



JLPH: **Journal of Law, Politic and Humanities**

<https://dinastires.org/JLPH> [✉ dinasti.info@gmail.com](mailto:dinasti.info@gmail.com) [☎ +62 811 7404 455](tel:+628117404455)

E-ISSN: 2962-2816
P-ISSN: 2747-1985

DOI: <https://doi.org/10.38035/jlph.v5i2>
<https://creativecommons.org/licenses/by/4.0/>

The Fulfillment of Diversion in cases of Participation in Assault Resulting in Death by Children

Merlin Theodor Handayani Samosir¹, R. Rahaditya².

¹Tarumanagara University, Jakarta, Indonesia, merlin.205210262@stu.untar.ac.id.

²Tarumanagara University, Jakarta, Indonesia, rahaditya@fh.untar.ac.id.

Corresponding Author: merlin.205210262@stu.untar.ac.id¹

Abstract: The increasing number of crimes involving children, the diversion approach is a major concern as an alternative in the juvenile criminal justice system that should be prioritized as mandated by Law No. 11/2012 on Juvenile Criminal Justice System (UU SPPA), which emphasizes peaceful conflict resolution between juvenile offenders and victims. However, this process can be complicated when the victim's family does not accept an amicable settlement. Although peace efforts were achieved between the victim's family and the offender's parents, the difference in sentences between the defendants triggered dissatisfaction and violation of the initial agreement, posing a dilemma in the implementation of diversion. This study highlights the application of diversion in the case resolved in Decision Number 9/Pid.Sus-Anak/2021/PN Jmb, where the peace process between the victim's family and the perpetrator faced challenges, although an agreement was reached. This research uses a normative juridical method with descriptive analysis of legal sources, including laws, journals, and court decisions. The analysis shows that, although diversion is mandatory in juvenile cases, material compensation is not. Its success depends heavily on the willingness of the parties involved to reach a fair and binding agreement so as not to create dilemmas in its implementation. This study recommends refining the diversion mechanism to address conflicts arising from disagreements between the parties in cases of children in conflict with the law.

Keyword: Diversion, Juvenile Criminal Justice System, Juvenile Delinquency.

INTRODUCTION

With the era of globalization and continuous advancement of times, this has become one of the reasons for increasingly complex social dynamics in society. Basically, with the advancement of times, positive impacts are certainly expected and do occur to help improve welfare in social life. However, on the other hand, it cannot be denied that this can also have negative impacts, such as increasing crime rates. The occurrence of criminal acts is not fixed by one's age, where children who are underage are often found to have the potential to become criminal offenders.

Looking at the phenomenon of criminal acts committed by children, these cases continue to increase and develop each year, supported by data released from the Directorate General of Corrections Ministry of Law and Human Rights showing an increase with recorded numbers of nearly 2,000 (two thousand) children in conflict with the law in the period 2020 to 2023 (Krisdamarjati, 2023). The high number of criminal acts committed by children should be a special concern that is very concerning for the state and society, considering that children are the generation that will continue the sustainability of the nation's future.

When looking at the stages of child growth, this is when personality and character formation occurs which will later become the character formed within the child (Gultom, 2008). In the involvement of individual children in a criminal act, there are various underlying factors as reasons such as social relationships in association and friendship, education, family, and the surrounding environment observed by children. Based on these conditions, it is possible that a child who commits a crime is not due to their own conscience's will, but rather carried away by influences from around them. Environmental and social factors are the most influential reasons for children who commit criminal acts of participation, this is because children actually still do not understand the consequences and impacts of their actions (Ulfa & Rizanizarli, 2020).

The involvement of children in criminal acts can have quite large impacts on physical, psychological, and child development and growth. In fact, children are future candidates of the nation who still have a long future requiring comprehensive special steps in their handling. The age limit for children suspected of committing criminal acts in the juvenile criminal justice system is those who are 12 (twelve) years old and have not reached 18 (eighteen) years old, this is explained in its legal basis as regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) which in practice is also accompanied by child protection law. This is certainly based on the awareness that children are hopes who will later play a role as the next generation of the nation, so they have the right to get protection as regulated in the provisions of Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (Indonesia, 1945). Therefore, in the handling process must be able to pay attention to the best interests for children's rights and needs as regulated in Article 21 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (Indonesia, 2014).

During the handling process in conducting examinations and trials, assistance is required by both the Indonesian Child Protection Commission (KPAI) and other Child Protection Commissions in their respective regions, Integrated Service Centers for Women and Children Empowerment (P2TP2A), professional social workers and social welfare workers (Ministry of Women's Empowerment and Child Protection, 2019). Therefore, policies regarding compensation and rehabilitation for children as victims clearly need to be implemented and included as mandated in Article 69B of Law Number 35 of 2014 concerning Child Protection. This policy is carried out as a form of effort in fulfilling children's right to survival to grow and develop. The rights given to children during the judicial process refer to Article 3 of the SPPA Law (Mahyani, 2019). These rights provisions are based on the consideration that underage children often need guidance and support in finding their identity, which is caused by their age which tends to still be very vulnerable with emotions that are not stable enough, so that in children's development and growth it is very easy to be influenced which can ultimately lead them to commit unlawful acts.

In Decision Number 9/Pid.Sus-Anak/2021/PN Jmb there was an act of participation in assault resulting in loss of life and causing injuries. Given that the child perpetrator in this case was still 16 (sixteen) years old, so in addressing it must still be based on the SPPA Law, then diversion is the first process that must be prioritized to be taken in its resolution. In the diversion process taken by the Panel of Judges, it was known that because the victim's parents did not

want to make peace, this peace effort stage was not pursued. Nevertheless, the perpetrator's parents continued to pursue the peace process, so that a peace agreement was reached between the victim's family and the four parents of the perpetrators. However, this condition did not last long after it was found that there were differences in criminal punishment decisions among the four children as defendants which made the parents of the perpetrator whose child was sentenced to 1 (one) year imprisonment feel unfair, resulting in the denial of the agreement to pay the remaining grief money that had been previously agreed upon (Zulfikar, 2023).

In its regulation in the SPPA Law, it regulates that the implementation of diversion must indeed be prioritized as a mandatory matter in addressing cases of children facing the law, but in terms of material compensation it is not required. Nevertheless, in this case previously an agreement had been formed between the four parents of the perpetrators and the victim's parents, so that the denial that occurred has the potential to create a dilemma in diversion practice based on the provisions of the agreement that had been formed between the parties.

METHOD

The legal research method used in this writing is normative juridical, by conducting literature study with data obtained through secondary data collection techniques. The secondary data is obtained by studying and analyzing legal sources such as decisions, legislation, journals, books, papers, and other literature studies on applicable positive law. The nature of this writing is descriptive, where research is carried out by describing research in detail in mapping research data results, both in the form of conditions and hypotheses factually and systematically (Azwar, 1998). All data that has been compiled and collected will later be analyzed qualitatively using deductive analysis. This analysis method is carried out by arranging arguments aimed at drawing specific conclusions obtained from general arguments to analyze regulatory construction relevant to research subjects narratively and systematically to answer problems that will be explained (Sugiyono, 2010).

RESULTS AND DISCUSSION

The presence of law in society is basically a foundation of norms and guidelines that are binding and must be obeyed in society without exception. Based on the opinion expressed by Roscoe Pound explains that, as a form of facing the occurrence of times development, then the presence of law in this case must be able to function as a tool that can be used to regulate and change society (law is a tool of social engineering) in order to realize an orderly and organized civilization in everyday life. In this case, if associated with juvenile crime, then the law must be able to effectively regulate how punishment is given to children while still prioritizing the rights owned by children, considering that in handling it must be distinguished from handling adult crimes.

Based on the case resolution carried out in Decision Number 9/Pid.Sus-Anak/2021/PN Jmb, in the process of fulfilling restorative justice in the case has been attempted to be done by the Panel of Judges and between the victim's parents and the four perpetrators' parents. Initially the peace agreement had been formed with the four victim's parents agreeing to provide grief money and funeral cost needs for the seven-day ceremony of the deceased. However, it is very unfortunate that the agreement was violated when one of the four perpetrators' parents found that there were differences in prison sentences, where one child was sentenced to 1 (one) year imprisonment, causing their parents to feel unfair and deny the agreement that had been formed in previous peace efforts. This condition certainly becomes a dilemma, where in the SPPA Law does not require material compensation as its consequence, although this method is one of the most common ways chosen as accountability in the diversion process in juvenile criminal cases. The SPPA Law also does not further regulate regarding the execution of compensation

or sanctions for parties who deny material compensation promises from peace agreements that have been formed (Sisera et al., 2024).

Responsibility with compensation in law is also known as restitution. The legal basis that principally regulates restitution can be found in Government Regulation (PP) Number 43 of 2017 concerning Implementation of Restitution for Children Who Become Victims of Crime. However, the provisions in this article also have not regulated if the agreed compensation is not paid, even though the agreement has been formed in writing (Sibuea, 2017).

The understanding of diversion itself in the SPPA Law is an effort to resolve child cases outside the court. Meanwhile, according to Supreme Court Regulation (PERMA) Number 4 of 2014 explains that the diversion process is a form of deliberation carried out between parties involving parents/guardians, victims and/or parents/guardians and representatives from other involved parties and will later produce a form of agreement that has been established between the parties. Basically, peace agreements formed in diversion have the same characteristics as valid agreement requirements in general as regulated in Article 1320 of the Civil Code (KUHPperdata). There are differences that can be found in the regulation where in Article 1330 of the Civil Code prohibits minors in terms of capability to make agreements. While in diversion, the position of children as suspects or victims is taken into account in agreements made while still involving parents as guardians of the child in the process (Roseline, 2023). The relationship between these two things in this case applies *lex special derogate legi generalis*, where special rules that are more will be prioritized and will override general law. Therefore, in terms of implementation in peace agreements still refers to its regulation in the SPPA Law.

The purpose of diversion as a form of restorative justice effort is carried out with the aim to still protect the rights of perpetrators who are minors by prioritizing the best interests for children. Basically, if agreements in diversion are not carried out then the case handling process can be continued at the trial stage and peace agreements can be agreed upon. However, when looking back at both conditions there is a legal vacuum that can guarantee the realization of the purpose of diversion and fulfillment of justice rights for victims can also be fulfilled. This is because in principle, the actual function of law is intended for protection that can be predictive and anticipatory, so it is not only limited to adaptive and flexible in daily practice (Rasjidi & Putra, 1993).

Thus, as a state of law (*rechtsstaat*) consistency and certainty is needed in implementing and enforcing in practice. The legal certainty aims so that the function of law as the highest guideline in regulating social life will not lose its existence and essence in society. Therefore, the presence of law as a form of instrument used in regulating various interests of human circles must be enforced consistently so that it can always be obeyed by society. The existence of this legal certainty itself is one form of effort in providing protection to every justice seeker from arbitrary actions.

When looking at the context of juvenile criminal offenders who are participatory (*deelneming*), according to *Memorie van Toelichting* argues that participatory action is interpreted as a behavior carried out intentionally playing a role in it, causing something to happen. In looking at the nature of participation, it can be seen more deeply into the strength of cooperation carried out by perpetrators in carrying out their crimes (Pratiwi, 2022). The relationship established between participatory criminal acts committed by children with diversion efforts is closely related to collective responsibility in criminal law. Thus, the complexity in Decision Number 9/Pid.Sus-Anak/2021/PN Jmb appears at the point where restitution carried out is part agreed in diversion considered unfair by one of the perpetrators' parents, so peace agreement efforts are not effectively achieved in this case.

When viewed comprehensively in its implementation, it can be concluded that in this case a legal approach is still needed that is able to better accommodate the interests of both

parties. Referring to the concept of justice, in this case as in carrying out criminal justice processes, prioritizing children's rights has become a priority that must be considered by law enforcement officials without forgetting the responsibility that must also be given to victims. In cases of participatory criminal acts committed by children, then in determining peace agreements the parties should pay attention to whether or not criminal acts committed are severe. In this case, children as participating parties did not have the intention to harm victims, only that children want to show forms of solidarity towards their friends. Therefore, it is appropriate if there are differences in criminal sentencing for the four children and restitution that has been pursued in diversion should still be carried out. Considering, although diversion is intended to protect the best interests rights for perpetrators who are still underage, fulfillment of responsibility towards victims must also still be carried out.

CONCLUSION

The case that occurred in Decision Number 9/Pid.Sus-Anak/2021/PN Jmb basically had attempted to carry out diversion, but it is very unfortunate that in practice this could not run well. This was because in the implementation of restitution by parties pursued in diversion there was dissatisfaction felt by one of the perpetrators' parents due to differences in punishment given to each child, causing denial of the peace agreement that had been formed from the beginning. When looking at its purpose, diversion is intended as one solution in realizing restorative justice designed to prioritize the best interests for children, but it is very unfortunate that in reality the SPPA Law has not been able to accommodate justice demands from non-uniformity and unclear if there are imbalances in peace agreements. Therefore, compensation policies or commonly called retributive applied in diversion require a new mechanism in its implementation that is more effective, for example by clearly stating sanctions, limited types and amounts of losses by victims and application procedures that make it quite difficult for victims' conditions. Thus, it is hoped that the initial purpose of implementing diversion can be fulfilled and implemented better and more effectively in the future.

REFERENCE

- Azwar, S. (1998). *Research Methods*. Yogyakarta: Pustaka Pelajar.
- Gultom, M. (2008). *Legal Protection of Children in the Juvenile Criminal Justice System in Indonesia*. Bandung: Refika Aditama.
- Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia. (2019). *Guidelines for Child-Centered Multidisciplinary Case Handling*. Jakarta: Ministry of Women's Empowerment and Child Protection.
- Rasjidi, L., & Putra, I. B. W. (1993). *Law as a System*. Bandung: Remaja Rusdakarya.
- Sugiyono. (2010). *Educational Research Methods: Quantitative, Qualitative, and R&D Approaches*. Bandung: Alfabeta.
- Mahyani, A. (2019). Legal Protection of Children as Terrorism Perpetrators. *Magnus Opus Law Journal*, II(02).
- Pratiwi, S. (2022). Participation Offense in the Criminal Code (KUHP). *Binamulia Law*, 11(1).
- Sibuea, H. Y. P. (2017). Legal Issues on Restitution for Child Victims of Crime. *Brief Info Law Magazine*.
- Sisera, P. A., et al. (2024). Settlement of Compensation for Cases of Children Facing Law Through Diversion. *Locus Journal of Academic Literature Review*, 3(2).
- Ulfa, M., & Rizanizarli. (2020). Criminal Acts of Participating in Violence Against Children by Children. *Scientific Journal of Law Faculty Students of Syah Kuala University*, 4(2).
- Zulfikar, A. (2023). Criminal Acts of Assault by Underage Children Committed by More Than One Child Resulting in Death of Victims. *Legality: Journal of Law*, 15(1).

- Republic of Indonesia. (1945). The 1945 Constitution of the Republic of Indonesia.
- Republic of Indonesia. (2014). Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.
- Krisdamarjati, Y. A. (2023, August 28). Increasing Cases of Children in Conflict with Law, Alarm for Society and State. Kompas. Retrieved from <https://www.kompas.id/baca/riset/2023/08/28/meningkatnya-kasus-anak-berkonflik-hukum-alarm-bagi-masyarakat-dan-negara>
- Roseline, E. (2023, October 30). Consequences If the Diversion Process Does Not Produce Agreement. Hukum Online. Retrieved from <https://www.hukumonline.com/klinik/a/akibat-jika-proses-diversi-tidak-menghasilkan-kesepakatan-lt5968430fd2eb1/>