refers to the concept of justice that gives emphasis on restoration of the victim's rights. The underlying idea of this concept is how to restore the victim into a condition prior to victimization.

Restorative justice can be achieved through an amicable settlement outside the court. This procedure requires all relevant parties namely victim, perpetrator and his family, victim and his family, and other relevant parties collaboratively seek a just resolution that prioritizes restoration rather than retribution. (Hariyanto & Swardhana, 2021).

In order to employ amicable settlement outside the court, the running criminal proceedings should be diverted into out of court mechanism. This process is technically called diversion.

The expected outcome of diversion procedure is a peace agreement. This requires the willingness of the child victim and his family as well as the approval of the victim and/or the victim's child’s family. Diversion may result in a peace agreement without the payment of compensation; returning the child perpetrator to his parents or guardians; participation in education or training at educational institutions for a maximum of three months; and community service.

Criminal proceedings to be taken in case: (a) the diversion fail to reach consensus; or (b) the consensus is not implemented; In other words, if the diversion does not result in a consensus or the consensus is not implemented, criminal proceedings will continue. (Forde, 2021).

Criminal proceedings should consider the best interest of children and encourage amicable situation. Furthermore, the identity of children should be protected from publicity.

Diversion is applicable at any stage of examination including investigation, prosecution and court trial. In order to promote welfare and anticipate detrimental consequence for child perpetrator, law enforcement officers such as police investigators, public prosecutors and judges
are encouraged to employ diversion. (Dini, 2017).

In regard to this, Muladi highlights that the goals of the criminal justice system are: (1) to promote social welfare; (2) to eradicate crime; and (3) to reintegrate and rehabilitate criminal offenders. While Sudarto reminds that law enforcement against child perpetrator should consider the child best interest. (Haulussy, et al., 2019).

The basic idea of restorative justice approach is different from the traditional model. Below are the distinctive features of restorative justice approach:

a. Hold the offender’s responsible for the harm they cause;
b. Include victims, parents, families, schools, and peers;
c. Provide a platform for problem-solving collaboration;
d. Define a clear and concrete connection between the violation and formal social responses.

Restorative Justice may be used in a diversion program if:

a. Encourage child perpetrator to take accountability for their actions.
b. Give them the chance to make up for mistakes they’ve made by helping the victim.
c. Let the victim take part in the process.
d. Give them the chance to keep their relationships with their families intact.
e. Give them the chance to bring healing and reconciliation to communities affected by crimes. (Huda, et al., 2022).

The employment of diversion offers an opportunity for child perpetrators to learn about the value of obeying laws and regulations. The law enforcement officers use coercive tactics and persuasive techniques to avoid making an unexpected arrest against child perpetrator and diverting the case in hand from formal to informal settlement. Consequently, the child perpetrators are supposed to be protected with the switch of procedure. (Hidaya, 2019).

When ordinary criminal proceedings are applied, the child perpetrator may be exposed to some sorts of coercive measures used by the law enforcement officers, including arrest and detention. One of the purposes of diversion is to prevent such coercive measures.

The large number of children who deal with the criminal justice system, get imprisonment and receive violence while going through various procedures—especially in the Philippines—is one evidence of the significance of diversion policies. As a comparison, criminal prosecution against minors is rather common in the Philippines, where 94% of criminals are first-time offenders. There are extremely few official programs or diversion plans to match the amount of children being imprisoned; instead, there is a dearth of assistance for reunifying children with their communities. (Dendy & Ramasari, 2022).

Diversion allows criminals to change their behavior by using community resources and non-formal channels. There are three ways to deploy diversion programs:

a. To put social control into practice, law enforcement officers assign the offender to community monitoring or supervision, with the offender obeying any orders or warnings. The offender acknowledges his responsibility for his conduct, and society does not anticipate giving him another opportunity.
b. The community's social services for offenders serve to monitor, intervene, enhance, and provide assistance to offenders and their families. In order to offer repairs or services, the community may intervene on behalf of the perpetrator's family.
c. In the direction of restorative justice or negotiation, which entails safeguarding the community, providing the offender a chance to accept responsibility directly from the victim and the community, and coming to a mutually beneficial agreement between the offender, victim, and community. (Triwati & Kridasaksana, 2021).

The use diversion may prevent the child perpetrator suffers from a detrimental impact
on his psychological health and development. Therefore, the law enforcement officers should be equipped with discretionary power to employ diversion when necessary. For better protection, diversion can be implemented at all tiers of the criminal proceedings. (Mahardika, et al., 2023).

The laws and regulations pertaining to the rights of child, such as the Child Protection Act, the Human Rights Act, the Juvenile Criminal Justice System Act, and the Convention on the Rights of the Child continue serve as the foundation for applying detention upon minors. When detention is required, the juvenile offenders should be placed in different facilities from adult offenders. The application of detention should ensure the fulfilment of the rights of child to education, leisure activities, family access, protection against physical and mental abuse.

However, the application of diversion must be done carefully after taking into account a number of factors including the category of crime committed. Diversion is probably unfavorable for grave offenses like physical and sexual assault that results in significant harm, (Kusworo & Fathonah, 2022).

The circumstances that lead minors committing crimes may differ from one to another, therefore all relevant variables should be considered in implementing diversion. The following are a few situational elements that are taken into account while implementing diversion:

- a. The severity of the offense: minor, moderate, or severe. One may take into account the history of the originating act.
- b. Violations committed earlier.
- c. The extent to which the youngster has engaged with the case.
- d. The way the youngster felt about the deed. This may be taken into account if the youngster expresses sorrow and accepts it.
- e. How the conduct affected the parents' and/or relatives' response.
- f. Offers made to compensate the sufferer or make repairs.
- g. The victim’s reaction to the act.
- h. The victim’s assessment of the suggested therapeutic approaches.
- i. The effect of fines or penalties that juvenile offenders have already experienced.

When public interest requires the exercise of legal action, there are three general types of distraction as follows:

- a. For small infractions, the police may give a warning as a sort of diversion and encourage the offender to ask for apology from the victim.
- b. Informal diversion is used for misdemeanors when it is deemed improper to just issue a warning to the offender. In such cases, a more thorough intervention plan is required. It is advisable to ask the opinion of the victim about the employment of informal diversion and what they want to be included in the plan. The employment of this informal diversion should give benefit victims, families, and child perpetrator.
- c. If the informal diversion is not favorable, a formal diversion is carried out. Certain victims may feel compelled to express their anger and hurt to the child perpetrator. It is preferable to involve more family members to talk about the situation and create a workable diversion strategy that will benefit all related parties.

**Issues and Challenges relating to the Employment of Diversion**

As explained before, diversion constitutes the initial step for protecting children rights. There are several components that contribute to the successful implementation of diversion, including: regulation; law enforcement officers; facilities and infrastructures. These relevant components will be discussed in the following.

This first relevant component is regulation. Diversion is introduced and governed in the Act Number 11 of 2012 on Juvenile Criminal Justice System. This Act specifies precisely who must participate in the diversion process in order so that a peace
agreement can be reached. Procedure of diversion at the stage of investigation, prosecution, and trial have been outlined in clear and comprehensive detail. There are also explicit regulations that guide investigator, prosecutor, and judge on what to do when the diversion procedure succeeds or fails. These have been outlined among others in a Guidelines issued by Public Attorney Office in 2015. This guideline was made based on a collaboration between the Deputy Attorney General for General Criminal Affairs and the Bureaucratic Reform Assistance Team of the Public Attorney Office. This guideline helps the implementation of the Act Number 11 of 2012 in regard to prosecution in the absence of Government Regulation. (Setyorini, et al., 2020).

The second relevant component is law enforcement officers. Handling criminal cases involving children requires specific knowledge and skills. The Act Number 11 of 2012 on Juvenile Criminal Justice System determines that such cases should be handled by qualified law enforcement officers at all stage of examination. The Act uses the term juvenile investigator, juvenile prosecutor and juvenile judge to call relevant law enforcement officers who have expertise on the subject matter. Such qualified law enforcement officers understand the value of resolving the case outside the judicial system and recognize diversion as a procedure to protect the human rights of these children. (Liefraard, 2015).

The following relevant component is facilities and infrastructures. The diversion and its following procedures require the existence of supporting facilities such as child-friendly room for the perpetrators and teleconference room for the victims. All relevant law enforcement offices should be equipped with relevant facilities (Ghoni & Pujiyono, 2020). Since the family of the relevant parties will involve during the case settlement process either through diversion or court trial, the existence of a family-friendly atmosphere will also be necessary. (Setiawan, 2017).

It seems that the employment of diversion comes across various issues and challenges. As highlighted by Balla, a number of factors might affect the system’s effectiveness, such as few resources, unclear legislation, a lack of awareness and understanding of children’s rights, and bad practices. A number of factors will be prioritized, such as the availability of legal redress, the way in which court procedures are conducted, the efficiency of the judicial system, appropriate punishments, and the rehabilitation process. The factors that affect the juvenile justice system’s effectiveness must be considered. These factors include the system’s present laws and regulations, enough funding, participation in professional training, and collaboration with relevant organizations and stakeholders. (Balla, 2022)

One of challenges in employing diversion comes from the society. Although the employment of diversion brings about some benefit for the society, nevertheless, the proposal to exercise diversion sometimes encounters unexpected response from the member of the society, especially the family of the victim.

Siantury and Lubis identify that refusal to participate in the diversion process during the investigation stage might constitute impediments, even when the reporting party wants to see the inquiry through to completion. Pickups conducted by investigators at the parties’ residences may get around this problem. The availability of investigators specialized in handling juvenile delinquency cases is another issue. (Sianturi & Lubis, 2020).

The difficulties encountered during the prosecution process are often the same as those encountered during the investigation process, notably the reluctance to participate in the diversion process. The Prosecution Guidance in the Juvenile Criminal Justice System published in 2015 provides additional support for the diversion process at the prosecution level. (Ningtias, et al., 2020).

The community’s perception on juvenile delinquent, the surroundings, and the state’s ignorance of its duty to protect children all create barriers in the use of diversion. This
factor can be interpreted as follows: the diversion process rarely succeeds, especially because of the lack of forgiveness culture in society. This is because the community, particularly parents and the wider community, tends to be reluctant to forgive and accept a child who has committed a crime. This situation contributes a large portion of diversion failure at the judicial stage. In the eyes of society, young people who commits crime also deserve punishment. (Sukadana, 2022).

Based on the above discussion, it is clear that the operation of the existing Juvenile Criminal Justice System in Indonesia needs some improvements, especially in regard to the employment of diversion.

The improvements cover several factors and involve wide range of stakeholders, including the government, non-governmental organizations, legal professionals, and the society in general. It is expected that these improvements will provide better protection of children rights. (Budoyo & Sari, 2019).

CONCLUSION

The ultimate concern of the Juvenile Criminal Justice System is to give sufficient legal protection for children involving in criminal cases especially those who stand as perpetrators. The rights of children who perpetrate a crime is primary protected through the employment of diversion, the initial step for settling the criminal case outside the judicial system. The operation of the Juvenile Criminal Justice System comes across some obstacles in field, including with regard to the employment of diversion. The successful implementation of diversion requires the existence of various components such as relevant regulation, qualified law enforcement officers and supporting facilities and infrastructures. Reluctance to participate in diversion processes especially from the family of the victims is so far considered as the most significant barriers in its implementation. Improvement in employing diversion is necessary to achieve better quality of children rights protection.

BIBLIOGRAPHY


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Muh Endriyo Susila & Bagaskara Yonar Farhansyah, Protecting Children Rights through the Juvenile Criminal Justice System in Indonesia: Issues and Challenges

Indonesia (Doctoral Dissertation, Universitas Katolik De La Salle).


