

## THE IMPLEMENTATION OF DIVERSION CONCEPT IN THE CHILDREN'S INVENTORY PROCESS AT POLRES LANGKAT, MEDAN, INDONESIA

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**ABSTRACT:** *One of the rights of a child who is a perpetrator of a criminal offense is getting diversion. Diversion is the transfer of the settlement of children's cases from the judicial process criminal proceedings to proceedings outside of criminal justice. Diversion is applied to the child who was 12 years old but not yet 18 years old or older 12 years old though never married but not yet 18 years old, threatened with imprisonment under 7 years and not a repeat of acts criminal. Giving authority to the police as investigators for to diversify due to police position as an enforcement agency the first law and direct contact with the community Database Penitentiary System, at prisons II Tanjungpura from 2015 until March 2017 there are 230 children so it becomes the highest rank have child prisoners throughout Langkat Regency. Problems which will be discussed in this study is how the protection of the law against the perpetrators of child crime in Polres Langkat and what is the application the concept of diversion there is in accordance with Law no. 11 of 2012 on the Criminal Justice System of the Child. This type of research is field research with using the empirical juridical approach of research into the problem by looking at and observing the applicable legal norms connected with the facts that exist from the problems encountered in the study. Type of this research is descriptive analysis that is describe and analyze events occurring in the investigation process using the concept of diversion at Polres Langkat. Technique of collecting data by interview, observation and recording of child investigation data at Polres Langkat. Data analysis method done by way of gathering information through interviews and documents, data reduction by the selection process, focusing attention to information deemed to be in accordance with the issues of interest, view and reviewing legislation on investigation, diversion and child protection, data presentation in the form of narrative text and tables, final stage namely drawing conclusions The results of this study indicate that the application of the concept of diversion on the investigation process at Polres Langkat has not been fully in accordance with Law no. 11 Year 2012 on Child Criminal Justice System. There is still a child's right not fulfilled as such, does not involve a Community Counselor does not involve professional social workers from the Social Service, there are some cases that are not eligible to be applied in a version, there are a child who is not accompanied by a parent / guardian, is not accompanied by a power of attorney law, some cases do not seek expert opinion due to cost constraints, the detained child is in adult custody*

**KEYWORDS:** Diversion Concept; Children; Law; Criminal Justice

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## INTRODUCTION

Children are the hope and support of parents, the hope of the nation and countries that will continue the development relay baton and have a role strategic, have special features or traits that will ensure continuity the existence of nation and state in the future. Children need to get a chance the widest possible to grow and develop optimally, well physical, mental and social. Moreover that childhood is the period of character formation, personality and character of a

human self, in order they later have the strength and ability and stand tall in the climb life. The right of the child is one of the most important things that should not be forgotten because that right as a form of side approach to protect children from law problem. Implementation of child protection should be based on a variety prevailing laws and regulations. With an important child role this, the right of the child has been expressly stated in the constitution, that the state guarantee that every child has the right to survival, growth and development and are entitled to protection from violence and discrimination. In addition, the right children facing the law are also regulated in Law no. 11 of 2012 on the Criminal Justice System of the Child, Law no. 35 Year 2014 about Child Protection, and Law no. 4 Year 1979 about Child Welfare. There are government agencies and independent institutions that handle cases children who are dealing with the law among others, the Ministry of Empowerment Women and Child Protection Indonesia, Ministry of Social Affairs, Police The Republic of Indonesia, the Commission for the Protection of Indonesian Children, and so forth. Criminal acts committed by children in general are the process of imitating or influenced adult persuasion.

Process punishment given to children through the formal criminal justice system by putting the child in jail was not successful in making deterrent children and become a better person to support the growth process. 4 If children are in prison, their rights are guaranteed Law no. 35 Year 2014 on Protection of Children many who do not fulfilled. In addition, with the limited number of detention houses and Child Correctional Institution (MAS), then the children are often combined with adult prisoners. 5 The imprisonment of child imprisonment may harms the child because the community will give the stigma to the child which can damage the career and future of the child, some people will rejecting the presence of former child prisoners resulting in the child isolated from society, children will become more proficient in committed crimes for learning to commit crimes while in prison. The Prison Database System shows the number of child prisoners which is still quite high in Langkat. In Lapas Tanjungpura 2014 there are 22 children, in 2015 there are 4 children. According to Article 1 number 7 of Law no. 11 of 2012 on the Judicial System Child Crime, the notion of diversion is the transfer of a child's case settlement from criminal justice process to proceedings outside of criminal justice. Diversi in effect for the offender of a child under the age of 18, is threatened with criminal sanction imprisonment under 7 years and not a repeat of a crime. Giving authority to the police as investigators for to diversify based on Article 7 paragraph (1) of Law no. 11 of 2012 on the Criminal Justice System of the Child. There are several advantages to be obtained if the diversion is done at the investigation stage by the police, that is: 1. Police are the only law enforcement agencies in the sub-system criminal justice that has network up to sub-district level so that lets have the network up to the very bottom. 2. The quantity of police apparatus is much higher than that of the apparatus other law enforcers even though not every police officer has commitment to handle child cases. 3. Diversies at the police level have a meaning to provide assurance to to be avoided by the criminal justice process. 4. Police position as the first law enforcement agency and directly intersect with the community.

## LITERATURE REVIEW

The criminal justice system is the whole process of completion children's case against the law, from the investigation stage to with the guidance stage after having a criminal. To establish more prospective legal provisions within put the maximum age limit of a child, there are opinions that very diverse, namely: 1. The age limit of children according to Article 1 number 2 of Law no. 4 Year 1979 about Child Welfare, mentioned that the child is someone who has

not 21 years old and never married. 2. According to Article 1 number 5 of Law no. 39 of 1999 on Human Rights mentions a child is any human being under the age of 18 and not married, including children who are still in the womb if things it is for its sake. 3. In Article 1 number 3 of Law no. 11 of 2012 on the Judicial System Child Crimes mentions children in conflict with the law are children who was 12 years old, but not yet 18 years of age suspected committing a crime. In Article 20 of Law no. 11 Year 2012 about The Criminal Justice System of the Child mentions in the event that a crime is committed by the child before the age of 18 and submitted to the court after the child exceeds the age limit of 18 years, but not yet reaching the age of 21 years, the child is still filed to the child's hearing. 4. In article 1 number 1 of Law no. 34 Year 2014 on Child Protection mentions a child is a person not yet 18 years of age, including children who are still in the womb. 5. Article 2 of the Regulation of the Supreme Court of the Republic of Indonesia No. 4 Year 2014 on Guidelines for the Implementation of Diversity in the Child Criminal Justice System Diversion is applied to a child who is 12 years old but not yet 18 years old or already 12 years old though never married but not yet 18 years old, suspected of committing a crime.

In Law no. 11 Year 2012 on Child Criminal Justice System has 3 principles namely the placement of children who undergo the judicial process can placed in the Institute for Special Education of Children (LPKA), restorative system justice and diversion systems. Diversies are in place for threatened children with imprisonment under 7 years and not a repetition criminal act. Diversi is applied to children who are 12 years old but is not yet 18 years old or has been 12 years old ever married but not yet 18 years old, who is suspected of committing a crime.<sup>27</sup> Children not yet 14 years of age can only be subject to action.<sup>28</sup> The 1945 Constitution considers that there should be special protection against the rights of the child. Article 28 B Paragraph (2) of the 1945 Constitution states that every child entitled to survival, growing and developing and entitled to protection from violence and discrimination. Child protection is all activities to ensure and protect children and their rights in order to live, grow, develop, and participate optimally in accordance with the dignity and human dignity, and protection from violence and discrimination. Special protection is a form of protection received by the child under certain circumstances to obtain assurance a sense of security against threats that endanger self and soul in growing flowers. Government, local government, and other state institutions shall be responsible and liable to provide special protection to the child. Special protection for children is given to children who dealing with the law. One of the protection of the detained child is with the distinction of a criminal penalty for a child at least ½ of the maximum criminal penalties against adults, while the imposition of capital punishment and imprisonment for life is replaced with a maximum imprisonment of 10 year.

Some of the punishment theories that developed in various countries, namely:

### **Absolute Theory**

The theory of retaliation says that the criminal is not aiming for practical, like fixing criminals. The crime itself contains elements to be imposed criminal. Criminal is absolute, because it is done a crime. It is not necessary to think about the benefits of imposing a criminal that. Every crime shall result in a criminal offense to the offender. Criminal is an absolute demand, not just something that needs to be dropped but becomes imperative, because the essence of a criminal is retaliation.

### **Relative Theory**

This theory seeks the basis of criminal law in orderly conduct society and consequently the purpose for prevention of crime. Criminal imprisonment is not only directed to cause suffering for perpetrators, but seeking punitive effects for the wider community. The purpose of This appeal is for crime not to recur in the future.

### **Combined Theory**

This theory is a combination of the theory of retaliation with the theory of purpose, so this theory based criminal on the principle of retaliation and defense principle public order. In theory this punishment is not intended for telling and not allowed to degrade human dignity.

### **Family Model Theory**

This Family Model is one form of completion used in the criminal justice system. In the Family model or also called kinship that is very prominent is the concept punishment which can be described in the equivalence of an atmosphere family, that is given a sanction, with the purpose the child has the ability to control himself but after the child is given sanctions, the child remains within the framework of family affection and he not regarded as an evil child and as a special human being or as a special group in relation to the family.

## **METHOD OF THE RESEARCH**

### **Research Approach**

This research uses empirical juridical approach that is research to the problem by looking at and observing the applicable legal norms associated with the facts that exist from the problems encountered within research on the application of the concept of diversion in the process of child investigation in Polres Langkat.

### **Type of Research**

This research may be qualified as a legal research descriptive analysis. Descriptive research is a research that seeks describes a phenomenon, events, events that occur today. Descriptive research focuses on actual problems as it was at the time of the study. Through research Descriptive, the researcher tries to describe events and events become the center of attention.

### **Techniques of Data Collection**

Observation and interview, which is a way of collecting data with conduct interviews, observations and systematic notes symptoms that are studied directly to the object of research where author directly to the research location.

### **Data Source**

Sources of data used to examine interviews and documents found by researchers in the field are:

- a. Primary data, that is interviews with perpetrators, victims, investigators, NGOs, and legal advisor. It also examines the documents about the case children ever handled by Polres

Sleman. The author interviews the subject research using interview techniques is not planned or not directed or unstructured or uncontrolled or uncontrolled die interviews are not based on a system or list of questions predefined. However, researchers will still prepare questions to be asked to the subject of research, but not too tied to strict rules to avoid running out question.

- b. Secondary Data, which is derived from legislation, books, legal works, relating to child crime regarding the system versioned in print and electronic form.

## **METHOD OF DATA ANALYSIS**

Collecting information through interviews and documents on the ground for become the source of research. b. Data reduction is the selection process, concentration of attention on simplification, rough data transformation arising from interviews and documents in the field during research. Destination held transcript of data (data transformation) to select which information is deemed appropriate with the problem being the center of field research. c. Deductive, by looking at the laws and regulations apply to review the rules on child protection for found the appropriate answer about how the process of applying the concept diversion in the juvenile justice system. d. The presentation of data is the activity of a collection of information in the form of narrative text, network graphs, tables and charts aimed at sharpen understanding research on selected information. But that will be most often used for the presentation of qualitative research data is text that is narrative. e. In the final stages are the conclusion or verification, which seek meaning of explanatory patterns, possible configurations, and causal paths. The conclusion is done carefully by verifying in the form of review on interviews and documents on the field validated data validation.

## **DISCUSSION**

From the results of observation and interviews, finally obtained data that there are some diversions given by the police Langkat, among them the case of motor vehicle theft, obscenity, molotof. In addition there are some data that is not diversified that is the case of theft, fights, harassment and others. Judging from the case that should be in the case that is not diversified bias diversified but the suspect experienced legal discrimination in the absence of a maximum mediation effort, not accompanied by lawyers, threatened and others.

**Table 1: Children's Data in the Protection and Rehabilitation of Tanjungpura**

NO	NAME	BORN	PARENTS		ADDRESS	CRIMINAL ACT
			FATHER	MOTHER		
<b>2016</b>						
1	DF	2008	TL	BL	Pematang Serai	Theft
2	CB	2009	BH	HH	Tapak Kuda	Harassment
3	DV	2008	CK	GH	Kuala Langkat	Street children
4	BA	2008	TU	KE	Karya Maju	Theft
5	KL	2006	RR	BS	Tapak Kuda	Theft
6	SM	2008	MN	DK	Kuala Langkat	Motor Vehicle Theft
7	CU	2007	KB	SS	Teluk Bakung	Fight
8	DL	2009	BL	TU	Pematang Serai	Motor Vehicle Theft (Diversion returned to parents)
9	AL	2008	ML	EL	Kwala Langkat	Motor Vehicle Theft (Diversion returned to parents)
10	TK	2008	CC	MN	Kwala Serapuh	Abuses (Diversion in the Pant)
11	PM	2009	BS	CK	Baja Kuning	Fight
12	DL	2008	XS	WI	Bubun	Fight
13	XK	2009	DW	MS	Kuala Langkat	Fight
14	TU	2008	AS	PO	Teluk Bakung	Motor Vehicle Theft
15	WE	2009	WQ	RT	Pematang Serai	Theft
16	OP	2008	NH	UY	Kwala Langkat	Theft
17	EB	2009	EG	LP	Kwala Serapuh	Theft (Diversion is returned to parents)
18	UJ	2007	PL	SY	Baja Kuning	Theft (Diversion is returned to parents)
19	IP	2007	DF	UM	Kwala Serapuh	Molotof (Diversion in the Pant)
20	KL	2007	IO	IK	Baja Kuning	Molotof (Diversion returned to parents)

## CONCLUSION

In the process of investigating children in Unit PPA Polres Langkat, there is a right children who have been fulfilled. Like, children who have special needs accompanied by an expert, the



return of the child to the parent does not use violence or coercion to seek information, respect all information, children are not differentiated treatment, minimum age and maximum age of children that is 12 years to 18 years, arrest and detention as an attempt last and short term, protection of his private secrets, the examination process in a special place, the presumption of innocence, the right to be notified demands, the right to remain silent, the right to present or examine cross-witnesses, parents are immediately notified of the arrest. However, there is a right child that has not been met that is, not all children are accompanied by legal counsel, with limited costs then the investigator can not bring in all the required experts, there is only 1 rule government that should have 5 government regulations to implement diversion. Diversion carried out to children who are threatened with imprisonment under 7 years and not a repeat of a crime. Child is a child who is 12 years old, but not yet 18 years old. At the Polres Langkat has no child investigator so that the duty is investigator general, but has received special training. From the 17 reports in the Unit PPA Polres Langkat there are 7 criminal acts of abuse, 2 criminal acts rape, 4 criminal acts of persecution, 3 criminal acts of beatings, 1 crime of beatings and persecution. Successful deliberations are successful due to the provision of compensation by the parent / guardian of the child to the victim that is on 1 criminal act of persecution and 1 criminal act of beatings. File deliberative misappropriation of delinquency and 1 the criminal act of the beating goes to the prosecutor. It should not only be the 4 cases above that are implemented in Unit Version PPA Polres Langkat because there are several other cases that qualify for deliberative deliberation are 2 cases of persecution and 1 case beatings.

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