



The Effectiveness of Diversion in the Resolution of Cases Involving Children in Conflict with the Law (ABH): An Analysis of Implementation, Juridical Constraints, and the Impact on Restorative Justice

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ABSTRACT

Children in Conflict with the Law (ABH) require special protection in the criminal justice system. One form of such protection is Diversion, which is the resolution of children's cases outside of formal justice based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. This study aims to analyze the effectiveness of Diversion implementation, the obstacles encountered, and efforts to improve its implementation. The research method used is normative-empirical with a descriptive-analytical nature, through legislative, conceptual, case, and sociological-juridical approaches. Data were obtained from literature studies, interviews, and documentation, then analyzed qualitatively. The results of the study indicate that Diversion is quite effective in resolving minor cases of children because it is able to prevent children from the stigma of justice, restore the relationship between the perpetrator and the victim, and support the best interests of the child. However, its implementation still faces legal and sociological obstacles, such as regulatory restrictions, differences in understanding of the authorities, and lack of support from victims and families. Therefore, it is necessary to strengthen the capacity of the authorities and support the social environment so that Diversion runs more optimally.

INTRODUCTION

Children in Conflict with the Law (ABH) are a vulnerable group requiring comprehensive protection. Various national and international legal instruments prioritize child protection. Law No. 35 of 2014 concerning Child Protection and Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) explicitly stipulate that all actions related to children must prioritize the child's best interests. Similarly, the Convention on the Rights of the Child, ratified by Indonesia, provides universal guidelines on children's rights, including the right to humane treatment, freedom from violence, and freedom from discriminatory treatment during the legal process.

In the context of law enforcement, the primary goal of the juvenile criminal justice system is not retribution, but rather guidance, recovery, and social reintegration. Therefore, the SPPA Law introduces a diversion mechanism, which diverts the resolution of juvenile cases from formal justice channels to out-of-court settlements through a restorative approach. Diversion is a significant innovation in Indonesian criminal law because it seeks to mitigate the negative impact of the judicial process on children's futures. Philosophically, diversion embodies the values of humanity, education, and social restoration.

More deeply, diversion has the following fundamental objectives:

1. Protecting children from judicial stigma

Criminal stigma can attach to children undergoing the judicial process, even if they have not yet been found guilty. The process of arrest, detention, and trial has the potential to cause psychological trauma and negative social perceptions. This stigma can hinder a child's development, affect their self-confidence, and increase the risk of reoffending due to negative labeling (labeling theory). With diversion, children do not need to go through the formal judicial process, thus avoiding the effects of stigmatization and being able to continue their education and social life normally.

2. Providing compensation or restitution to victims

Diversion not only focuses on the perpetrator but also provides a strong position for victims. The restorative approach allows victims to directly express their losses, needs, and hopes, and receive tangible reparations, whether in the form of material compensation, an apology, or other forms of agreement deemed fair. This mechanism is considered more satisfying for victims than formal justice processes, which sometimes do not provide concrete solutions to the losses experienced.

3. Returning Children to Their Social Environment Without a Criminal Record

Children learn by mistakes. Therefore, children need to be given the opportunity to improve themselves without the burden of a criminal record that could hinder their future, such as access to education, employment, or social relationships. Diversion allows for the resolution of cases without imprisonment, allowing children to return to their families and communities with a clean slate. Social reintegration without a criminal record is an important part of the SPPA's goals, which prioritize recovery and education over retribution.

In the context of the Juvenile Criminal Justice System (SPPA), one fundamental breakthrough that distinguishes juvenile justice from adult criminal justice is the Diversion mechanism. Diversion is the process of diverting case resolution from formal justice channels to non-litigation mechanisms, prioritizing deliberation, recovery, and peaceful resolution between the perpetrator, victim, family, and other relevant parties. This concept stems from the understanding that children are individuals in an immature stage of psychological, mental, and social development, requiring a different approach to addressing deviant behavior.

Diversion symbolizes a paradigm shift in law enforcement for children, from a retributive approach to a restorative approach. Through Diversion, the focus of case resolution is no longer simply determining a child's guilt or innocence, but rather on repairing relationships between the parties involved, redressing the victim's losses, and providing legal education to the child without jeopardizing their future.

Furthermore, Diversion plays a strategic role in preventing the labeling effect or stigmatization that often arises from the criminal justice process. The involvement of children in the investigation, prosecution, and trial process can significantly impact their emotional and mental well-being, resulting in feelings of fear, anxiety, shame, and even prolonged trauma. Furthermore, society tends to negatively label children involved in legal issues, hindering their social reintegration process. Diversion allows children to avoid the often hostile judicial environment that can potentially threaten their psychological development.

Diversion also provides space for children to continue their normal development. Children imprisoned or involved in formal judicial proceedings are at significant risk of losing their rights to education, play, protection from violence, and humane treatment. The Child Protection Act (SPPA) emphasizes that detention and sentencing of children are a last resort (*ultimum remedium*). Therefore, diversion is an important tool to ensure that children remain in a family and community environment that supports their recovery.

Furthermore, diversion also provides significant benefits for both victims and the community. The dialogue process in diversion allows victims to directly express their disappointments, losses, and hopes, and to receive a more concrete form of redress than a formal court decision. The community can also play an active role in instilling moral and social values in children so that the reintegration process runs more effectively.

Overall, diversion in the Child Protection and Rehabilitation System (SPPA) is not only a legal instrument but also a manifestation of the implementation of humanitarian values, substantive justice, and child protection. Through this mechanism, it is hoped that the resolution of children's cases will not damage their future but instead provide an opportunity to improve behavior and strengthen social relationships within the community.

Diversion is mandatory at every level of the judicial process, from investigation and prosecution to court hearings, particularly for cases with a sentence of less than seven years or cases that do not involve a repeat offense. However, the effectiveness of diversion in practice often falls short of the ideal

stipulated in the SPPA Law. In several regions, including various police units and prosecutors, diversion implementation faces challenges such as a lack of understanding among law enforcement officers, limited competent facilitators, differing perceptions regarding the purpose of diversion, conflicts of interest between the parties, and an imbalance in the positions of victims and perpetrators.

Furthermore, several legal obstacles remain, such as provisions subject to multiple interpretations, a lack of uniform guidelines for diversion implementation, and the persistence of a retributive paradigm that views criminal punishment as the sole form of case resolution. Meanwhile, from a social perspective, the success of diversion is also influenced by the level of community acceptance, family conditions, and the readiness of the environment to support child reintegration.

Despite the various legal, structural, and sociological obstacles encountered in its implementation, diversion remains considered the most strategic and effective instrument for realizing restorative justice for children. Within the modern legal framework, restorative justice positions the resolution of criminal cases as a process of recovery, not retribution. This principle is particularly relevant for children in conflict with the law, as the primary orientation of the juvenile criminal justice system is guidance, protection, and rehabilitation.

Diversion plays a crucial role in curbing the practice of overcriminalization, namely the tendency to criminalize every deviant behavior of children without considering their age, environment, and psychological condition. Through diversion, not all children's behavior must be immediately processed through formal mechanisms, thus avoiding repressive prison sentences. This aligns with the principle of *ultimum remedium*, which places punishment as a last resort after all alternative solutions have been exhausted.

Furthermore, diversion is an important tool to prevent children from entering correctional institutions. Various studies have shown that the prison environment is not an appropriate environment for child development. Children placed in correctional institutions are at risk of violence, psychological stress, and even exposure to negative behavior from other inmates. Furthermore, criminalizing children can disrupt their education, cause social trauma, and increase the risk of reoffending in the future. With diversion, children can remain in family care, attend formal education, and receive more effective social support.

From a social relations perspective, diversion has the potential to improve relationships between perpetrators, victims, and the community. Through a restorative dialogue process, both parties are given space to understand each other, express their losses, and reach a fair agreement. This approach is considered more satisfying for victims because the focus is not solely on punishment, but on concrete reparations, such as restitution, an apology, or other mutually agreed-upon forms of accountability. This process also builds a sense of responsibility in children while fostering empathy for the victim.

Furthermore, diversion offers a more humane solution than formal justice, which tends to be rigid and procedural. Diversion creates a deliberative atmosphere that emphasizes family values, substantive justice, and respect for

the child's dignity. In the diversion forum, children are not treated as criminals, but as individuals learning, deserving a second chance to improve themselves. This demonstrates that diversion is able to balance the interests of perpetrators, victims, and the community while upholding the principles of child protection.

Therefore, although the implementation of diversion still faces various obstacles in the field, this mechanism remains a key pillar in building a juvenile criminal justice system oriented towards the protection, recovery, and future of children. Diversion not only mitigates the negative impacts of the justice system but also emphasizes that the resolution of juvenile cases must be carried out wisely, proportionally, and humanely.

Although diversion is mandated by law, its implementation in the field still faces various challenges that affect its effectiveness:

1. **Criminal Limits and Recurrence:** Many ABH cases, especially those involving crimes punishable by more than 7 years in prison or recurrence, do not formally qualify for diversion.
2. **Victim Involvement:** The lack of active participation of victims or their families in the diversion deliberation process, often due to unmet demands for compensation or dissatisfaction with the outcome of the deliberations.
3. **Law Enforcement Agency Capacity:** The lack of understanding or shared perception among law enforcement officials regarding the urgency and mechanisms of diversion leads to varying levels of success in diversion implementation across regions.

This study aims to evaluate the effectiveness of diversion from two perspectives: procedural compliance (whether diversion is always attempted and implemented in accordance with the law) and substantive impact (whether diversion succeeds in restoring the victim-offender relationship and preventing juvenile recidivism). Based on these realities, it is important to analyze how effective diversion is in resolving ABH cases, what legal obstacles it faces in its implementation, and how diversion impacts the achievement of restorative justice. This study will provide an empirical and normative overview of the implementation of diversion, while also offering recommendations to improve the quality of child case handling in accordance with the principles of child protection and substantive justice.

From the discussion above, several research questions arise, as follows:

1. What is the effectiveness of the implementation of Diversion by law enforcement officials (the Police, the Prosecutor's Office, and the Courts) in resolving cases involving Children in Conflict with the Law (ABH) under the Child Protection and Child Protection Law (SPPA)?
2. What are the main legal and sociological obstacles that hinder the achievement of Diversion agreements and the fulfillment of the principles of Restorative Justice?
3. What are the most effective strategies to improve the quality and effectiveness of Diversion so that its results truly ensure the best interests of children?

LITERATURE REVIEW

The concept of child protection in the criminal justice system is founded on the principle that children are rights-holders who require special safeguards due to their physical, psychological, and social vulnerability. Internationally, the Convention on the Rights of the Child (CRC) establishes that all actions concerning children must prioritize the best interests of the child and ensure protection from violence, discrimination, and inhumane treatment. In Indonesia, these principles are incorporated into Law No. 35 of 2014 on Child Protection and Law No. 11 of 2012 on the Juvenile Criminal Justice System (SPPA Law). These legal frameworks emphasize that juvenile justice should focus on the child's welfare, development, and rehabilitation rather than punishment. Consequently, children in conflict with the law are viewed not merely as offenders but as individuals who require guidance, support, and opportunities for positive reintegration into society.

Diversion is a central mechanism within the juvenile justice system that reflects the principles of restorative justice. It seeks to resolve cases involving child offenders outside formal court proceedings through dialogue and agreement among the child, victim, family members, and relevant stakeholders. The primary objectives of diversion include protecting children from the negative stigma associated with criminal proceedings, providing victims with opportunities to obtain restitution or other forms of reparation, and facilitating the child's reintegration into the community without acquiring a criminal record. From a theoretical perspective, diversion is closely linked to labeling theory, which suggests that formal criminal labeling may increase the likelihood of future offending by creating negative social identities. By avoiding formal judicial processes and promoting accountability, reconciliation, and social restoration, diversion serves as a more child-centered approach that supports both the rights of the child and the interests of victims.

METHODOLOGY

This research is a normative-empirical legal study with a descriptive-analytical nature. The descriptive study aims to systematically describe the practice of resolving plantation crimes through Restorative Justice at the Langkat Police Department, while the analytical study aims to assess the compliance of these practices with applicable legal provisions.

In normative-empirical legal research, the research approach used is combinative, combining the study of written legal norms with the realities of the situation on the ground. Therefore, this study utilizes several approaches, as follows:

1. **Statutory Approach.** This approach is used to examine various legal provisions governing the research topic. The researcher examines relevant laws and regulations, including statutes, government regulations, and other implementing regulations. This approach is crucial for understanding how positive law regulates the research object, as well as the applicable limitations, authorities, and procedures. The study analyzes the mandatory provisions for diversion (Articles 7-15 of

the SPPA Law) and the formal requirements for diversion (threat of criminal penalties and reoffending).

2. **Conceptual Approach.** This approach is used to understand the legal concepts that form the basis of the analysis, such as the concepts of inquiry, investigation, evidence, and criminal responsibility. Through this approach, researchers use legal theories from experts as a foundation for developing arguments. They analyze the philosophy of Restorative Justice and the principle of the Best Interests of the Child as the basis for implementing Diversion.
3. **Case Approach.** The case approach is used to examine court decisions or concrete cases related to the research object. Through this approach, researchers can observe how the law is applied in practice, the judge's reasoning patterns, and the development of legal interpretations by law enforcement officials.
4. **Sociological-Legal Approach.** This approach is used to obtain data directly from the field through interviews, observations, or documentation with relevant parties (investigators, prosecutors, forensic experts, and others). The purpose of this approach is to understand how legal provisions are implemented in practice, the obstacles encountered, and the factors that influence the effectiveness of legal implementation. Examining how the legal norms of Diversion are accepted and implemented by the community (victims, children's families) and law enforcement officers in the field.

The data sources in this study consist of:

1. **Primary Data:** In-depth interviews with:

- a) Investigators from the Women and Children's Service Unit (PPA) of the Police.
- b) Public Prosecutors (JPU) handling juvenile cases.
- c) Juvenile Judges.
- d) Community Guidance Officers (PK) of the Child Protection Agency (BAPAS).

2. **Secondary Data:** Primary Legal Materials (SPPA Law, Government Regulations), Secondary Legal Materials (scientific journals, law books), and statistical data on the success/failure of diversion from relevant institutions.

The data collection techniques in this study were:

1. **Library Research**

Conducted by collecting and reviewing various legal materials and literature relevant to the research. This technique was used to obtain a theoretical and normative foundation.

2. **Interviews**

In-depth interviews were conducted with purposively selected informants, namely parties deemed to have knowledge and direct involvement.

3. **Documentation**

Documentation was conducted by reviewing documents related to the research object, such as minutes, settlement letters, case settlement documents, and other relevant administrative documents.

The data obtained were analyzed qualitatively, namely by describing, connecting, comparing, and interpreting data obtained from legal materials and interview results to answer the research problem formulation. The analysis was conducted using deductive thinking, namely drawing conclusions from general provisions to specific conditions encountered.

RESULT AND DISCUSSION

A. Effectiveness of Diversion Implementation by Law Enforcement Officials in Resolving Cases of Children in Conflict with the Law (ABH) Based on the Juvenile Criminal Justice System (SPPA) Law

Based on the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law), diversion must be pursued at every stage of the juvenile criminal justice process, namely at the investigation, prosecution, and court hearing levels. Normatively, this regulation demonstrates that diversion is the primary instrument in resolving juvenile cases, oriented toward rehabilitation, not punishment. In practice, the implementation of diversion by law enforcement officials can be considered quite effective, especially for minor cases, such as minor theft, minor assault, or acts that do not result in serious consequences.

The effectiveness of diversion is seen in its ability to prevent children from the formal justice process, which has the potential to cause stigma, psychological stress, and damage to their future. Diversion also provides a faster, simpler resolution, and is oriented toward restoring relationships between the child, the victim, and the community. However, this effectiveness is not yet fully distributed. At the implementation level, differences in approaches remain among law enforcement officials, including the police, prosecutors, and courts. Therefore, the success of Diversion often depends heavily on their understanding, commitment, and sensitivity to child protection principles.

According to the author's analysis, the effectiveness of Diversion cannot be measured solely by the implementation of deliberations or the achievement of a peace agreement. It must also be assessed by the extent to which the process truly protects the child's best interests, restores the victim, and prevents the child from repeating their actions in the future.

B. Legal and Sociological Obstacles Hindering the Achievement of Diversion Agreements and Fulfillment of Restorative Justice Principles

In its implementation, Diversion still faces various legal and sociological obstacles. From a legal perspective, the main obstacle lies in the limitation of Diversion requirements, which can only be applied to crimes punishable by imprisonment under 7 (seven) years and not to repeat offenses. This provision means that not all children's cases can be resolved through Diversion, even though the child is socially and psychologically deserving of a restorative approach. Furthermore, in practice, there are still differing interpretations among

law enforcement officials regarding the limits of cases that can be diverted, the implementation mechanism, and indicators of success of diversion.

Meanwhile, from a sociological perspective, the main obstacle often stems from the failure to reach an agreement between the child perpetrator and the victim. In many cases, victims or their families reject diversion because they feel disadvantaged, dissatisfied, or want the legal process to continue as a form of revenge. Furthermore, the persistent societal paradigm that views criminal cases as always ending with punishment also presents a challenge to the implementation of restorative justice. Other contributing factors include the weak role of the family, the lack of social support, and the limited understanding of diversion as a legal protection mechanism among children and parents.

According to the author's analysis, the failure of diversion is often not solely due to regulatory weaknesses, but rather due to the lack of a legal culture that truly supports the resolution of children's cases in a restorative, dialogical, and substantive justice manner.

C. The Most Effective Strategy to Improve the Quality and Effectiveness of Diversion to Ensure the Best Interests of Children

To improve the quality and effectiveness of diversion, a strategy is needed that focuses not only on procedural compliance but also on the quality of justice achieved. The first and most important strategy is to increase the capacity of law enforcement officials, including the police, prosecutors, and judges, through ongoing training on child protection approaches, mediation techniques, restorative communication, and the principle of the best interests of the child. A shared understanding among officials will significantly determine the consistency of diversion implementation in the field.

The second strategy is to strengthen the role of families, community counselors, social workers, and the community in the diversion process. The involvement of these parties is crucial to ensure that children are not only free from the formal justice process but also receive guidance, supervision, and moral support after the case is resolved. Diversion that stops only at the signing of a peace agreement without follow-up guidance risks being ineffective in preventing re-offending.

The third strategy is the need to strengthen the restorative approach, which focuses on balancing the interests of children, victims, and the community. This means that diversion should not be understood merely as a means of dismissing cases, but rather as a genuine, fair, voluntary forum for recovery, capable of restoring disrupted social relationships. Therefore, the success of diversion must be measured by the achievement of protection for the child's future, recovery for the victim, and the creation of a just and humane resolution.

According to the author's analysis, the most effective strategy is to simultaneously integrate legal certainty, quality mediation, and social support. Diversion will work optimally when supported by clear regulations, competent officials, and a social environment that fully embraces the child's recovery process.

CONCLUSION AND RECOMMENDATION

A. Conclusion

The implementation of Diversion in resolving cases involving Children in Conflict with the Law (ABH) has essentially become a crucial instrument in realizing child protection and restorative justice as stipulated in the Child Protection and Child Protection Law (UU SPPA). Diversion is considered quite effective in resolving minor cases because it can prevent children from undergoing formal legal proceedings, reduce stigma, and encourage the restoration of relationships between children, victims, and the community. However, its effectiveness is still influenced by legal constraints, differing understandings among authorities, and sociological factors such as lack of agreement between the parties and low social support.

B. Recommendations

There is a need for increased understanding and uniformity of perception among law enforcement officials in implementing Diversion in accordance with the principle of the best interests of the child. Furthermore, the involvement of families, communities, and support institutions needs to be strengthened so that the Diversion process is not merely formal but truly capable of providing optimal protection, guidance, and recovery for children.

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