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Diversion of Juvenile Criminal Cases at the Investigation Stage at the Ternate City Police Force

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Abstract: Diversion of juvenile criminal cases at the investigation stage at the Ternate City Police Force. Object: This research analyzes the diversion of child molestation cases at Ternate Police Force during the investigation stage. Objective: This paper analyzes: (1) the diversion implementation of at the investigation stage of child molestation crimes at the Ternate Police Force and (2) the factors that influence the implementation of diversion at the investigation stage of child molestation crimes. Method: This research used empirical research, which is a research model in the form of an action to observe a legal reality in society. Results: At the investigation stage, diversion implementation at the crime of child molestation cannot be carried out because according to Article 7 clause (2) of Law No. 11 of 2012, diversion can only be carried out on children who commit crimes with a prison sentence of less than seven years and are not a repeat of the crime. However, the Ternate City Police Force provides a solution of mediation. Factors that influence the implementation of diversion at the investigation stage of child molestation crimes include an obstacle where the victim's family prefers to continue the legal process rather than mediate.

Keyword: Child, Diversion, Investigation, Molestation.

INTRODUCTION

God Almighty has created children as mandates and gifts. Children inherently have honor and dignity as full human beings (Nur, 2017). In addition, in the future, children will become the successors of the nation's struggle. They have roles, characteristics, and special traits that are strategic to lead and take care of the nation in the future (Iksan et al., 2022). As the next generation, adults must provide children with education and guidance to make sure that they may carry out their obligations and receive protection to obtain their needs and rights. Parents, family, society, and the state have the obligation to protect children as a part of their responsibility (Afrianto & Hamonangan, 2022).

To make sure that every child may shoulder the responsibility as the successor of the state, he/she must obtain the optimum opportunity to grow and develop, including their

physical, mental, and social aspects. They should also have good morals. Therefore, there is a need to increase children's welfare by fulfilling their rights and treating them in a non-discriminatory manner (Iksan et al., 2022). Children play a strategic role in the Indonesian constitution. The Constitution explicitly states that the state protects each child's rights to life, growth, and development as well as protection from discrimination and violence. As a result, the best interests of children should be lived as the best interests of humanity (Astuti, 2015). Also in the Indonesian legal environment, children are positioned as legal subjects, namely as a group of people who are in a legal status and are classified as unable or underage. They are deemed unable due to the child's developing position of reason and physical growth (Teguh, 2018).

Nowadays, there are many children involved in criminal acts, both victims and perpetrators of crimes. This can be seen through the rampant news coverage of mass media through television and social media. Such cases may also be seen in our environment. The problem of children in conflict with the law requires serious handling, because if reviewed internationally and nationally, both the quality and quantity of crimes increase annually (Munajat, 2022).

Anyone can become a victim of crime. However, generally, victims comprise women and children because they are physically weaker than the perpetrators who are generally men (Anggreni, Setiabudhi, & Putri, 2016). Even so, it is important to realize that crimes can be committed by anyone and against anyone. Everyone can be a target or perpetrator of crime, be they adults or minors (Alfitra, 2019).

Rapid development, globalization, scientific and technological advancement, openness of information, as well as significant and profound social changes have been brought about by changes in lifestyle and way of life. Specifically for children who are perpetrators of deviations or criminal actions, these changes have an impact on children's values and behavior as well. Factors outside the child are the cause of behavioral deviations or unlawful acts that children perpetrate (Hutahaean, 2013).

Of the various forms of child-committed deviation or criminal acts, one form of criminal act that has been in the spotlight lately is immoral acts. This deviation, which is usually committed by adults as perpetrators, has in fact also been widely committed by children. The aforementioned immoral acts are usually in the form of sexual abuse. The provisions regarding sexual abuse itself can be found in Article 289 of the Criminal Code, which states "Anyone who by violence or threat of violence forces someone to commit or allows an obscene act to be committed against him/her, shall be punished for violating decency with a maximum imprisonment of nine years."

According to the guidelines of Criminal Code Article 289, Soesilo defines indecent acts as all acts that lead to morality (decency) or vile acts, which all fall under the category of sexual lust, such as kissing, groping the breasts, touching the genitalia, and so forth, even having sex (Prihandoyo, 2014). In connection with this, law enforcement through the criminal justice system automatically runs to overcome the crimes that occur. Regarding minors who are in legal trouble, the implementation of criminal justice specifically uses a special approach aimed at realizing child welfare and children's best interests (Annisa, 2014).

As stipulated in Law No. 11 of 2012 governing the Juvenile Criminal Justice System, this is particularly relevant due to the restorative justice approach through diversion initiatives in the criminal justice process for any kid in dispute with the law (Ariyanti, 2019). The criminal law enforcement system is the same as the criminal justice system. It runs in an integrated tiered manner in four sub-systems of power, namely the power of investigation, prosecution, trial and execution. On the other hand, the transfer of case resolution outside of the courts is given top priority when it comes to resolving issues involving children who are in conflict with the law. This is undoubtedly consistent with the definitions of restorative justice and diversion itself,

which are given in Law No. 11 of 2012's Article 1 clauses 6 and 7 on the Juvenile Criminal Justice System. These clauses each state the following:

1. "Restorative justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just resolution by emphasizing restoration to the original state, and not retaliation" (Article 1 clause 6 of Law No. 12 of 2012).
2. "Diversion is the transfer of the settlement of a child's case from the criminal justice process to a process outside the courts" (Article 1 clause 7 of Law No. 12 of 2012).

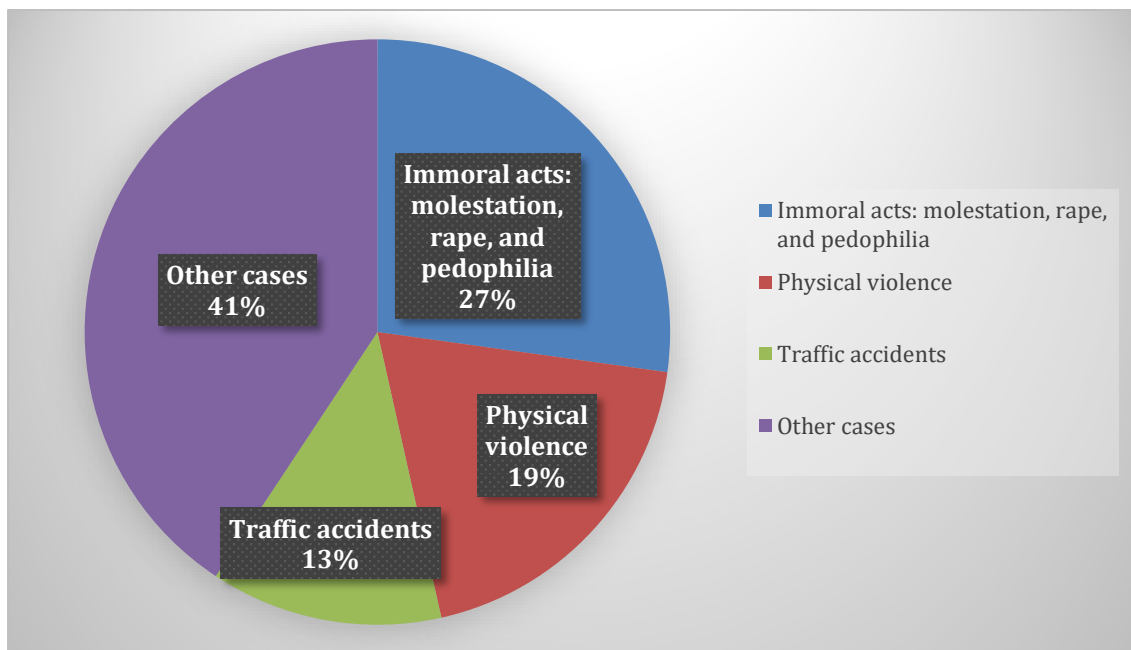
This is certainly in line with efforts to achieve synergy in the juvenile justice system according to the international instruments of the Beijing Rules and the Convention on the Rights of the Child which take an alternative path to resolving juvenile criminal cases with wisdom in handling or resolving the problem of juvenile offenders by not taking the formal path called diversion, namely halting or abandoning the legal proceedings or reentering the community to provide social services. All levels of examination can use distraction, which is meant to lessen the detrimental effects of children participating in the legal system (Purwati, 2020).

The purpose of this study is to find out how diversion is implemented at the investigation stage for child molestation crimes at the Ternate Police Force, Indonesia. It also aims to analyze the factors that influence the implementation of diversion at the investigation stage for child molestation criminal perpetrators. By conducting this research, it is hoped that it can become a recommendation for policymakers in handling diversion at the investigation stage.

A child who commits a crime and undergoes a formal judicial process cannot be ignored. Such children will experience negative impacts, such as in the form of trauma, stigma or bad labels, and even being expelled from school. The experience of undergoing a series of tiring judicial processes places a heavy burden on a child's psyche, which can be in the form of fear, anxiety, sleep disturbances, appetite disturbances, and even mental disorders. Therefore, legal protection with proper implementation is needed so that children are protected from the misapplication of laws and regulations that apply to them which cause mental, physical, or social harm (Harefa, 2015).

Referring to the data on child complaint cases every year from 2016 to 2020 collected and compiled by the Indonesian Child Protection Commission (KPAI/Komis Perlindungan Anak Indonesia), the quantity of youngsters who have run afoul of the law, either as offenders or victims, during that period accumulated to 6,500 cases. From this data, it was recorded that 41% of the children in these cases were children with legal trouble as perpetrators or a total of 2,622 cases (Bank Data, 2020).

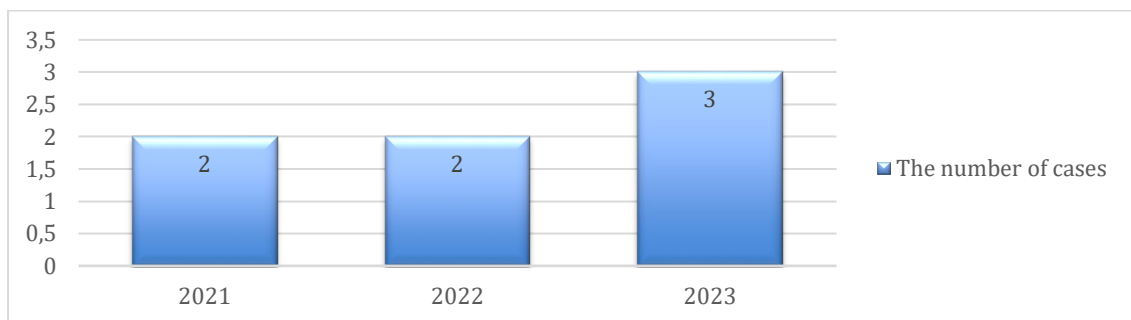
Still with the same data by KPAI above, from a total of 2,622 cases of children facing the law as perpetrators, cases of children committing immoral acts in the form of molestation or rape and pedophilia are placed in the first rank with a total of 713 cases, beating cases of children committing physical violence (abuse, ganging up, fighting, etc.) in second place with a total of 506 cases. Then, the cases of children committing traffic accidents were placed in third place with a total of 336 cases (Bank Data, 2020).



Source: Bank Data (2020)

Figure 1. Cases of Children Facing the Law as Perpetrators from 2016 to 2020

There have been 7 cases of child molestation in Ternate City, North Maluku Province from 2021 to 2023. In 2021 there were 2 cases. In 2022, there were 2 cases, while in 2023 there were 3 cases. In such cases, the perpetrators were still minors. Thus, their families asked the PPA Unit (Women and Children Protection Unit/Unit Perlindungan Perempuan dan Anak) to carry out diversion or mediation because they provide greater attention to children’s rights when the perpetrators are still in school. However, every time mediation is carried out for diversion, it is always rejected by the victim’s family. In the legal implementation, in addition to punishing juvenile offenders with criminal penalties, the juvenile criminal justice system aims to promote the welfare of children by adhering to the proportionality concept, which is reiterated in the rules of the United Nations in the United Standard Minimum Rules for the Administration of Juvenile Justice or Beijing rules and the Convention on the Rights of the Child



Source: Women and Children Protection Unit of Ternate City, North Maluku Province

Figure 2. The Number of Child Molestation Cases in Ternate City, North Maluku Province from 2021 to 2023

According to the background described above, this research analyzes the diversion of child molestation cases at Ternate Police Force during the investigation stage. Thus, the problems of this study are formulated in light of the following issues: (1) How is the diversion implementation at the investigation stage of child molestation crimes at the Ternate Police Force? and (2) What are the factors that influence the implementation of diversion at the investigation stage of child molestation crimes?

METHOD

This research used empirical research, which is a research model in the form of an action to observe a legal reality in society. This model was chosen because the law is not only in the form of rules but also in how the law is applied in society (Kelik Wardiono, 2019). According to the study's title, this research was conducted in Ternate City which is located in the South Ternate City Police Sector area.

This empirical legal research also examined the application of favorable legal provisions in legal proceedings with the goal of ensuring the conformity of its implementation results with the provisions of the law (K. Wardiono et al., 2024). Prospective researchers employed field research, literature reviews, and documentation as data collection methods in this study (Dimiyati & Wardiono, 2004). Primary and secondary data were the two categories into which the three data-gathering studies were separated. Field studies were employed to obtain primary data, whereas literature and documentation studies were used to gather secondary data. The following steps were used to carry out the research procedure:

1. Preparing research instruments;
2. Identifying the problem;
3. Collecting data and conducting analysis;
4. Compiling research results; and
5. Following up on research output plans.

RESULTS AND DISCUSSION

The Diversion Implementation in the Investigation Stage of Child Molestation Crimes (Ternate Police Jurisdiction)

Article 1 number 1 of Law No. 11 of 2012 on the Juvenile Criminal Justice System states that the juvenile criminal justice system is defined as the entire process of resolving cases of children in conflict with the law, starting from the investigation stage to the guidance stage after serving a sentence. Not all cases of children in conflict with the law must be resolved through formal justice channels. There is the provision of an alternative dispute resolution method with a restorative justice approach (Asti, Febriana, & Aestetika, 2001). Therefore, in cases of children in conflict with the law, diversion can be carried out for the best interests of the child and by considering justice for the victim. According to Article 7 clause 1 of Law No. 11 of 2012 on the Juvenile Criminal Justice System, diversion must be attempted at the level of investigation, prosecution, and examination of children's cases in the District Court. In Article 6 of Law No. 11 of 2012 on the Juvenile Criminal Justice System, diversion aims to (The Government of the Republic of Indonesia, 2011):

1. Achieve peace between victims and children;
2. Resolve children's cases outside the judicial process;
3. Protect children from deprivation of liberty;
4. Encourage the community to participate; and
5. Instill children with a sense of responsibility.

According to Tony F. Marshall, restorative justice is a process in which the parties involved in a particular violation meet together to cooperatively resolve the problem together. In this justice, the parties resolve the consequences of the criminal violation for the sake of the future, by actively involving the victim, the perpetrator, and the community (Purwati, 2020).

Meanwhile, according to Walgrave, restorative justice is defined as an approach where the related parties repair damages caused by violations through mediation efforts in the form of community service or social work with forms of intervention. Such a method does not aim to punish or re-instill values that apply in society to perpetrators of violations. However, it aims to repair or replace losses or suffering resulting from the violations that occurred (Purwati, 2020).

As stipulated in Article 1 clause (6) of Law No. 11 of 2012 on the Juvenile Criminal Justice System as well as in the Guidelines for the Implementation of Restorative Justice in General Courts in 2020 in the chapter on the definition point 2, it is stated that “Restorative justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just resolution by emphasizing restoration to the original state, rather than revenge” (Purwati, 2020).

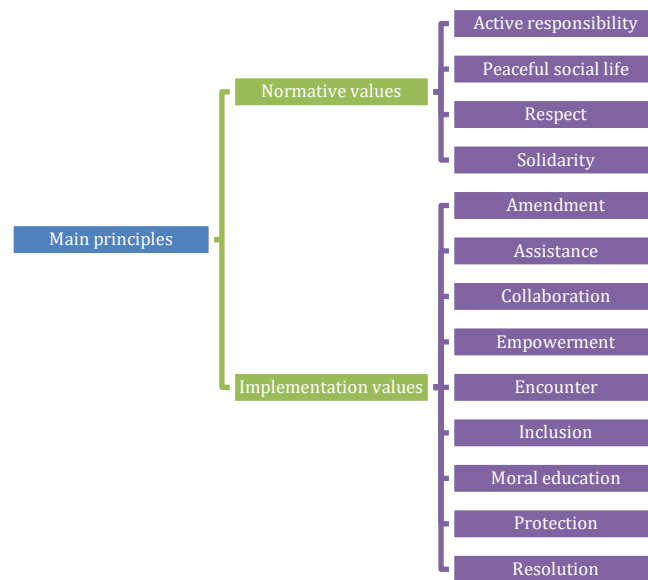
Therefore, it can be concluded that restorative justice is an alternative resolution of criminal cases in the criminal justice system that focuses on dialogue and mediation processes by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties. They come together to jointly create an agreement on a fair and balanced resolution of criminal cases for both the victim and the perpetrator by prioritizing restoration to the original state and restoring good relations in society.

In contrast to the approach used in conventional justice systems, the process of resolving criminal cases, restorative justice is a model of approach that emphasizes direct participation from perpetrators, victims, and the community. A fair trial is the main goal of restorative justice. In this process, there is a high expectation for the major role of the parties involved. It is also expected that the perpetrator will compensate for losses and reduce the suffering that the victim experienced. In such a resolution, the perpetrator must fully be accountable. In restorative justice, perpetrators must be aware of their mistakes. It is important to underline that restorative justice is not a program but rather a set of principles that can be applied to every program or practice of handling criminal acts. Liebmann provides a simple understanding of restorative justice. He defines it as a legal system that aims to restore the welfare of victims, perpetrators, and the community that has been damaged by crime. It has the objective to prevent further violations or criminal acts (Amdani, 2016).

The main principles that serve as the basis for restorative justice-based judicial practices can be described as follows (Purwati, 2020):

- a. Normative values of the implementation of restorative justice:
 - 1) Active responsibility means taking responsibility for behavior that harms others by actively promoting restorative values.
 - 2) Peaceful social life means making peace and not stigmatizing or labeling the perpetrator when responding to a crime.
 - 3) Respect is the process of solving problems by treating all parties equally.
 - 4) Solidarity means resolving cases by always encouraging agreement, support, and openness.
- b. The implementation value of restorative justice:
 - 1) Amendment means fixing any damage caused by a violation. Damages must be accounted for and repaired as much as possible.
 - 2) Assistance is the provision of post-violation improvement conditions for parties affected by the crime.
 - 3) Collaboration is the provision of solutions and assessments that are included in an agreement (consensus) by the parties involved in the violation.
 - 4) Empowerment is the provision of equal opportunities and effective responses for parties involved in resolving violations.
 - 5) Encounter is providing an opportunity to meet the party in a safe setting to discuss the violation, harm, and appropriate response for the affected parties.
 - 6) Inclusion is the involvement of the harmed party in the restorative process.
 - 7) Moral education means strengthening values and norms to determine how to deal with certain violations of community standards.
 - 8) Protection is the protection of the rights of perpetrators, victims, families, and the community in terms of each party's emotions and psychology.

9) Resolution is the entire process of resolving previous and subsequent violations that involve all relevant parties.



Source: Purwati (2020)

Figure 3. The main principles of restorative justice-based judicial practices

In the context of handling cases of children in conflict with the law, restorative justice makes efforts to pay attention to the child’s dignity as stipulated in Article 40 clause (1) of the Convention on the Rights of the Child which states that, “States Parties recognize the right of every child suspected, accused or recognized as having violated the criminal law to be treated in a manner consistent with increasing the child's understanding of dignity and value, which strengthens the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desire to improve the child's reintegration and the child's implementation of a constructive role in society” (Amdani, 2016).

In addition, the handling of child cases in restorative justice is known as the reparative board youth panel, namely the involvement of children as perpetrators or victims, the community, mediators, and authorized law enforcement officers who together resolve a criminal case by formulating appropriate sanctions for the perpetrator and providing compensation for the victim or community. Providing support for the process of protecting children in conflict with the law is a way to implement restorative justice (Purwati, 2020).

This is because preventing perpetrators of criminal acts from entering the formal criminal justice system and providing perpetrators with the opportunity to carry out alternative sanctions without imprisonment is the main principle of restorative justice. Therefore, in order to uphold the rights and safety as well as advance children’s physical and mental welfare, the establishment of a justice system with imprisonment must be used as a last resort in dealing with children in conflict with the law. Thus, legal instruments that violate children's rights or those that do not favor the best interests of children can be avoided.

Next, diversion can simply be understood as an effort to divert the formal to the non-formal criminal justice process in resolving child criminal cases. Philosophically, diversion can be interpreted as an effort to distance a case with certain criteria from the formal criminal justice process towards community support to avoid negative impacts caused by the former (Rosidah, 2019).

In the Convention on the Rights of the Child, diversion can be found in the provisions of Article 40 clause (3) letter (b) which states "Where appropriate and desirable, steps are taken

to deal with such children without the imposition of legal action, provided that basic rights and necessary legal protections are respected." Although it does not explicitly include the term "diversion" in its wording, through this article, the Convention on the Rights of the Child provides an opportunity for participating states to carry out diversion without involving the judicial process in resolving every case of children in conflict with the law (Purwati, 2020).

In line with the Convention on the Rights of the Child, Republic of Indonesia's Law No. 11 of 2012 on the Juvenile Criminal Justice System, Article 1 clause (7) as well as Government Regulation No. 65 of 2015 on Guidelines for the Implementation of Diversion and Handling of Children Under 12 (Twelve) Years of Age, Article 1 clause (6) explain a similar thing. It is stated that "Diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system" (Purwati, 2020).

The criminal justice process for children as perpetrators of crimes tends to have more dominant negative effects than positive effects on children. This is the condition that encourages the application of the diversion concept. This is because child perpetrators usually obtain stigmatization or labeling from the formal criminal justice process, such as being considered evil. Thus, dispute resolution models outside the criminal justice system are better for the interests of these children. Diversion can be broadly divided into three models as follows (Purwati, 2020).

- a. **Diversion Warning:** it is a form of a warning that is intended for minor violations given by the Police. At this stage, the perpetrator will apologize to the victim as part of the warning. Then, the incident is recorded in the archives at the police office in detail.
- b. **Informal Diversion:** in its process, informal diversion handles minor violations that require a comprehensive intervention plan for the perpetrator. This is because if it is only limited to giving a warning, it is considered inappropriate. Because informal diversion must provide a positive effect on the victim, the child perpetrator, and their families, the victim must be invited to ensure their views on informal diversion and what they want in the plan. This is carried out until it can be ensured that the provision of informal diversion is appropriate for the child as well as the victim. This informal diversion plan results in the child perpetrator's accountability by being able to fulfill the victim's needs.
- c. **Formal Diversion:** if the informal diversion process fails and is almost intervened by the formal justice process, namely the courts, then a greater involvement of other non-formal instruments is needed. In this case, other family members as well as community leaders jointly discuss and formulate a good plan for the victim and perpetrator. This is so that they can sit together to resolve their problems.

Diversion is the transfer of the settlement of a child's case from the criminal justice process outside the criminal justice process. It is governed by Article 7 clause 2 of Law No. 11 of 2012 on the Juvenile Criminal Justice System, which states that the obligation to seek diversion from the start of investigation, prosecution, and examination of juvenile cases in the District Court, is carried out with the following conditions (Rosidah, 2019):

- 1) The child perpetrator is threatened with imprisonment of less than 7 (seven) years;
- 2) It must not be a repeat of the crime;

Furthermore, in addition to these provisions, diversion also applies to children who are accused of committing a crime that is punishable by imprisonment for less than 7 (seven) years and are also charged with a crime that is punishable by imprisonment for (seven) years or more in the form of subsidiarity, alternative, cumulative or combined charges (Article 7 of Regulation of the Supreme Court No. 4 of 2014 on Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System).

The purpose of diversion is simply to obtain ways of handling legal violations outside the formal justice system or courts. This is certainly motivated by the desire to protect children from the criminal justice system's negative effects that may affect their mental health and development. It is also to prevent child perpetrators from obtaining stigmatization/bad labeling

due to their involvement with the formal criminal justice system. Through this method, it is hoped that children can naturally return to the social environment (Rosidah, 2019).

In Article 6 of Law No. 11 of 2012 on the Juvenile Criminal Justice System, the purpose of diversion is explicitly stated as follows (Rosidah, 2019):

- a. Achieving peace between victims and children;
- b. Resolving children's cases outside the judicial process;
- c. Protecting children from deprivation of liberty;
- d. Encourage the community to participate; and
- e. Instilling a sense of responsibility in children.

In addition, diversion is also carried out on the grounds that lawbreakers can become good people again. This is because they are given the opportunity to resolve their legal issues through non-formal channels involving community resources and also families. However, the implementation of diversion still considers the sense of justice as the main priority in addition to providing opportunities for perpetrators to take non-criminal paths such as compensation, social work, or parental supervision. In any case, the implementation of diversion is indirectly part of an effort to invite society to remain obedient and uphold the law of the state. The implementation of diversion aims to properly realize justice and law enforcement by minimizing criminal coercion.

Efforts to overcome child delinquency must be carried out in an integrated manner. According to Kartono, efforts to overcome child delinquency are carried out with preventive measures, punitive measures, and curative measures. Article 289 of the Criminal Code which regulates crimes on indecency states (JDIH MA, n.d.), "Anyone who by violence or threat of violence forces someone to commit or allow an obscene act to be committed against him/her, shall be punished for damaging decency with a maximum prison sentence of nine years."

It was found that there have been seven cases of child molestation in Ternate City, North Maluku Province in the last 3 years. In 2021, there were two cases; in 2022, there were two cases, and in 2023, there were three cases. In these cases, the perpetrators are still minors or they have a status as children. Thus, their families asked the PPA Unit (the Women and Children Protection Unit) to carry out diversion or mediation. This is because they pay attention to the rights of the child perpetrators who are still in school. However, every time mediation is organized, it always fails because the victim's family refuses to carry out diversion. Referring to the interview results for this research, Officer Naomi Olina Harahap (Head of the Women and Children Protection Unit) provided the following information:

"[Concerning] the implementation of this diversion, if we look at Law No. 11 of 2012 on the Juvenile Criminal Justice System, it has a requirement that the criminal act committed by the child must not be threatened with a sentence of more than 7 years and must not be a repetition of the crime. In cases of molestation, it is punished with 9 years, so it is not possible [to apply diversion]."

Seeing the reality that there are cases of child delinquency behavior, the government encourages the emergence of ideas to find solutions to resolving and overcoming such issues. One of the breakthroughs taken by Law No. 11 of 2012 on the Child Criminal Justice System is the conduction of "penal mediation," although this law does not explicitly use the term "mediation". Law No. 11 of 2012 actually regulates restorative justice and diversion, as stated in Article 1 clauses (6) and (7). It is explained as follows (The Government of the Republic of Indonesia, 2011):

"Restorative justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just resolution by emphasizing restoration to the original state and not retaliation."

"Diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system."

Penal mediation based on restorative justice departs from the paradigm of resolving children's cases by promising to handle children in conflict with the law more humanely. It departs from a shift in the value from punishment towards reconciliation; from retaliation against the perpetrator towards healing the victim; from isolation and violence towards kinship and community participation; as well as from negative destructiveness towards improvement and forgiveness that is full of love. In resolving cases of child molestation, including perpetrators in the criminal justice system is not the right solution based on the nature of the crime, the quality of the child criminal perpetrator, and the condition between the victim and the perpetrator.

In the case of child molestation at the Ternate City Police Force, investigators try to provide a mediation solution between the victim and the perpetrator. This is clarified in the interview results with Officer Naomi Olina Harahap. Harahap gave the following statement:

"Children who commit this sexual abuse are still classified as children who still have the opportunity to change, especially since they are the next generation of the nation. This is why we as investigators must provide a mediation solution between the victim's family and the perpetrator. Usually from the beginning, we have been asked where this issue will be brought, whether should it continue using the litigation method or whether should it be implemented through mediation for peace. Mediation is usually only submitted once, usually submitted by the perpetrator's family. The percentage between the litigation method and mediation is 70% and 30%. The litigation method is 70% and the mediation is 30%."

Of the seven cases of child molestation in the last three years in Ternate City, not one case has successfully been mediated. This is because the victim's family immediately rejected it at the beginning of the mediation effort and wanted to continue the legal process. In handling cases of child molestation, from the results of research conducted by the author, it was found that the diversion in such cases was not implemented. However, the Ternate City Police Force provided mediation efforts.

Factors Influencing the Diversion Implementation Against Child Molestation Crime Perpetrators at the Investigation Stage (Ternate City Police Jurisdiction)

Punishment of children must take into account aspects of child development and the best interests of the child. Children who commit crimes must continue to be protected. Their rights must be observed to prevent the intervention or even damage the child's growth period. Thus, children obtain different treatment and threats in every juvenile criminal justice process.

Deviant behavior will lead to criminal violation that clearly requires special handling. Children's deviant behavior often occurs as act that violates morality, especially indecent acts. What is even more concerning is that there is an increasing prevalence of criminal acts of indecency committed by children.

The government, law enforcement, various social institutions, and community leaders have carried out various efforts to prevent juvenile crimes. However, indecent acts committed by children are difficult to avoid. Such conditions are very concerning for all levels of society. Thus, they need to be addressed immediately by law enforcement officers, especially the police force, and the community. Without such efforts, cases of indecent acts committed by children will continue to increase both in terms of number and in terms of their modus operandi.

In recent years in Ternate City, there have also been social phenomena that have emerged in society, where the crime of sexual abuse is not only committed by adults but also by children, either individually or in groups. Law No. 11 of 2012 on the Juvenile Criminal Justice System states that diversion can only be implemented for crimes that are threatened with punishments of seven years or those that are classified as minor crimes, without providing rules for protecting against criminal threats over 7 (seven) years. In principle, inconsistency in the implementation of diversion against criminal threats over 7 (seven) years makes the legal protection for children

suboptimum as those threatened with a sentence of over 7 (seven) years are still processed using the formal legal system.

In the Dutch language, criminal acts are referred to with a term which is *Staatbaar Feit*, although the Dutch term is translated with many variations of terms, they have the same equivalent meaning, such as "criminal acts", "criminal events", "criminal acts", "punishable acts", and so on. This is because the government does not set an official translation of the Dutch term (Suyanto, 2018).

According to Muljatno, a criminal act/criminal offense is an act that is prohibited by a legal rule. Such a prohibition is accompanied by a threat of sanctions in the form of a certain criminal penalty. Meanwhile, Simons explains that *strafbaar feit* is behavior (*handeling*) that is threatened with a criminal penalty and is against the law. It is related to mistakes carried out by a person who is capable of being responsible (Sofyan & Azisa, 2016).

According to Muljanto, a criminal act is an act that is prohibited by a rule of law, where the prohibition is accompanied by a threat (sanction) in the form of a certain penalty for anyone who violates the prohibition. It can be further explained that a criminal act is an act that is prohibited by a rule of law and is threatened with a penalty, where the prohibition is directed at an act (i.e. a condition or incident caused by a person's behavior). Meanwhile, the threat of a penalty is directed at the person who caused the incident. There is a close relationship between the prohibition and the threat of a penalty because the incident and the person who caused the incident have a close relationship that cannot be separated from each other (Moeljatno, 2000).

Definition of Molestation

The act of molestation is a deviant behavior which is classified as a criminal act. The crime of molestation is a criminal act that is contrary to and violates the decency and morality of a person, all of which are in the scope of sexual lust (Putra, 2016). According to Moeljatno, indecency is any act that violates morality or a vile act related to sexual desire. Moeljanto emphasizes more on acts committed by people based on their sexual desire, which directly or indirectly constitutes an act that violates morality and can be punished.

According to Arif Gosita, sexual abuse can be formulated into several forms of behavior, namely as follows:

- a) The victim of molestation must be a woman, without age limit (object). Even so, there are also cases where men are molested by women.
- b) The victim must have experienced violence or the threat of violence. This means that there was no consent from the victim regarding the perpetrator's intentions and actions.
- c) Extramarital sexual abuse is a goal that is achieved by committing violence or threats of violence against a particular woman.

The criminal acts of indecent assault that occur in society are very diverse. All acts that are classified as indecent assault are very contrary to the norms that exist in society. Some types of indecent assault that can occur include:

- a) Sexual exhibitionism: an act that is deliberately carried out by exposing genitals to children.
- b) Voyeurism: an act where an adult passionately kisses a child.
- c) Fondling: the act of stroking or touching a child's genitals.
- d) Fellatio: an act where an adult forces a child to make oral contact.

Acts of indecency can be divided into several types, including:

- a) Sadistic rape: in this type sexuality and aggression combine into a destructive form. The perpetrator of the molestation has been seen to enjoy erotic pleasure not through sexual intercourse but through a terrible attack on the genitals or body of the victim.
- b) Anger rape: it is sexual abuse characterized by sexuality as a means to express and vent suppressed feelings of rage and anger. In this case, the victim's body becomes an object of the perpetrator's frustrations, weaknesses, difficulties, and disappointments in life.

- c) Domination rape: it is an act of indecency that occurs when the perpetrator tries to persist in power and superiority over the victim. The goal is sexual conquest, the perpetrator hurts the victim but still has the desire to have sex.
- d) Seductive rape: it is an act of indecency that occurs in stimulating situations, created by both parties. Initially, the victim decides that personal intimacy should be limited to not reaching the point of sexual intercourse. The perpetrator generally believes that coercion is needed.
- e) Victim-precipitated rape: namely indecent acts that occur or take place by placing the victim as the initiator.
- f) Explosion rape: it is an act of indecent assault that takes advantage of the victim's dependence on the perpetrator, both economically and socially.

There are many factors that cause sexual abuse (Sampurna & Suteki, 2016), such as social inequality, education level, media influence, pornography, and social environment. Specifically, pornography, including in the form of shows, images, readings and other things related to it, will trigger sexual arousal for someone who enjoys it. According to Dr. Dwijo, a person's sexual behavior is greatly influenced by internal and external factors. Internal factors refer to conditions that already naturally exist, including a person's social or social environment and the extent to which a person is exposed to sexual abuse. If a person is exposed too often, then he or she will quickly be stimulated to carry out concrete actions in the form of sexual abuse (Partab, 2012).

Children who commit crimes are different from adults who commit them. Children who are perpetrators can also be said as victims (Sisca & Alhakim, 2022). Many children who are in conflict with the law commit crimes that are threatened with more than seven years of imprisonment or are classified as ordinary crimes such as aggravated theft, molestation, serious assault resulting in death, traffic accidents resulting in death, and drug trafficking (Kabdullina, Dosymzhan, & Akmamyk, 2021). These crimes are ordinary crimes which cannot be diverted with restorative justice based on laws and regulations (Rado & Badilla, 2019). However, the handling of children who commit crimes is still different from the handling of adult crimes (Sisca & Alhakim, 2022). Children must receive special care and protection so that they do not experience mental stress and negative influences on their future and personality development.

Not all cases of children in conflict with the law must be resolved through formal justice channels. By providing an alternative for resolution with a restorative justice approach, diversion can be carried out for the best interests of the child and by considering justice for the victim (Chusniatun, 2020).

The most important requirement in carrying out diversion or mediation is that the victim and the perpetrator must be willing to make peace. If one party does not agree then the agreement is nullified and penal mediation/diversion will not be achieved. According to Officer Naomi Olina Harahap in an interview, the implementation of diversion was as follows:

"There is no standard operating procedure [to the diversion implementation]. The guideline is Law No. 11 of 2012 on the Juvenile Criminal Justice System. In the implementation of diversion/mediation, investigators only function to facilitate meetings between the conflicting parties. However, if the mediation process runs, the parties who must be present are the perpetrator and the perpetrator's parents, the victim, investigators, community officers, social officers, community leaders, as well as legal advisors."

Concerning mediation facilitated by the Ternate City Police Force, seeing the information provided by Officer Naomi Olina Harahap, it can be seen that the mediation was still constrained by several things. For instance, the parents/guardians of the victim were not present in the mediation process. After confirming this case with the victim, it turned out that the victim still did not accept the actions carried out by the perpetrator. If not handled properly and comprehensively, the child perpetrator of the crime be stigmatized, which will have fatal consequences for the child's future.

Therefore, the handling of child criminal perpetrators must be carried out through penal mediation. The criminal justice system must not be used as penal mediation provides many advantages, namely penal mediation requires a case resolution accompanied by efforts to restore or repair the negative impacts experienced by the victim of the crime, (Iqbal, Sutanto & Nuna, 2020) restore the suffering experienced by the victim, and restore their relationship. Officer Naomi Olina Harahap provided further information in the interview as follows:

"When mediation is going to be carried out, there will definitely be an obstacle. The obstacle that often occurs in the implementation of mediation is that the victim is usually not present because they still do not accept the actions carried out by the perpetrator. Thus, they still want to take the criminal action to court."

Based on the results of the research conducted by the author, it can be concluded that the implementation of diversion or mediation can occur if there is an agreement between the victim and the perpetrator. This is because diversion or mediation cannot be implemented if one of the parties does not agree with the agreement made and continue it to the trial stage.

CONCLUSION

At the investigation stage, diversion implementation for the crime of child molestation cannot be carried out. This is because according to the rules in Article 7 clause (2) of Law No. 11 of 2012 on the Juvenile Criminal Justice System, diversion can only be carried out on children who commit crimes with a prison sentence of less than 7 (seven) years and are not a repeat of the crime. Therefore, diversion cannot be carried out for children who commit crimes of molestation, but the Ternate City Police Force provides a solution of mediation. Factors that influence the implementation of diversion at the investigation stage of child molestation crimes include an obstacle where the victim's family prefers to continue the legal process rather than mediate.

The authors suggest that the government should make efforts to reform the criminal justice system by integrating penal mediation. This is to realize a progressive criminal justice system in Indonesia based on the noble values of Pancasila. The reform can start with conceptual reconstruction in the criminal justice system from its formalistic concepts to become more dynamic. They should have progress in accepting more humanitarian ideas. Then, investigators and PPA Units should make more efforts to provide an understanding and explanation regarding the implementation of diversion or mediation as these solutions can have an impact on the future of children as perpetrators and victims.

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