



Criminal Law Policy Towards the Concept of Diversion as an Act to Safeguard Children Who Commit Criminal Crimes in the Context of Criminal Law Reform

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Abstract

This paper takes a background from the perspective of criminal law renewal, it must be acknowledged that a repressive approach to children who commit criminal ACTS often offers no effective solutions. Rather, they create space for more holistic interventions, taking into account the social, economic, and psychological factors that can influence child behavior. Therefore, criminal law renewal that incorporated the concept of altered version paved the way for a more humanistic civilization of law and in accord with human rights principles. The method of research used in this study is normative jurisdiction or literature study. And so the problem with this research is. How criminal law policy. the concept of protecting child criminals in current positive laws and how efforts are made to provide protection against children who commit non-criminal ACTS and how the concept is altered in a new criminal law in the future.

Keywords: *Criminal Law Policy; Version; Child Molesting; Criminal Law Enforcement*

Introduction

In an effort to ensure public justice and satisfaction, criminal laws in Indonesia, especially criminal law, need to continually adapt to changing times, social conditions, and the needs of Indonesian people. The predominant principle of justice in solving conflicts in society is communal justice.¹ Communal justice is a form of justice in which each individual does not feel wronged by decisions made by the chairman or the local figure in resolving conflict. This justice is a vital aspect of maintaining the balance of people's lives under tribal laws. The principles of deliberation and decision are the basis for philosophy of decision making in Indonesian society, including conflict resolution.² The concept of cooperation and decision has been part of the philosophy of the republic of Indonesia as set forth under the fourth precepts of the 1945 constitution and other regulations of legislation.

¹ Ma Syahrin, "Penerapan Prinsip Keadilan Restoratif Dalam Sistem Peradilan Pidana Terpadu", *Majalah Hukum Nasional*, 2018

² Hariyanto Hariyanto, "Prinsip Keadilan Dan Musyawarah Dalam Hukum Islam Serta Implementasinya Dalam Negara Hukum Indonesia", *Jurnal Kajian Ilmu Hukum*, Vol 4, No 1 (2015)

In today's ever-expanding era of globalization and modernization, criminal law systems are becoming increasingly complex and deepening, especially when it involves child-status offenders. Protection against the rights of children as vulnerable individuals who need special coaching becomes a major focus on criminal law renewal. In this perspective, diversion concepts appear as alternatives to the treatment of children who committed criminal ACTS, aimed at better protection, rehabilitation, and prevention of future criminal behavior. Child protection of criminals is an urgent need, as children are often caught up in situations that threaten their sustainability. Regardless of their mistakes, they view them as subjects who need an opportunity to improve behavior through being converted into a critical aspect of the criminal law paradigm shift. Criminal law policies that encourage implementation of version become a progressive step toward addressing children as perpetrators.³

In view of the renewed perspective of criminal law, it must be acknowledged that repressive approaches to children engaging in criminal crimes often fail to provide effective solutions. Rather, they create space for more holistic interventions, taking into account the social, economic, and psychological factors that can influence child behavior.⁴ Therefore, criminal law renewal that incorporated the concept of altered version paved the way for a more humanistic civilization of law and in accord with human rights principles. The importance of the transition in the context of children convicted felons also reflects a desire to diminish stigmatization toward them. Too often, conventional legal management can ruin a child's future by laboning a crime that is difficult to erase.

Setya wahyudi stated that the diversions were a way to divert or address the behavior problems of children from conventional judicial processes of children, to a more social-service approach to society. The version is carried out with a view to protecting the child from the possible ill effects of the child's ongoing judicial process. Translated as an alternative form of treatment, opening an opportunity to restore the reputation and integrity of children, so that they can re-contribute a positive to society.⁵ In relation to the renewal of criminal law, a comprehensive and inclusive approach involves a wide variety of stakeholders, including child rearing agencies, families, schools, and communities. The understanding that children who practice criminal crimes need special attention and solutions that are not only academic, but also rehabilitation, become a cornerstone of progressive criminal law policies. In this context, in-depth research and deep understanding of the impact policy reversion on child perpetrators became essential.

Formulation of the Problem

Based on the given background, the problem identified is as follows:

- 1) What about criminal law policy. the concept of protecting criminal children in current positive laws?
- 2) How does the attempt to provide protection against children who commit no crime?
- 3) What's the concept of a new criminal law coming up?

Research Methods

This method of writing used research on literature, which includes written sources such as books, journals, encyclopedias, and other writings that relate to the subject under consideration. This approach is a

³ Sri Rahayu, "Diversi Sebagai Alternatif Penyelesaian Perkara Tindak Pidana Yang Dilakukan Anak Dalam Perspektif Sistem Peradilan Pidana Anak", Jurnal Ilmu Hukum, 2015

⁴ Setya Wahyudi, "Implementasi Ide Diversi Dalam Pembaharuan Sistem Peradilan Pidana Anak Di Indonesia", Genta Publishing, Yogyakarta, 2011, Hal. 59

⁵ Marlina, "Peradilan Pidana Anak Di Di Indonesia", Refika Aditama, Bandung, 2009, Hal. 158.

descriptive, analytical description, which aims to portray and analyze the problems at their core proportionately through an analytical process.⁶ The approach method used in this writing is the normative approach. The approach has been used to assess penal policy on penal enforcement through mediation penal. The purpose of this approach is to explore more in the context of penal reform in Indonesia, especially through the application of penal settlements as one of the strategies for treating criminal actions.

Through the normative approach, the author will analyze the legal aspects associated with penal mediation and its implications of the changes and updating of the penal system of Indonesia.⁷ The method of collecting data used in this writing is textual search, which involves text-related analysis of the primary data, that is, materials containing key information or materials that are considered important. Secondary data, on the other hand, refers to information that gives additional explanations or contexts to primary materials. Materials such as books or literature that are relevant to the subject of this scientific journal will be used as a secondary source of data.⁸

Discussion

1) Criminal Law Policy the Concept of Protecting Criminal Children in Today's Positive Laws

Translated into context for protection against criminal children is an alternative approach to handling children involved in the criminal justice system. The reversion aims to provide children with the best protection, avoid stigmatization, and help them avoid deeper into the path of crime. This approach emphasizes on the rehabilitation and reintegration of children into society. In Indonesia's positive laws, diversions are governed in the 2012 act number 11 on the criminal justice system of children. Article 7 the law states that the solution of a child's case can be done by a reversion of a child's case outside the court by remaining concerned for the interests of the child, justice, and the security of society.

There are several possible versions of the version, among other things: a formal, formal version of the child solution outside the court with the approval of the prosecutor and the parent or guardian. The formal version is under article 8 of act 11 in 2012. A nonformal version takes place outside the criminal justice system of children, through public institutions, schools, religions, or other social institutions. Mediation was a process of settling disputes between sides with the aid of a neutral third party. In the context of reversion, mediation can be one method for settling children's affairs outside the court.⁹ Another relevant chapter in 2012's article number 11 regarding the criminal justice system of children:

- a) chapter 9: states that the prosecutor can do a formal dissection after obtaining a police report ora complaint from the public.
- b) chapter 10: mentions that a formal version is done by making an agreement between the prosecutor, the child, and the parent or guardian of the child.
- c) chapter 11: states that formal version of the agreement must be approved by the local trial.
- d) chapter 12: state that in performing diversion, prosecutors should look to the best interests of children, principles of justice, and the security of society.¹⁰

⁶ Kartini Kartono, 1996, *Pengantar Metodologi Riset Sosial*, Masdar Maju, Bandung, Hlm. 33.

⁷ Pendekatan Normatif Yaitu Studi Yang Memandang Masalah Dari Sisi Legal-Formalnya Dan Atau Normatifnya. Lihat Khoirudin Nasution, *Pengantarstudi Islam..*, Hlm. 141.

⁸ Soerjono Soekanto, 1986, "Pengantar Penelitian Hukum", Ui-Press, Jakarta, Hlm. 52.

⁹ S Sampara, H Djanggih, "Diversi Sebagai Bentuk Penyelesaian Perkara Pidana Anak Dr Ningtias", *Journal of LexGeneralis*, 2020

¹⁰ UU Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak

Thus, an inversion of Indonesia's positive law is a form of approach that provides opportunities for children involved in criminal justice systems for more humane treatment, rehabilitation, and avoiding overly formal and judgmental judicial proceedings.

Then implement a reversion of the child's penal system in the perspective of criminal law renewal. Law renewal is needed to achieve goals in practical policies, such as social policy, criminal policy, and law enforcement policies. If the idea of a version is considered an element of legal renewal, the diversion can serve as a tool to support and achieve the objectives of those policies. A converted idea can be a means to support social policy by becoming an effort to achieve social and social welfare. Versions can support criminal policy by becoming instruments to deal with crime. They can also support law enforcement policies if the substance of the diversion can increase the effectiveness of law enforcement.¹¹ The renewal of criminal law should include a principle of balance, which means that the renewal of criminal law needs to include the value of a monodualistic balance between the interests of society and individual interests, the balance between the behaviour of crime and subjective interests, the balance between the arbitrary and subjective aspects, the balance between formal and material criteria, the balance between legal certainty, flexibility, and justice, And the balance between social and global values.

In the context of contemporary criminal law, the idea of the balance between the need to uphold the law and the protection of the rights of children of criminals gets serious attention. The effort has been reflected in the implementation of the "mediation policy" as one of the forms of restorative justice applications, which have been granted legal recognition in recent changes to the penal system. In contrast with the previous provision found in article 145 letters "d" of the 2012 criminal code, which emphasizes "out-of-process resolution," *kuhp* 2023 has made significant adjustments by introducing article 132 letter "g" which refers to "off-policy resolution."

This change marked an evolution in the criminal justice system approach to cases involving children, putting more restorative solutions above purists. Ali highlights the importance of the termination of criminal prosecution by the prosecutor based on the principle of restorative justice, showing a step forward in the practice of law that presupposes certainty, justice, and judicial expediency.¹²

Reversion can serve as a means to achieve community welfare if it meets the need for social welfare. Social welfare refers to living conditions and social livelihoods, both materially and spiritually, which include a sense of safety, decency, and calm of birth and mentality. These include social assistance for citizens both individually and in groups, social-welfare maintenance through social security systems, guidance, coaching, and social rehabilitation for needy individuals, social development and counseling to improve civilization and humanity, and the creation of other foundations and institutions to meet the social security needs that address the overall interests of society.

In the 1979 statute on child welfare, it has been explained about the child's social welfare. The welfare of the child refers to the living conditions and livelihoods of the child that ensure its normal growth and development, both spiritually, physically, and socially. To ensure the well-being of the child, social welfare measures are taken to address a child's basic needs. Children have the right to welfare, care, upbringing, guidance, protection, and development according to national culture and identity, both within the family and in special care environments. Children who have no parents are entitled to care for their country, individuals, or institutions. Children who face behavioral problems are entitled to services and treatments aimed at helping them overcome potential obstacles during their growth and development. Special services

¹¹ Nikmah Rosidah, "Embaharuan Ide Diversi Dalam Implementasi Sistem Peradilan Anak Di Indonesia", *Masalah- Masalah Hukum* Jilid 41, Nomor 2, Tahun 2012

¹² Ali, T. M. (2023). Penghentian penuntutan terhadap suatu perkara pidana oleh penuntut umum berdasarkan keadilan restoratif dalam perspektif kepastian, keadilan dan kemanfaatan hukum. *Jurnal Ilmiah METADATA*, 5(1), 381-395.

are provided to children with disabilities, as well as to children who have been convicted of lawlessness by the courts.

The implementation of the attempt on the penal system in a renewed perspective of criminal law reflects a significant transformation in the treatment of children who commit felonies. Here are a few points that need attention in the perspective of criminal law renewal: "a focus on rehabilitation and prevention" in criminal law renewal, there is a paradigm shift from a additive approach to a more rehabilitative and preventive approach. It makes it possible to address the underlying issues of children's criminal behavior by paying attention to rehabilitation and prevention. In turn, responsive to the needs of children, the system is designed to be more responsive to the needs and uniqueness of each child involved in criminal wrongdoing. These include recognition of such factors as age, maturity, social background, and specific issues that may affect a child's behavior.

Encouraging restoration and social reintegration of criminal law renewal emphasizes the importance of restoration and social reintegration of children into society after they become involved in criminal crimes. Through substitution, children are given the opportunity to correct their mistakes, to acquire new skills, and to return to productive members of society. Further empowering of children and participation of criminal law renewal perspectives emphasize the importance of empowering children and their participation in the process of completion of criminal cases. It provides room for children to be involved in decision making related to the steps taken to deal with the crimes they commit.

Continual evaluations and improvements in the context of criminal law renewal, it is important to continue to evaluate the implementation of a version. This evaluation aims to identify successes, challenges, and opportunities for improvements in the altered system to ensure that children's rights are respected and their needs met. In all, the implementation of efforts in the penal system in the perspective of criminal law is crucial to creating a more just, responsive, and rehabilitative system for children involved in criminal ACTS. Considering these aspects, criminal law renewal can offer children better protection while promoting sustainable development in society.

2) The Attempt Was to Provide Protection Against Children Who Committed Criminal ACTS

To protect children and acknowledge their characteristics and characteristics, child cases involved in the law must be tried in criminal courts in a public judicial environment. Before going into the process of justice, law enforcement, families, and society should attempt to settle cases outside the court for crimes that have a prison sentence of less than 7 years and not a recurrent, by reversion based on a restorative justice approach. Article 1 paragraph (6) the 2012 penal system (6) explains that restorative justice is a way to solve criminal cases by involving perpetrators, victims, families of victims, and others involved in achieving a fair settlement by focusing on recovery and not retaliation.¹³ Efforts are made to provide protection against children who commit crimes for several reasons: the rehabilitation approach, is often viewed by children as vulnerable and affected by the environment and other factors. This approach focuses on child rehabilitation, not just on punishment or penalties. Thus, it provides an opportunity for children to improve behavior and start over a more positive life.

The avoidance of criminals, through their versions, is that children have the opportunity to avoid the stigma associated with formal criminal justice. By not engaging in judicial proceedings or criminal proceedings, children have a greater chance of obtaining the guidance and support they need without having to be identified as criminal offenders. Future criminal risk reduction, the reversion provides timely interventions and preventive for children involved in criminal ACTS. By giving appropriate attention and guidance, diversions can help reduce the child's risk of engaging in future criminal ACTS.

¹³ Pasal 1 Ayat (6) UU No 11 Tahun 2012

Recognition of the rights of the child, reversion efforts are based on the principles of human rights and child rights. Children have the right to be protected and have the opportunity to correct their errors in a way that considers the best interests for them. In the concept of child empowerment, the version gives children the opportunity to engage in the process of solving their cases. It gives them a sense of responsibility and enables them to actively participate in improving their own behavior. The diversion thus provides a holistic and sustained protection against children who commit criminal ACTS, while considering their needs as vulnerable and entitled second chances.

The version provides a number of significant benefits to children involved in the legal system. First, the rehabilitation approach is in a version that paves the way for improved child behavior. Instead of merely sanctioning or punishing, it enables a child to focus on self-improvement and start over a more positive life. Second, the reversion helps children avoid the criminal stigma associated with formal judicial proceedings. By not engaging in criminal courts, the child has the opportunity to receive guidance and support without being identified as a criminal offender. Third, the diversion has a powerful preventive properties. Through timely and responsive interventions, diversions can help reduce the child's risk of engaging in future crime. Fourth, the diversion recognizes the rights of the child and empowers them in the process of solving the case.

This enables children to be actively involved in decision making that affects their future, creating an environment that supports recovery and growth. In conclusion, a version not only provides protection for children involved in criminal ACTS but also offers opportunities for improvements, avoidance, crime prevention, recognition of the rights of the child, and the empowerment of these vulnerable individuals in the justice system.

3) The Concept Is Translated in the Future Book of Criminal Law

The change to the version proposed in the Indonesian criminal code revision is a reflection of the evolution of legal thinking and social justice in the handling of criminal children. This reform, as expressed by barda nawawi arief, marked a shift toward a more restorative and humane system, one that emphasis not only on punishment but on recovery and rehabilitation.¹⁴ In the revised penal code of laws, the revisions are no longer seen as an alternative, but as an integral component in a child-oriented criminal justice system. It offers the framework of penal mediation and off-court settlement becoming more than the simple option of providing the foundation for the handling of child cases.¹⁵ This transformation is rooted in claims that traditional legal processes often fail to meet the unique needs and best interests of criminal children.

A change in this version of the concept is potentially changing the landscape of child protection in Indonesia. With a focus on recovery rather than revenge, it is hoped to reduce the social stigma often attached to criminal children, paving the way for more effective and sustainable social reintegration.¹⁶ More than that, by reducing dependence on traditional detention and punishment, these updated versions may play a key role in reducing the overcapacity of child correctional facilities and ensuring that children have the support they need to rebuild their lives¹⁷.

The changing concepts in the revision of the criminal code reflect awareness and response to the need for a more just and effective criminal justice system, which respects human rights and the potential for

¹⁴ Arief, Barda Nawawi, 1998, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, Bandung: Citra Aditya Bakti, hlm. 156.

¹⁵ Barda Nawawi Arif, *Mediasi Penal: Penyelesaian Perkara Pidana Diluar Pengadilan*.(Semarang: Pustaka, 2012)

¹⁶ Barda Nawawi Arif, *Perkembangan Sistem Pemidanaan Di Indonesia*. (Semarang:Pustaka Magister, 2007), Hal. 2

¹⁷ Eko Soponyono, P. (2017). *Kebijakan Perlindungan Hukum Terhadap Anak Sebagai Korban Kekerasan Seksual (Studi Putusan No. 76/Pid. Sus. Anak/2013/Pn. Smg) Ditinjau Dari Prespektif Keadilan*. *Diponegoro Law Journal*, 6(2), 1-18.

child development. It's not just about reform of law, it's about reestablishing a supportive social order, where children who face the law are seen as individuals who need guidance, not just the subject of punishment.

Applying a more restorative approach, Indonesia is on its way not only to improve its judicial system but also to strengthen the social safety nets for the most vulnerable children. It is a significant step forward in emitting justice based on understanding and empathy, not fear and punishment.

Conclusion

The version represents a crucial alternative approach to dealing with children involved in criminal crimes. The concept, governed in the 2012 law number 11, focuses on providing children with more human treatment and rehabilitation, keeping them from the stigma and judging judicial proceedings, and reintegration into society. This accords with the principal purposes of the law that put the best interests of the child ahead. Within the framework of criminal law renewal, it has become an important tool supporting social policy, crime, and law enforcement, emphasizing future rehabilitation and prevention of crime. Diversions offer not only comprehensive protection against children who deal with the law through approaches that recognize their rights and allow their participation, but also help in reducing future criminal risks and facilitating effective social reintegration.

The anticipated change in concepts of the criminal revision marked an evolution in understanding of social law and justice, suggesting a shift in the direction of more restorative and humane systems. This reaffirms commitment to recovery, rehabilitation, and respect for human rights, while also acknowledging a child's potential for future development. Thus, diversions of the child's criminal justice system reflect not only a paradigm change from punitive to rehabilitation but also promises sustainable social development and more inclusive justice. This transformation, which puts understanding and empathy above fear and punishment, is a significant step forward in an attempt to create a more just and supportive society for all children, especially those in the face of the law.

Based on the analysis and conclusions outlined earlier, some Suggestions may be given to improve the effectiveness of versions and the protection of children in the criminal justice system are as follows:

- (1) Increased law-enforcement and associated capacity, It needs to be increased capacity for law enforcement, such as police, prosecutors, judges, and other associated agencies, to understand and apply version concepts. The ongoing training and education of restorative approaches and rehabilitation must be a priority to ensure that they can implement effectively versions.
- (2) Reinforcement of inter-agency cooperation, Closer cooperation is needed between judicial, social institutions, educational institutions, and communities to support the process of child reintegration and disintegration into communities. This cooperation is necessary to provide comprehensive support for children, including access to education, skill training, and mental health services.
- (3) Advocacy and socializing about diversion, Increased public awareness of its benefits and importance was translated through advocacy and socialization campaigns. It will help reduce the stigma on children involved in criminal ACTS and strengthen society's support for rehabilitation and restorative approaches.
- (4) Regulation development and improvements, Evaluate and refine diversion regulation to ensure that the practice of version can be implemented more widely and effectively. This includes ensuring clarity in the procedures, criteria, and implement mechanisms of version.
- (5) Funding and resources, Allocate sufficient resources and finance to support the implementation of diversion, including funding for child rehabilitation and social reintegration programs. It is important to make sure that these programs are accessible to all children in need.

- (6) Continuing research and evaluation, Doing continuous research and evaluation of the practice of version to identify the successes, challenges, and areas for improvement. This will help in adapting and improving the transition approach according to changing social needs and conditions.
- (7) Child and family empowerment, Reinforce the roles of children and their families in the process by giving them the opportunity to participate actively in decision making. This includes informing, support, and guidance to children and family during the process of reversion.

Applying these Suggestions, it is hoped that the Indonesian criminal justice system can be more effective in protecting children's rights and supporting their future development through more restorative and humane approaches.

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