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The Implementation of Diversion for Juvenile Offenders: A Case Study in the Batu City Police Department

Rudi Eko Kurniawan¹, Sunardi², Moh. Muhibbin³¹Universitas Islam Malang, Malang, Indonesia, rudie985@gmail.com²Universitas Islam Malang, Malang, Indonesia³Universitas Islam Malang, Malang, IndonesiaCorresponding Author: rudie985@gmail.com¹

Abstract: The juvenile justice system is closely related to the diversion approach as a form of settlement effort for children in conflict with the law. Diversion in this case is a legal effort in resolving cases so that children in conflict with the law can avoid the consequences of judicial procedures which will have a direct impact on the child's psychological and mental state. Based on observations that have been made, in 2024 there have been at least 10 cases of criminal acts involving children as perpetrators in the jurisdiction. The perpetrators of the persecution are known to be 13 years old and in grade 7 of Junior High School (SMP). Diversion as an alternative approach in handling criminal offenses has been seen as an appropriate step to prosecute and guarantee the rights of children in conflict with the law. This research is empirical juridical research using sociological approach and statutory approach. The data used in this research consists of primary data sourced from the results of interviews and observations, as well as secondary data sourced from legal materials in the form of regulations and legislation relevant to the research topic. Data analysis is carried out qualitatively to describe and analyze the application of diversion to juvenile offenders in the Batu Resort Police. The results showed that diversion has not been realized comprehensively in the Batu City Resort Police. The police tend to prefer to use a restorative justice approach rather than diversion because the circumstances in the field do not allow for the application of diversion. Factors that hinder the implementation of diversion in the Batu City Resort Police include individual, procedural, and technical factors. Concrete efforts that have been made by the PPA unit of the Batu City Resort Police to overcome obstacles in the implementation of diversion include the formation of the PPA Task Force in collaboration with various other agencies, such as the Batu City District Attorney's Office, the Batu City Social Service, the Batu City Office of Women's Empowerment, Child Protection and Population Control and Family Planning (DP3AP2KB), the Batu City Education Office, and the Batu City Religious Ministry to socialize the improvement of child protection and the SPPA Law through direct visits to formal and informal educational institutions.

Keywords: Children, Child Crime, Diversion, Restorative Justice

INTRODUCTION

More recently, the issue of criminal offense involving children has received considerable critical attention in Indonesia. This phenomenon is actually not a new thing in society, but it has just become an attention because people are increasingly aware and have broader insights into the law. Increased public awareness of the law has made juvenile delinquency, which in the past could be resolved internally between parties, now more likely to be processed to the level of law enforcement. In connection with this, it is necessary to have a legal concept that is able to accommodate a sense of justice for all Indonesian people, can provide protection for Human Rights (HAM), and transparency for the public interest.

Indonesia has a firm commitment to protect the rights of every child. Every child has the right to survival, growth, and development, and the right to protection from violence and discrimination. Every child is also entitled to protection from all forms of exploitation, oppression and arbitrary treatment, especially in the process of punishment (Yulianto, 2022). Attention to the concept of diversion for children in conflict with the law has actually existed since the formulation of Law Number 35 of 2014 concerning Child Protection. The main idea of the juvenile justice system is basically the restoration or diversion of conventional criminal sanctions. This consideration is because children are entitled to a second chance, because the criminal acts committed are very likely to occur without clear thinking and tend to be mere delinquency (Munajat, 2023, p. 105). In relation to the idea of recovery or transfer of criminal sanctions, in the juvenile criminal justice system there are two alternative criminal settlements, namely, restorative justice and diversion. In this study, alternative efforts to resolve crimes committed by children are more focused on the concept of diversion.

Basically, diversion and restorative justice are two different concepts but both are part of the restorative justice approach. The difference between diversion and restorative justice in resolving a criminal offense is the main focus. Diversion focuses on the termination of legal procedures, while the main focus of restorative justice is on victim recovery and offender reintegration. However, the application of diversion in handling juvenile offenses is not much different from restorative justice. Diversion can be carried out at the investigation, prosecution, and court decision stages (Purwati, 2020, p. 83). Diversion is defined as the transfer of the settlement of children's cases from the criminal justice process to a process outside of criminal justice. The existence of diversion in resolving criminal cases allows children to obtain their proper rights. The application of diversion by law enforcers also focuses on improving community life to help offenders avoid other crimes in the future.

The target and goal in diversion is to solve the problem, and increase the sense of responsibility through dialogue and negotiation as a way to restore the victim and the offender. Diversion is basically a simple measure of justice that no longer carries retaliation against the perpetrator in the form of punishment, but makes the perpetrator aware so that he can become a better person in the future. This conception is in line with the rights of children that have been regulated in the law on human rights, as stated in Article 52 paragraph (1) that every child must get protection from parents, society, and the state (Republic of Indonesia 1999).

Referring to the provisions in Law 11/2012 on SPPA, diversion can only be applied by investigators based on discretionary authority by handing back children in conflict with the law to their parents or guardians. Children suspected of committing a criminal offense and processed through the juvenile justice system must be handled by investigators, prosecutors, and judges who specifically handle juvenile cases. Before entering the judicial process, the criminal settlement approach outside the justice system, in this case diversion, must be prioritized (Ayu & Susetyo, 2015). Diversion is a new paradigm in legal settlement aimed at seeking criminal law reform in the jurisdiction of Indonesia, especially in resolving criminal cases by children who are in conflict with the law.

Given that the perpetrators of persecution are minors, the legal treatment in prosecuting and trying the perpetrators must be differentiated from adult perpetrators (Sibarani et al., 2019). In this context, the difference in handling criminal offenses in children referred to is the application of diversion at the investigation stage at the police level. Diversion as an alternative approach in handling criminal offenses has been seen as the right step to prosecute and guarantee children's rights, but its application does not always run smoothly.

The implementation of diversion as an alternative to criminal settlement at the police level is of course not always successful or reaches an agreement between the parties. In a study in the jurisdiction of the Bandung Resort Police, it was found that there were still many victims who objected to the concept of diversion, thus demanding the police to continue to apply punishment to the perpetrator despite the socialization of diversion (Juniati & Karyoto, 2023). Similar to the results of this study, diversion at the investigation level in the jurisdiction of the Papua Regional Police also experienced many obstacles from the victim (Pabassing, 2021).

Where diversion is successfully implemented, the legal process against the perpetrator is stopped and not continued. However, recovery and compensation for the victim must still be implemented in accordance with the diversion agreement, which will be accompanied by supervision and revocation of charges against the perpetrator. On the other hand, if diversion is unsuccessful in resolving a criminal case, it will be followed up to complete the file to the prosecutor's office and the legal process will continue. From the description above, it can be seen that diversion is an alternative approach in resolving criminal offenses carried out by considering the protection of children's rights. The application of diversion in handling juvenile crimes is still often rejected by the community in various regions and is debated by various legal practitioners. Therefore, the researcher is interested in conducting a study to obtain a broader and more up-to-date picture of the implementation of diversion in legal practice in Indonesia. Based on the description of the phenomenon and the urgency behind this research, the problems that will be addressed through a series of studies are formulated as follows.

1. How is the application of diversion in the settlement of juvenile crime at the investigation level by the Batu City Police?
2. What are the obstacles experienced by the Batu City Police in implementing diversion for the settlement of juvenile crimes?
3. How are efforts made by the Batu City Police to overcome obstacles in the application of diversion settlement of juvenile crimes?

METHOD

The approaches used in this current research were sociological approach and statutory approach. The location of the research was conducted at the Batu City Resort Police located at Jl. Hasanudin, Junrejo, Kec. Junrejo, Batu City, East Java, Indonesia. This location was chosen because in 2024 the number of children in conflict with the law in the relevant jurisdiction has increased from the previous year.

The data used in this study consist of primary data and secondary data. Primary data is data obtained directly from the research subject, while in this study in the form of information obtained secondary data is a set of data obtained indirectly from the subject or object of research (Suratman & Dillah, 2020, p. 106). Primary data comes from interviews and observations made in the field. Secondary data in this research is obtained from literature studies and review of literature relevant to legal topics. Secondary data in this study is sourced from legal materials, as well as books or other literature related to the topic.

This research uses interview techniques and literature studies to obtain related data. Interviews were conducted by openly discussing with sources to explore a topic in detail (Ali,

2021). Secondary data collection using the literature study method was carried out by studying the applicable laws and regulations concerning children in conflict with the law, as well as examining the handling of similar criminal offenses studied in previous studies. The data was then analyzed using qualitative analysis method. The qualitative analysis technique in this study was carried out to describe and analyze a detailed picture of the implementation of diversion in the settlement of juvenile crimes.

RESULTS AND DISCUSSION

Implementation of Diversion in the Settlement of Juvenile Crime at the Investigation Level by the Batu City Police Department

Crimes committed by children in the jurisdiction of the Batu City Police are mostly committed by children aged between 14 and 17 years old. Data recorded in the PPA unit of Batu City Police shows that there were two cases of violence committed by junior high school students, one case of theft where the perpetrator was a school dropout with the age of a junior high school student, and the other case was committed by a child with the age of a senior high school student. In all cases of criminal offenses committed by children handled by the Batu Resort Police, none have been handled using the diversion approach. However, the two theft cases mentioned above were successfully resolved through restorative justice.

Investigators from the PPA unit of the Batu Resort Police continue to pursue a diversionary approach in handling juvenile crimes. However, in its realization, it experienced many obstacles. The PPA Unit of the Batu City Police has twice attempted to handle criminal offenses by children with a diversion approach but failed because no agreement was reached between the victim's family and the perpetrator's family.

The PPA Unit as an investigator has the obligation to conduct a diversion process for children in conflict with the law as long as the conditions for diversion in accordance with Article 7 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System are met. If it is found that the investigator intentionally does not seek diversion in handling juvenile criminal offenses, the investigator concerned will be subject to sanctions in accordance with Article 96 of the Law. RI. No. 11 of 2012 concerning the Juvenile Criminal Justice System.

In cases of juvenile criminal offenses that allow for diversion at the police investigation level, it is carried out in accordance with certain requirements and limited authority from the police.

The requirements that must be met and used as a reference by child investigators of the PPA unit of the Batu City Police in order to apply diversion in handling criminal acts by children are Article 7 of Law No. 11 of 2012 concerning the Child Criminal Justice System. Diversion can be applied to juvenile offenders if the punishment for the criminal offense committed does not exceed 7 (seven) years of imprisonment and is not a recidivist or repeat offender. Procedure for implementing diversion and restorative justice applied by investigators of the PPA unit of the Batu City Police is explained as follows (Pramudya, 2024).

The implementation of diversion is carried out with the legal basis of Law No. 11 of 2012 concerning the Child Criminal Justice System and Government Regulation No. 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Who are Not Yet 12 (Twelve) Years Old, including:

- a. The case must first advance from the investigation process to the investigation and ensure that child perpetrator meets the formal requirements for diversion in accordance with the SPPA law
- b. Coordinate with the prosecutor's office (public prosecutor) that a diversion effort will be made.

- c. Coordinate with officers from the Technical Implementation Unit for Child Protection and Social Services (UPT PPSPA) Batu City as professional social workers to conduct community social research (litmas) on child perpetrators.
- d. Offer to resolve the case through diversion for the child victim.
- e. If the child victim does not agree, make an official report that the diversion effort is not approved by the victim and continue to punish the perpetrator. If the child victim agrees to a diversionary settlement, then set the time for the diversion deliberation.
- f. Invite officers from the Malang City Correctional Center (Bapas) as community supervisors and officers from the Batu City Child Protection and Social Services (PPSPA) or other parties (e.g., teachers or religious leaders) needed to attend the deliberations at the specified time.
- g. If in the diversion deliberation the child victim and the child perpetrator do not reach an agreement, a written report and minutes of the diversion deliberation do not agree, then the punishment is continued to be forwarded to the public prosecutor. If in the diversion deliberation the parties agree, a diversion agreement letter is made from the Batu City Resort Police to be signed by all parties involved in the deliberation, including, the investigator as the chairman of the deliberation, the Bapas officer and the PPSPA officer as the deputy chairman of the deliberation, the child victim and the child perpetrator as the two litigants, and other parties as community leaders if any. At this stage, the minutes of the diversion agreement are also made.
- h. This diversion agreement letter and the minutes of the diversion agreement were submitted to the Head of the PPA Unit of the Batu City Resort Police to be sent to the Chief of the District Court for a determination.
- i. The determination from the Malang City District Court in the form of a Diversion Decree is conveyed to the parties involved in the diversion process to then implement the diversion agreement that has been agreed upon previously.
- j. The Head of the PPA Unit of the Batu City Police Force supervised the implementation of the diversion agreement and asked PPSPA Batu City officers to implementation accompany of the diversion agreement. Then wait for the report on the results of the implementation of the diversion from PPSPA Batu City.
- k. If the PPSPA report indicates that the diversion agreement was not implemented, produce minutes of the diversion agreement not implemented and continue the punishment to be forwarded to the public prosecutor. If the diversion agreement is properly implemented, issue a letter of discontinuation of investigation and produce minutes of the diversion process.
- l. Decree of termination of investigation, minutes of diversion process, minutes of examination are sent to the public prosecutor.

Diversion at the investigation level by the police is declared successful after the District Court issues a Diversion Determination Letter and on the basis of this letter the police stop the investigation process, so that the resolution of the child's crime is transferred outside the criminal process. Structurally, the sequence is (1) issuance of a diversion agreement by the investigator signed by the victim, the perpetrator, and the community coach, (2) recording the diversion process in the diversion minutes, (3) reporting the diversion agreement and diversion minutes to the investigator's immediate superior, (4) the immediate superior sends the diversion agreement and diversion minutes to the chairman of the local District Court for a determination, and (5) termination of the investigation based on the Diversion Determination Letter from the District Court.

The submission of a diversion decision to the District Court by police investigators must fulfill several formal requirements. These requirements were conveyed by the resource

person, including "minutes of diversion agreement, police report, investigation warrant, notification letter of commencement of investigation, minutes of examination of the suspect, letter rejecting legal counsel, letter of agreement between the two parties (handwritten on stamp duty), and results of litmas (community research) from bapas (Utomo, 2024).

In the case of criminal acts by children committed by GF based on the police report LP/B/96/VI/2024/SPKT/ RESBATU/JAWATIMUR, the child investigator of the PPA unit of the Batu City Police Resort prefers to be resolved through restorative justice due to several considerations. The first consideration is the similarity of goals, as stated by the informant that diversion and restorative justice have the same concept and vision, which aims to resolve crimes outside the justice system and reconcile the parties to the case (Pramudya, 2024).

The second consideration is the flexibility of the mechanism, as according to the interviewee that referring to the existing statutory provisions, diversion in the police authority can only be carried out at the investigation stage, while restorative justice can be applied from the investigation stage before the investigation. The third consideration is efficiency, as stated by the resource person that diversion has a longer procedure compared to restorative justice (Pramudya, 2024).

Diversion and restorative justice have their own advantages and disadvantages. The advantage in diversion is in special circumstances investigators can apply diversion without having to obtain consent from the victim first, and on the other hand diversion can lead to legal products in the form of diversion agreements without compensation (Wiyono, 2022). This advantage can be utilized by investigators to close the gap usually often used by the reporting party in seeking material benefits deliberations during diversion. The disadvantage of diversion is nothing more than a mechanism that is slightly longer and involves quite complex coordination. In contrast to diversion, the advantage of restorative justice is a simpler procedure, however, it can only be carried out with the consent of the victim or the reporting party.

In relation to the implementation of diversion in the Batu City Police, if referring to the diversion procedure and the provisions of Article 7 of the SPPA Law, the criminal offense of maltreatment by a child with case register LP/B/84/VI/2024/SPKT/RESBATU/JAWATIMUR that occurred to YM should have been handled and resolved by diversion without the consent of the victim. The author assumes so because from the results of the information submitted by the resource person of the PPA unit of the Batu City Resort Police, it shows that the criminal acts committed by the child perpetrators did not cause injuries classified as serious injuries that make the body unable to heal completely or pose a mortal danger in accordance with Article 155 of the new Criminal Code. The settlement of these criminal offenses should be resolved through diversion deliberations that lead to an agreement in the form of community service or the participation of child offenders in education and training at LPKS.

Obstacles Experienced by the Batu City Police in Implementing Diversion for the Resolution of Juvenile Crimes

As for juvenile criminal cases that were successfully resolved outside the criminal justice system that occurred in the Batu City Resort Police, they were resolved through a restorative justice approach rather than through a diversion approach. This dynamic occurs due to several considerations of investigators in making decisions (police discretion) and various obstacles that must be faced by police juvenile investigators in the field.

The first factor in the inapplicability of diversion in juvenile criminal cases that occurred at Batu City Police Station was the lack of consent from the child victim. The refusal from the victim's family occurred due to a lack of understanding from the community about the importance of the role of Law No. 11 of 2012 concerning SPPA. The majority of

people in Batu City in particular, still have the perspective that criminal offenders must be punished according to their actions without considering the age and maturity of thinking of children who are perpetrators of criminal acts (Aditya Firman Pramudya 2024). The lack of public understanding of the SPPA Law also creates a stigma in the community that if the criminal offender is not processed, it is considered not to have a deterrent effect, even though the perpetrator is a minor (Utomo, 2024).

The second factor that inhibits the application of diversion is the egocentricity of the victim or the reporter. The egocentricity of the reporter in question can appear in the form of the reporter's personal hatred of the child offender and attempts to imprison the child offender without considering the rights and future of the child offender (Utomo, 2024). Another form of egocentricity conveyed by the informant is that the reporter tries to seek material benefits from the child offender in a criminal offense. From the data obtained, it is shown that the search for profit by the reporting party is seen that in the peace process the reporting party asks for restitution with an unreasonable amount of money, for example for psychological therapy asking for restitution of Rp. 80,000,000, - (eighty million rupiah), or for petty theft asking for restitution twice the value of the loss of the stolen goods (Utomo, 2024).

The third factor that hinders the implementation of diversion is the intervention of a third party, which is usually the legal counsel of the complainant. The presence of a third party in the diversion process is supposed to provide legal advice so that criminal offenses committed by juvenile offenders can be resolved outside the justice system, but the opposite is true. It is still often found that the attitude of third parties leads the opinion that the victim prefers to resolve through the criminalization process or raises the conditions of the diversion agreement that are difficult to fulfill by the child perpetrator so that a peace agreement between the two parties is not reached in the diversion deliberation (Pramudya, 2024).

The fifth factor that causes diversion cannot be applied is the type of criminal offense committed by children with a sentence of more than 7 (seven) years imprisonment. Some time ago, precisely in May, there was an incident of beating that resulted in the death of the victim of the beating which went viral on various news channels and social media. In cases of beatings that result in loss of life, in accordance with the Criminal Code, the maximum penalty is 12 years, and this type of crime is outside the formal requirements for the application of diversion (Utomo, 2024).

The sixth factor in inhibiting the implementation of diversion in the Batu City Resort Police is rejection from the community. Crimes by children that occur in Batu City are on average committed by child perpetrators whose daily lives show deviant behavior from societal norms or can be referred to as delinquent children. Child perpetrators with this tendency have often committed criminal acts but were successfully resolved at the first level, for example at school or at the RT level, but because they often repeat their actions and there is an escalation of delinquency, it eventually leads to a police report (Pramudya, 2024).

The seventh factor that hinders the implementation of diversion is the absence of a special room for diversion in the PPA unit of the Batu City Police. Space does seem to be an optional element in the implementation of diversion, but actually has an equally important role. So far, efforts to handle diversion and restorative justice in the PPA unit of the Batu City Police are carried out in the same facility with a limited number of officers. The absence of a specific separation between facilities and an increase in the number of officers also indirectly hinders the successful implementation of diversion in handling juvenile crimes.

The dynamics in the implementation of diversion at the police level do not only occur in the Batu City Resort Police. From a search of scientific journals, it is still widely found that diversion at the police level is almost rarely successfully implemented in various regions in Indonesia. A study on diversion in the Tulungagung Resort Police showed the result that diversion could not be applied because most of the perpetrators did not admit their actions

despite various efforts made by the child investigators of the PPA unit of the relevant Polres (Agustina, 2019). The attitude of not recognizing the criminal act shown by the child in the study was a consideration for the diversion mediator and the victim's family to decide to choose a settlement through the justice system.

Diversion at the police level can be stated to have a fairly low success rate. Apart from the reasons mentioned above, a study shows that diversion at the police level is less effective because of the element of doubt of police investigators due to the limited authority determined by the law (Muliadi & Usman, 2018). The low success rate of diversion at the police level does not make diversion an inappropriate method for handling juvenile crimes. Diversion is still an alternative to solving juvenile crimes at the level of case examination by the judiciary because there are often cases that are not successfully resolved through diversion at the police level but receive diversion decisions at the court level.

Efforts Made by the Batu City Police to Overcome Obstacles in the Implementation of Diversion

Various efforts have been made by the PPA unit of the Batu City Police to support the implementation of diversion at the police level in handling criminal acts by children. Broadly speaking, the efforts made are socialization to the wider community about the good intentions of the provisions in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. The point that is emphasized is to provide an understanding to the public that the law has the main objective of maintaining peace and order in the community without traumatizing child offenders in the process of resolving their cases. The socialization was also carried out to provide an understanding to the community that criminal acts committed by children can be resolved and prevented in the future by increasing the child's sense of responsibility, not through punishment which actually deprives independence and has the potential to foster the negative side of children who are still at an unstable age (Utomo, 2024).

Practical efforts as well as the first steps taken to support the socialization agenda and reduce the rejection of diversion from the community, were realized by the formation of the PPA Task Force of Batu City Police. This task force is also a follow up to the instructions of the East Java Police Chief in the program to improve the protection of women and children as stated in telegram 881/VII/pam.3.3/2022. This task force involves cooperation with the Batu City District Attorney's Office, Batu City Social Service, Batu City Women's Empowerment, Child Protection and Population Control and Family Planning Office (DP3AP2KB), Batu City Education Office, and Batu City Religious Ministry. This task force has been active since 2022. The main agenda of this task force is to actively socialize the SPPA Law (door-to door) by visiting formal and informal educational institutions throughout the Batu City area (Pramudya, 2024).

Socialization is not only conducted at the formal and informal education institution level, but also to the community at large. Socialization to the community is carried out with a monthly routine agenda by visiting the village office in turn. The main agenda in this activity is the socialization of preventing children from committing illegal acts through active community involvement in monitoring children's behavior. This socialization also conveyed an understanding to the community that supervision of children is the shared responsibility of all residents who live in the vicinity of the child. With this joint supervision, it is hoped that when a child tries to commit a criminal offense, they can be reprimanded in a good way so that the criminal offense can be avoided and the child's future is more secure.

CONCLUSION

Diversion has not yet been realized and the police are more likely to use a restorative justice approach rather than diversion because the circumstances in the field do not allow for

the application of diversion. In the case of light maltreatment that occurred, it should have been resolved by diversion without the consent of the victim with the results of the diversion agreement leading to the placement of the perpetrator's child in LPKS or doing community service.

Factors inhibiting the implementation of diversion in the Batu City Resort Police include individual, procedural, and technical factors. Individual factors that cause diversion to fail to be implemented are rejection from the litigants, the tendency to seek benefits in the diversion process, third party intervention, and rejection from community leaders. On procedural factors, the inhibiting aspects are the mechanism and coordination system of the diversion approach, which is longer and more complicated when compared to the restorative justice approach, and the absence of procedural guidelines for diversion at the police level with permanent legal force. On technical factors, there is no special room for diversion.

The real effort made by the PPA unit of the Batu City Police to overcome the obstacles in the implementation of diversion for the settlement of criminal acts by children is the formation of the PPA Task Force in collaboration with other agencies, such as the Batu City District Attorney's Office, the Batu City Social Service, the Batu City Women's Empowerment Office for Child Protection and Population Control and Family Planning (DP3AP2KB), the Batu City Education Office, and the Batu City Religious Ministry to conduct socialization of child protection improvements and the SPPA Law through direct visits to formal and informal educational institutions

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