



THE EFFECTIVENESS OF THE IMPLEMENTATION OF DIVERSION FOR CHILDREN OF CRIMINAL OFFENDERS IN TERNATE CITY

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Abstract

This study aims to analyze the effectiveness of diversion implementation for juvenile offenders in Ternate City and recommend penal and non-penal policy reforms in criminal law. The research method combines normative and empirical legal approaches, utilizing interviews, observations, and document analysis of cases handled by the Ternate Police. Findings indicate that diversion has reduced stigmatization through restorative mechanisms, yet its effectiveness is hindered by law enforcers' limited understanding, inadequate facilities, and public resistance to restorative justice. Case studies, such as recidivism by offender Isra Nasrun, highlight the need for post-diversion mentoring evaluation. Legal reform recommendations include officer training, public education, and integrating non-penal policies focused on social rehabilitation. The study concludes that multidisciplinary collaboration is essential to strengthen diversion implementation and ensure child rights protection is aligned with the best interests of the child principle.

Keywords: Diversion Effectiveness, Restorative Justice, Criminal Law Reform



INTRODUCTION

Child protection is a fundamental element in a country's social and legal system. In the Indonesian context, the guarantee of the right to life, growth, and development, as well as protection from violence, has been affirmed in the 1945 Constitution Article 28B paragraph (2). Children are not only seen as immature individuals, but also as the next generation of the nation, who need a special approach in every legal problem that involves them (Anindyajati, T. 2021). The mishandling of children of criminal offenders not only has the potential to cause psychological trauma, but also has an impact on the nation's broader social and moral future. (Sriwiyanti, *et al.*2021)

With the development of the times and advances in information technology, children now live in a much more complex social environment (Fahria, 2022). The phenomenon of children facing the law has become part of the legal reality in Indonesia, including in Ternate City. Data from the Women and Children Protection Unit (PPA) of the Ternate Police shows that the number of criminal cases involving children continues to increase from year to year (Pujiani, R. S., *at.al.*2022). This phenomenon shows that the juvenile criminal justice system still faces major challenges in efforts to protect children's rights and secure their future (Nazmi, & Syofyan, W., 2023)

As a form of legal protection for children, the diversion system is one of the important instruments applied in the juvenile criminal justice process. Diversion is the transfer of case settlement from a formal judicial process to a non-formal process by prioritizing a restorative justice approach. This approach is oriented towards restoring relationships between perpetrators, victims, and society, and aims to prevent children from stigmatizing judicial processes. In practice,



diversion is expected to be able to avoid the negative impact of legal proceedings on children's psychological and social development (Zane, S. N., & Mears, D. P., 2023).

However, the effectiveness of the implementation of diversion in the field does not always go as expected (Ardian, F. R., 2020). In Ternate City, even though the diversion mechanism has been implemented by law enforcement officials, there are still cases of repeat crimes by children who have previously undergone the diversion process (Zainal, M., & Amin, M. 2023) Cases like the one that befell a child named Isra Nasrun are a concrete example that not all diversion results provide an ideal deterrent or recovery effect. This raises fundamental questions about the effectiveness and relevance of the application of diversion in handling cases of children of criminal offenders (Wagiati Soetedjo, S., & Melani, S. H., 2020).

This condition encourages the need for a thorough evaluation of the implementation of diversion, especially in the context of law enforcement in Ternate City. Has the implementation of diversion met the principles of restorative justice? Are there obstacles in its implementation, both in terms of regulations, human resources, and the understanding of law enforcement and the public? This study is important to ensure that the legal remedies carried out are not only procedural, but also have an impact on the recovery and rehabilitation of children (Nurwati, N., Fedryansyah, M., & Achmad, W., 2023)

This research also aims to review how penal and non-penal policies within the framework of criminal law reform are implemented locally. Given the complexity of the issues that arise, a more contextual, adaptive, and local culture-based legal approach is urgently needed. In Ternate, settlement mechanisms based on family values and deliberation are often more accepted by the



community. Therefore, it is important to see the extent to which the application of diversion is in harmony with local values and strengthens social harmony (Abdulajid, S., et.al. 2024).

From a theoretical perspective, this research is based on the theory of restorative justice, legal effectiveness, child protection, and criminal policy theory. The four theories are used as a basis for analyzing the dynamics and effectiveness of the application of diversion to children who are facing the law in Ternate City. This research is expected to be able to make an empirical and conceptual contribution to the development of a child justice system that is fair, humane, and responsive to the times (Stevenson, E., & Saulnier, S., 2023)

Thus, this paper aims to examine in depth the effectiveness of the application of diversion to children of criminal offenders in Ternate City, as well as evaluate the extent to which this approach can be a solution to children's legal problems. This research is expected not only to contribute to the development of science in the field of juvenile criminal law, but also to become a reference in public policy making oriented towards the protection of children's rights and inclusive social development.

LITERATURE REVIEW

The application of diversion in the juvenile criminal justice system is a reflection of the change in the legal paradigm that leads to a humanist and restorative approach. Unlike the retributive approach that focuses on punishment, this approach places justice as a dialogical process between the perpetrator, the victim, and the community. Restorative Justice theory is the main basis for designing diversion mechanisms. According to Van Ness and Heetderks



Strong (2010), restorative justice emphasizes the recovery of losses caused by criminal acts through the active participation of all affected parties. The main principles of this theory are restoration, reconciliation, and responsibility, not mere punishment.

In the context of Indonesian law, the theory of restorative justice has been accommodated through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law). This law explicitly stipulates that every handling of children's cases must prioritize a diversion approach based on the principle of restorative justice, as stipulated in Article 1, number 6, and Article 7. Diversion itself is interpreted as the transfer of case settlement from the criminal justice process outside the formal system through a deliberation mechanism to reach a fair agreement between the perpetrator, the victim, and their families. This is intended to protect children from the negative impacts of the formal criminal justice process, including stigmatization and psychological trauma.

The effectiveness of the law is an important indicator in assessing the success of the implementation of diversion. According to Soerjono Soekanto (2008), the effectiveness of the law is determined by five factors: the substance of the law, law enforcement officials, supporting facilities, society, and legal culture. In this context, the effectiveness of diversion is measured through the extent to which child protection goals are achieved, such as preventing the repetition of criminal acts, supporting child rehabilitation, and rebuilding social harmony. If the application of diversion is not able to prevent recidivism or is even used by the perpetrator as a loophole to avoid punishment, then its effectiveness is questionable.



In addition, child protection theory is an ethical and normative framework in the implementation of criminal policies against children. Child protection, according to Law Number 35 of 2014 concerning Child Protection, includes all activities to guarantee and protect children's rights so that they can live, grow, develop, and participate optimally following the dignity and dignity of humanity. Special treatment of children as perpetrators of criminal acts is rooted in the principle of the best interest of the child, which places the best interests of the child as the main consideration in every legal process that concerns him/her. This approach emphasizes that punishment is not the only goal of criminal law, especially for children.

In addition, criminal policy theory is also the basis for reforming the juvenile criminal justice system. According to Marc Ancel (2006), criminal policy is a rational and organized effort by the state in tackling crime with a penal and non-penal approach. Diversion as part of a non-penal policy is a strategic choice in handling children's cases to avoid the long-term effects of the criminal process. The implementation of this policy must consider social environmental factors, family support, and the readiness of supporting institutions such as the Correctional Center (BAPAS), social workers, and UPTD PPA.

The theory of causality in child crimes cannot be ignored either. This theory explains the relationship between the factors that cause crime and the deviant behavior of children. According to Emile Durkheim, crime includes deviant behavior that arises from weak social control in society. In many cases, children commit criminal acts not solely of free will, but because of environmental factors, peer group pressure, parental neglect, or socioeconomic conditions. Therefore, handling that prioritizes a recovery and coaching approach is very important.



Thus, the theoretical framework used in this study includes restorative justice theory, legal effectiveness, child protection, criminal policy, and crime causality. The five theories complement each other and provide a strong basis for analyzing the effectiveness of the application of diversion to children of criminal offenders, especially in the context of implementation in Ternate City. This research is expected to contribute to developing a more adaptive, humanist, and legal approach based on the principles of social justice for children.

RESEARCH METHOD

This study uses a normative juridical approach combined with an empirical juridical approach. The normative juridical approach is carried out through a literature study by examining relevant laws and regulations, legal doctrines, and academic literature to analyze the effectiveness of the application of diversion to children of criminal offenders (Noor, A., 2023). Meanwhile, an empirical juridical approach was carried out to obtain a factual picture in the field, especially related to the implementation of diversion in law enforcement practices by officials in Ternate City.

Normative juridical research in this case aims to examine and understand positive legal norms that regulate diversion, such as Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, as well as other implementing regulations and policies that support a child-friendly justice system. Meanwhile, the empirical approach is carried out utilizing observation and direct interviews with informants involved in the diversion process.

Empirical data was collected through in-depth interview techniques with five key informants, namely: the Head of the Women and Children Protection



Unit (PPA) of the Ternate Police Criminal Investigation Unit, the Head of the Ternate City UPTD-PPA, the Head of the Ternate City BAPAS, Social Workers from the Social Service, and parents of the perpetrator's and victim's children. The research also includes observational data from several diversion cases that have been carried out by the police, especially at the investigation stage.

The type of data in this study consists of secondary data and primary data. Secondary data is obtained from primary legal materials such as laws, as well as secondary legal materials in the form of literature, journals, scientific articles, and the results of previous research. Primary data came from the results of interviews, internal police documents, and case reports from the Ternate Police PPA Unit.

The data analysis technique is carried out in a normative qualitative manner, namely by examining the data collected through a descriptive-analytical approach without using numbers or statistics. The data obtained was analyzed to understand how the diversion mechanism was implemented, what obstacles were faced, and how effective it was in reducing the recidivism rate of children of criminal offenders in Ternate City.

The approach method used in this study includes three main approaches, namely: The statute approach is carried out by examining all laws and regulations related to diversion and juvenile justice. The conceptual approach is used to formulate and develop the ideal legal concept of diversion. The case approach is used to analyze several concrete cases of diversion that occurred in Ternate City, especially those that have obtained court decisions.



RESULTS AND DISCUSSION

The implementation of diversion for children of criminal offenders in Ternate City has generally been carried out in accordance with the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law). The Ternate Police Criminal Investigation Unit, especially the Women and Children Protection Unit (PPA), is at the forefront of the implementation of this mechanism at the investigation stage. Although juridically adequate regulations are available, in practice the effectiveness of the implementation of diversion still faces a number of significant challenges.

Data obtained from the PPA Unit of the Ternate Police Criminal Investigation Unit shows an increase in the number of child cases in conflict with the law over the past three years. In 2022, there were 11 cases, increasing to 13 cases in 2023, and until April 2024 there were 8 cases. However, not all of these cases were successfully resolved through diversion. Only about 45% of cases are processed up to the P21 stage (complete file), indicating that most are still under investigation or have been stopped through a restorative approach.

One concrete example of the application of diversion is the case of demolition carried out by a child named Isra Nasrun. In this case, the investigation process was stopped and the case was transferred to the diversion process, which was then granted by the Ternate District Court through decision Number 2/Pen.Div/2023/PN Tte. However, the effectiveness of the diversion is questioned when the same child again commits a criminal act against another victim. This second case is no longer processed through diversion because it is considered a repeat criminal act, and is only resolved through a restorative justice approach without a formal judicial process.



The phenomenon of recidivism in child offenders shows potential weaknesses in the diversion system applied. The perpetrator's child may consider that the legal system does not provide strict sanctions, so that there is no deterrent effect. In this case, diversion, which should be educational and rehabilitative, has the potential to be misinterpreted as a form of legal leniency that can be used.

On the implementation side, police officers and supporting institutions such as the Correctional Center (BAPAS) and UPTD PPA have tried to carry out diversion with a participatory approach, involving the families of the perpetrators and victims, as well as assistance by social workers. However, this process still faces obstacles in terms of limited human resources, lack of supporting facilities, and low public understanding of the importance of restorative justice.

This condition shows that procedurally, the implementation of diversion has been quite successful, but in terms of substance, its effectiveness is still questionable. Many cases have not achieved the goal of restoration as mandated by restorative justice. Diversion, which is only understood as a form of administrative peace without a further coaching process, will lose its essence as a tool of social restoration and legal education for children.

Normatively, the diversion legal framework in Indonesia provides a great opportunity to strengthen a more humane juvenile justice system. However, this needs to be supported by a monitoring and evaluation mechanism for the results of the diversion implementation. In the context of Ternate City, there is no integrated evaluation system to assess the success of diversion from time to time, including the extent to which the perpetrators carry out post-diversion agreements.



Therefore, although the implementation of diversion in Ternate City has taken place in accordance with the regulatory framework, its effectiveness still depends on several factors: the consistency of law enforcement officials, active community involvement, the availability of child rehabilitation facilities, and the sustainability of post-diversion coaching. In the long run, this approach should be geared towards creating an educational effect and building the child's character, not just an administrative settlement.

CONCLUSION

The implementation of restorative justice-based diversion in Ternate is a progressive step in the juvenile criminal justice system, which aims to solve legal problems humanely by restoring the relationship between perpetrators, victims, and society. While successful in reducing social stigma and increasing community participation, challenges such as a lack of understanding of restorative justice and limited resources still exist.

Reform of the juvenile criminal law needs to be carried out with a responsive approach to the psychological and social conditions of children, as well as separating the juvenile justice system from adults. Restorative justice-based non-penal policies are essential to restore disrupted social relationships, supporting the recovery of perpetrators, victims, and communities. Thus, the reform of the children's criminal law must focus on creating a system that is just, humane, and oriented towards social recovery in order to support the optimal development of children.

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