

THE URGENCY OF DIVERSION FOR CHILD OFFENDERS

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Abstract. This research is motivated by the increasing involvement of children in motor vehicle theft (curanmor) in the Cirebon Regency area, which requires special handling outside the formal criminal justice system. Children as perpetrators of criminal acts are often victims of their social environment, so imprisonment is not considered an effective solution. The problem formulations in this study are: (1) Why is diversion possible in child criminal cases? and (2) How is the law applied to perpetrators of motor vehicle theft committed by children? The objectives of this research are to understand the basic considerations for the possibility of diversion for children who commit criminal acts and to understand the application of diversion for children who commit criminal acts. The research method used is normative juridical with a statute approach and conceptual approach. Data is sourced from primary, secondary, and tertiary legal materials analyzed qualitatively. Problems found in the field indicate obstacles in synchronization between the formal requirements of the law and compensation demands from victims that often hinder the peace process. The discussion results show that diversion has a very high urgency as an instrument to prevent children from the negative impacts of stigmatization (labeling) and the criminogenic effects of prison. In Cirebon Regency, the basic considerations for implementing diversion include fulfilling the requirements of Article 7 of the Child Criminal Justice System Law (criminal threats below 7 years and not recidivists), results of Community Research (Litmas) from Bapas, and the existence of a peace agreement between perpetrators and victims facilitated by community leaders. The use of police discretion based on the ultimum remedium principle becomes the main key so that child motor vehicle theft cases can be diverted to deliberation channels to ensure the growth and development of children as national assets.

Keywords: Diversion, Children, Motor Vehicle Theft, Restorative Justice

I. INTRODUCTION

The Unitary State of the Republic of Indonesia as a state of law has a constitutional obligation to guarantee, protect, and fulfill human rights for all citizens without exception, including children. Children are an integral part of the continuity of the nation and state, because children embody the future hopes of the nation. Therefore, child protection is not only viewed as a moral obligation but also as a legal obligation that must be carried out by the state, government, parents, and society.

This protection includes fulfilling the right to survival, growth and development, education, health, security, and protection from all forms of violence, exploitation, discrimination, and other mistreatment (Abdus Sallam, 2007).

Childhood is a very crucial period in the process of forming a person's character, personality, and moral values. At this stage, children are in a condition vulnerable to the influence of their surrounding environment. The family, school, and community environment have a very large role in shaping children's behavior and mindset. If this environment fails to carry out guidance and supervision functions optimally, children have the potential to experience behavioral deviations that ultimately lead to violations of legal norms and social norms. In this context, the phenomenon of juvenile delinquency emerges, which generally does not arise solely from the child's free will but is an accumulation of various external factors, such as peer influence, economic pressure, lack of parental attention, and examples of deviant behavior from adults around them (Markus Munajat, 2022).

In community life, the existence of law becomes very important as a means of social control to create order, justice, and legal certainty. Every act contrary to legal provisions is qualified as a criminal act and threatened with certain criminal sanctions. However, the application of criminal law to children cannot be equated with adults, considering that children do not yet have complete physical, mental, and emotional maturity. Therefore, children who commit criminal acts must be viewed comprehensively, not only as perpetrators but also as individuals who are still in the process of development and have the potential to be improved and guided.

Awareness of the importance of special protection for children in conflict with the law has encouraged the state to establish more responsive regulations oriented toward the best interests of the child. This is reflected in the birth of Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014, and Law Number 11 of 2012 concerning the Child Criminal Justice System (SPPA). These laws affirm that children in conflict with the law, whether as perpetrators, victims, or witnesses of criminal acts, have the right to obtain special protection so that their rights remain guaranteed during the legal process.

One of the fundamental reforms in the Child Criminal Justice System Law is the use of a restorative justice approach through the diversion mechanism. This approach marks a paradigm shift from a retributive and repressive criminal justice system to a more humane and recovery-oriented system. Diversion is intended as an effort to resolve child criminal cases outside the formal judicial process by involving the child, parents or guardians, victims, law enforcement officers, and other related parties in deliberations to achieve a fair and balanced agreement for all parties.

The essence of diversion is to prevent children from formal criminal justice processes and criminal sanctions in the form of deprivation of liberty, which in reality often causes negative impacts on child development. Criminal imprisonment of children not only has the potential to cause stigmatization and social labeling but can also hinder children's access to education, damage family relationships, and increase the risk of children becoming repeat offenders. Therefore, from the perspective of child criminal law, punishment must be placed as a last resort (*ultimum remedium*), not as the main means of handling child criminal acts (Junior Purba, 2007).

Although normatively the application of diversion has been mandated at every stage of the child criminal justice process, from investigation, prosecution, to examination in court, the reality in the field shows that the implementation of diversion is still not optimal. In practice, many criminal cases involving children are resolved through formal criminal justice mechanisms and end in prison sentences. This

condition is particularly evident in cases of motor vehicle theft committed by children, where children are often immediately positioned as criminals without deeply considering the social, psychological, and environmental backgrounds that influence their actions. The role of the Police as law enforcement officers at the early stage of the criminal justice process becomes very strategic in determining the success or failure of diversion implementation. The Police have discretionary authority as well as legal obligations to pursue diversion from the investigation stage. In addition, the Police are the institution closest to the community and have direct access to information regarding the child's background, family conditions, and social dynamics surrounding the occurrence of criminal acts. However, the implementation of diversion at the Police level still faces various obstacles, including limited understanding of law enforcement officers regarding the concept of restorative justice, lack of victim and community participation, and normative limitations related to criminal threats and repetition of criminal acts.

If the implementation of diversion is not carried out optimally, various legal and social consequences will arise that are detrimental to children and society at large. Children processed through the formal criminal justice system have the potential to lose their future due to prison sentences, while the goals of child guidance and rehabilitation are not achieved. In addition, failure to implement diversion can also increase child recidivism rates, which ultimately adds to the social and legal burden on the state. Therefore, an in-depth academic study is needed to examine the urgency and effectiveness of implementing diversion as an instrument of legal protection for children in conflict with the law.

Based on the above description, research on the urgency of implementing diversion for child perpetrators of motor vehicle theft, particularly in the Cirebon Regency area, becomes very important and relevant to conduct. This research is expected to provide theoretical contributions to the development of child criminal law, as well as practical contributions for law enforcement officers, local governments, and the community in strengthening the implementation of restorative justice through diversion, to ensure the fulfillment of children's rights and realize a child criminal justice system that is fair, humane, and oriented toward the child's future.

Based on the background above, the problem formulations in this research are:

1. Why is diversion possible in child criminal cases?
2. How is the law applied to perpetrators of motor vehicle theft committed by children?

II. RESEARCH METHOD

This research uses a normative juridical research method because its study focuses on legal norms that regulate the application of diversion in the child criminal justice system and the position of diversion as an instrument of legal protection for child perpetrators of motor vehicle theft. Normative juridical research views law as rules or norms contained in legislation (law in books), so it is appropriate to use to examine positive legal provisions, legal principles, and doctrines related to diversion.

The research focus is directed at analyzing Law Number 11 of 2012 concerning the Child Criminal Justice System, particularly the obligation to apply diversion at every stage of child case examination. Therefore, this research does not examine the

behavior of the community or law enforcement officers empirically but rather assesses legal regulations and their juridical implications. This method also allows researchers to conduct legal interpretation and systematically construct legal arguments to answer legal issues regarding the urgency of implementing diversion.

In addition, this research uses legal materials as the main source, consisting of primary legal materials in the form of legislation and secondary legal materials in the form of legal literature and expert opinions. The statute approach and conceptual approach are used to examine the regulation of diversion and the concepts of restorative justice and the best interests of the child. Thus, the normative juridical method is considered most relevant to answer the legal problems examined in this research.

III. RESULTS AND DISCUSSION

a. Basic Considerations for Implementing Diversion for Children Who Commit Criminal Acts

The fundamental concept of an object or phenomenon often serves as the main foundation or basic perspective in understanding something. This core idea functions as a worldview (*weltanschauung*) that dictates how one interprets a phenomenon. As a central cognitive resource, this idea determines whether a phenomenon is logical, while establishing the core problem and its explanation method. Because of its fundamental nature, it more resembles an aspiration or ideal, like the concept of *rechtsidee* (legal ideal) which becomes a thought construction to guide law toward its ideal goals. In Rudolf Stamler's view, this legal ideal is likened to a *leitstern* or guiding star for fulfilling society's expectations (A Hamid S Attamimi, 1990). Therefore, the legal ideal plays a vital role as a guiding principle, evaluation parameter (critical norm), and main driving force in every practical aspect of law, from design, discovery, to implementation of rules and legal subject behavior. Through comprehensive formulation of legal ideals, the process of transforming ideas into authority regulations or behavioral norms becomes more systematic. This simultaneously ensures the maintenance of consistency in all series of law enforcement in the field (Bernard Arief Sidharta, 1999). So it can be concluded that every core idea carries a constitutive nature that dictates the direction of thought, from determining the central issue to the explanation method used. In Gustav Radbruch's framework of thinking, the position of *rechtsidee* is viewed as a constitutive foundation. That is, without the legal ideal, positive law will lose its direction and most essential foundation.

The Child Criminal Justice System (Juvenile Justice System) encompasses all judicial components involved in handling cases of children in conflict with the law. This series begins with the police institution as the main gateway that holds discretion to continue cases or release children. Next, the role of prosecutors and community guidance institutions becomes crucial in deciding whether the case needs to be submitted to trial. The next stage is the Juvenile Court, where judges will hand down decisions ranging from acquittal to placement in guidance institutions. This flow ends at correctional institutions as places for implementing sanctions or measures (Purnianti *et al.*, 2003). In the law enforcement structure, the police serve as the frontline institution that conducts early intervention for children in conflict with the law. Through the legal mandate it possesses, the Indonesian National Police has the authority to conduct a series of pro-*justitia* actions from arrest and detention to

investigation and inquiry processes to carry out the integrated child criminal justice system function. Police officers are equipped with legal attributes in the form of discretionary power. Juridically, this authority provides room for investigators to determine whether a case is suitable to proceed to the prosecution stage. Through this mechanism, the police have a legal basis to implement diversion for children, which aims to divert the legal process from formal courts to non-litigation channels.

Based on information from the Head of the Criminal Investigation Unit of the Cirebon Police, it is affirmed that not all criminal reports received end in case file submission to the Prosecutor's Office. During the investigation phase, reconciliation initiatives often emerge between the aggrieved party and the perpetrator. This peace process is generally facilitated by the role of social actors such as community leaders or traditional leaders. The peace agreement is usually manifested through material compensation as a form of the perpetrator's responsibility to the victim.

Although the police are not always directly involved in the mediation process, parties who have made peace usually report the results of their agreement to the Cirebon Police accompanied by local community leaders. However, it should be noted that this policy has strict exceptions. For example, in cases of sexual violence (molestation), if the victim or their guardian refuses to make peace in writing, the investigator is still obligated to continue the case to the prosecution stage at the Prosecutor's Office.

Diversion is a child criminal law policy based on the consideration that children who commit criminal acts have different characteristics from adults. Children do not yet have complete physical, mental, and emotional maturity, so they are not fully able to understand the legal consequences of their actions. Therefore, handling children in conflict with the law must prioritize protection and guidance aspects, not merely punishment. This approach is in line with the principle of the best interests of the child, which places children's welfare and future as the top priority in every legal process (Marlina, 2009). The main consideration for implementing diversion is to prevent children from the negative impacts of the formal criminal justice system. The judicial process and punishment, especially imprisonment, have the potential to cause social stigma, damage children's psychological development, and hinder the process of children's education and social integration in the future. Prison can even become a place where children learn new crime patterns due to interaction with other criminal offenders. Therefore, diversion is seen as a more effective means of preventing children from becoming repeat offenders (Muladi, 1995).

In addition, diversion is based on the thinking that criminal acts committed by children are often influenced by environmental factors, such as family, associations, and socio-economic conditions. In many cases, children who commit criminal acts cannot be fully blamed, because they are also victims of uncondusive social environments. Thus, case resolution through diversion allows for recovery not only for the child perpetrator but also for the victim and social relationships disrupted due to the criminal act (Soerjono Soekanto, 2014).

Diversion also reflects the application of the concept of restorative justice, which emphasizes conflict resolution through deliberation and restoration of conditions, not retaliation. Through this approach, children are encouraged to take responsibility for their actions, victims obtain fair recovery, and the community is involved in the case resolution process. Thus, diversion not only protects children's

rights but also creates more substantive justice for all parties (Peter Mahmud Marzuki, 2017). Based on these considerations, diversion is positioned as the embodiment of the ultimum remedium principle in child criminal law, namely that punishment should be used as a last resort. The implementation of diversion is expected to realize the goals of the child criminal justice system, namely guidance, protection, and children's welfare, without neglecting a sense of justice for victims and society.

Other considerations related to this can be explained as follows: philosophical considerations. Diversion is based on the philosophical view that children are individuals who are in the process of growth and development, so they do not yet have perfect thinking, emotional, and moral maturity. Therefore, children cannot be treated the same as adults in the criminal justice system. The application of repressive criminal sanctions to children is contrary to the values of humanity and substantive justice because it has the potential to deprive children of their future. This principle is in line with the principle of the best interests of the child, which requires that every policy and legal action against children must prioritize children's welfare and future. Diversion also reflects justice values oriented toward restoration (restorative justice), not retaliation (retributive justice). In this context, crimes committed by children are not merely viewed as violations against the state but as social conflicts that must be restored through dialogue, responsibility, and peace between perpetrators, victims, and society.

Then there are sociological considerations, namely: Sociologically, children who commit criminal acts are generally influenced by external factors beyond themselves, such as disharmonious family environments, free association, economic pressure, and minimal supervision and moral education. In many cases, children in conflict with the law are victims of social conditions that do not support their optimal growth and development. Therefore, resolving child cases through diversion is considered more appropriate because it can accommodate children's social and psychological aspects comprehensively. The formal criminal justice process and imprisonment often worsen children's conditions. Prison can cause social stigmatization and prisonization processes, where children absorb negative values from the correctional environment. This has the potential to encourage children to repeat criminal acts in the future. Diversion emerges as an alternative solution to prevent these negative impacts by placing children back in healthier social environments that support the rehabilitation process.

Legal considerations are very necessary, because: Legally, the basis for implementing diversion is affirmed in Law Number 11 of 2012 concerning the Child Criminal Justice System. This law explicitly mandates diversion efforts at every stage of child case examination, from investigation, prosecution, to examination in court. This provision shows the legislative intent to make diversion the main instrument in legal protection for children in conflict with the law. Diversion is also the embodiment of the ultimum remedium principle in child criminal law, namely that punishment should be used as a last resort. In this context, imprisonment of children can only be applied if out- of-court resolution is not possible. Thus, diversion functions as a legal mechanism that limits the use of repressive criminal sanctions against children.

And finally, there are considerations for preventing repeat criminal acts. Diversion is also based on preventive considerations, namely to prevent children from becoming repeat offenders (recidivists). Various studies show that imprisonment of

children is not always effective in suppressing child crime rates, even often increasing the risk of recidivism. Optimally implemented diversion is actually more capable of suppressing the possibility of children repeating their actions, because children receive adequate guidance, assistance, and social support. (Marlina: 2011) Thus, diversion is viewed as a more rational child criminal law policy oriented toward the future, for children, victims, and society at large.

b. Application of Diversion for Children Who Commit Criminal Acts

In Indonesia, realizing a justice system that truly considers children's interests requires establishing limited justice for children to ensure children's interests through Law Number 11 of 2012 concerning the Child Criminal Justice System. Special justice for children is held to address the problems of criminal acts committed by those who are still classified as children, all of which must be tried in child courts within the general court environment (Afrina, N., & Marbun, W, 2019). Creating a legal state requires a legal apparatus that regulates balance and justice in society in all areas of people's lives through legislation. In general, society knows law as rules, norms, behavioral guidelines, or statutory regulations that if violated will be subject to sanctions (Danang Sucahyo and Aryani Witasari, 2021).

The application of diversion for children who commit motor vehicle theft in Cirebon Regency is a concrete manifestation of child criminal law policy oriented toward child protection and restorative justice. Diversion is positioned as a legal instrument to divert child case resolution from formal criminal justice processes to out-of-court resolution, with the main objective of protecting the best interests of children and minimizing the negative impacts of punishment. It is important to understand that the application of diversion in criminal cases involving children must be a priority, considering that basically children do not yet have full maturity in understanding the legal impact of their actions. Many criminal acts committed by children occur due to environmental influences, adult encouragement, or simply imitating wrong behavior. Application of punishment through formal criminal justice processes, such as imprisoning children, is often ineffective in forming better personalities, even hindering their development. Therefore, a more humane and flexible legal approach is needed in handling child criminal cases, so that children's interests and future remain protected in the applicable legal system.

One of the efforts to prevent and overcome juvenile delinquency (child criminal politics) currently is through organizing the juvenile justice system. The purpose of organizing the juvenile justice system is not solely to impose criminal sanctions on children who have committed criminal acts, but is more focused on the basic thinking that the imposition of such sanctions is a means to support realizing the welfare of child offenders. When a child is suspected of committing a criminal act, the existing formal justice system ultimately places the child in prisoner status, which certainly brings quite large consequences in terms of child growth and development (Ruben Achmad, 2005). Normatively, the basis for implementing diversion is regulated in Law Number 11 of 2012 concerning the Child Criminal Justice System, which requires law enforcement officers to pursue diversion at every stage of child case examination, namely at the investigation, prosecution, and examination levels in court. This provision shows that diversion is not merely a discretionary policy but a legal obligation that must be prioritized as long as the requirements are met (Lilik Mulyadi,

2014).

In the context of motor vehicle theft committed by children, the implementation of diversion in Cirebon Regency is principally carried out by considering the criteria determined by law, namely that the criminal act is threatened with imprisonment below 7 (seven) years and is not a repetition of a criminal act. This provision reflects the legislative caution in balancing children's protection interests and a sense of justice for victims and society (Barda Nawawi Arief, 2011).

At the investigation stage, the Police Resort in the Cirebon Regency area plays a very strategic role in implementing diversion. Child investigators must conduct an initial assessment of the child's background, family conditions, social environment, and motive for the motor vehicle theft. At this stage, investigators work together with Community Guidance Officers to prepare a community research report (litmas) as a basis for considering whether the child's case is suitable for resolution through diversion (Setya Wahyudi, 2011).

The implementation of diversion in Cirebon Regency is generally carried out through deliberations involving the child perpetrator, parents or guardians, victims and/or their families, Community Guidance Officers, and law enforcement officers. This deliberation aims to reach a joint agreement that reflects a sense of justice for all parties, while providing children the opportunity to take responsibility for their actions without having to undergo formal criminal justice processes. Diversion agreements can take the form of vehicle return, compensation, apology, obligation to participate in guidance, or other forms of resolution agreed upon voluntarily.

Diversion is explicitly regulated in Law Number 11 of 2012 concerning the Child Criminal Justice System, which affirms that out-of-court resolution efforts must be pursued at all stages of the process, whether at the investigation, prosecution, or examination levels in court. This law becomes the legal basis for law enforcement officers in Cirebon Regency to implement diversion, especially for children who commit criminal acts with criminal threats below 7 (seven) years and are not recidivists. In addition, other normative foundations are found in Law Number 23 of 2002 concerning Child Protection which emphasizes children's rights to receive protection from all forms of violence and legal handling that is educational in nature. The principle of restorative justice becomes the main paradigm in implementing diversion, emphasizing deliberation and restoration of social relationships between children, victims, and society.

The implementation of diversion in motor vehicle theft cases in Cirebon Regency also reflects the application of the restorative justice concept, where case resolution is not oriented toward retaliation but toward restoration of social relationships disrupted due to criminal acts. In this approach, children are not only viewed as criminals but also as individuals who can still be guided and returned to their social environment normally. Victims are also given space to express their interests and hopes, so case resolution can provide more substantive satisfaction and sense of justice (Paulus Hadisuprpto, 2013).

However, the implementation of diversion for child perpetrators of motor vehicle theft in Cirebon Regency still faces various obstacles. One of the main obstacles is the rejection from victims or victims' families who desire case resolution through formal judicial channels, especially when the criminal act causes large material losses. In addition, limited understanding of law enforcement officers and

the community regarding the concept of diversion and restorative justice is also a hindering factor in its implementation.

On the other hand, there are also normative obstacles, namely the limitation of diversion application only to criminal acts with criminal threats below 7 (seven) years and not constituting recidivism. In practice, this limitation causes not all motor vehicle theft cases committed by children to be resolved through diversion, although sociologically and psychologically these children still deserve to receive protection and guidance outside the formal criminal justice system. This condition shows the need to evaluate and strengthen diversion policies so that child protection goals can be achieved optimally.

Thus, the implementation of diversion for children who commit motor vehicle theft in Cirebon Regency is a form of implementing a child criminal justice system oriented toward protection, guidance, and children's future. The success of implementing diversion is not only measured by the number of cases resolved outside the court but also by the extent to which diversion can prevent children from repeating their actions, restore social relationships with victims, and ensure the fulfillment of children's rights in a fair and humane legal process.

IV. CONCLUSION

a. Conclusions

- i. Legal and Procedural Basis for Consideration: The implementation of diversion in Cirebon Regency is based on fulfilling the limitative requirements of Article 7 paragraph (2) of Law No. 11 of 2012 (SPPA), namely criminal acts with imprisonment threats below 7 years and the perpetrator is not a recidivist. In motor vehicle theft cases, investigators carefully classify between Article 362 of the Criminal Code and Article 363 of the Criminal Code. Police discretion, as mandated by Article 18 of Law No. 2 of 2002, becomes the main legal instrument for investigators to stop the litigation process for the public interest and children's future.
- ii. Application of Diversion in Resolving Criminal Acts of Theft with Violence Committed by Children at the Cirebon Police is implemented based on Law Number 11 of 2012 concerning the Child Criminal Justice System which requires investigators to conduct diversion at the investigation stage involving related parties, namely perpetrators, victims, parents of victims and perpetrators, Professional Social Workers, and Bapas to conduct deliberations where the results of these deliberations are later poured into the form of a Diversion Agreement. The implementation of diversion at the Cirebon City Police Resort is an obligation guided by Law Number 11 of 2012 concerning the Child Criminal Justice System and views children not to be punished but given opportunities to become better.

b. Recommendations

- i. The government needs to issue government regulations containing various matters not contained in the SPPA Law and these government regulations can clearly show criminal acts, criminal threat limits, and age limits that can be diverted to avoid multiple interpretations in implementing diversion.
- ii. For Children in Conflict with the Law: Children who commit criminal acts,

especially motor vehicle theft, need to receive moral guidance and character education from an early age to understand the legal consequences of their actions. The government and educational institutions also need to strengthen legal education programs and social values for children so that the potential for juvenile delinquency can be prevented.

- iii. For Law Enforcement Officers: The Cirebon City Police should add investigators in conducting diversion for theft criminal acts committed by children. In addition, there needs to be a special room for conducting investigations of children who commit criminal acts as well as building special rooms for child detainees. The police who facilitate diversion must understand the diversion implementation procedures and have interest, dedication, and understanding of child issues.

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