



Article History	Received: 01-02-2024	Reviewed:03-02-2024	Accepted: 02-03-2024	Published: 01-06-2024
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IMPLEMENTATION OF DIVERSION TOWARDS CHILDREN WHO COMMIT CRIMINAL ACTS OF ABUSE IN THE JURISDICTION OF PEKANBARU CITY

Ilfan Afriandi Jahri¹, Eddy Asnawi², Rudi Pardede³

¹²³ Magister Ilmu Hukum Universitas Lancang Kuning Pekanbaru
Ilfan1oke@gmail.com

ABSTRACT

This research aims to analyze the application of diversion to children who commit criminal acts of abuse in the jurisdiction of Pekanbaru City and analyze the obstacles and efforts to overcome these obstacles. The type of research used is sociological legal research with a legal effectiveness approach. The data source used is primary data which is analyzed qualitatively. The results of the research show that the implementation of diversion against children who have committed criminal acts of abuse in the jurisdiction of Pekanbaru City has not been implemented well in 2021 to 2023, where there is still failure to diversion against children who have committed serious criminal acts of abuse. Some of the obstacles behind this failure include: First, legal factors, namely legal provisions that require an agreement between the perpetrator and the victim for diversion, whereas there is no agreement on compensation. Second, the factor of law enforcement officers, namely: the lack of involvement of the Pekanbaru City Social Service in the diversion process. Third, community factors, namely: The desire of the community that the perpetrator must be punished.

Keywords: Diversion, Children, Criminal Abuse

ABSTRAK

Penelitian ini bertujuan untuk menganalisis penerapan diversifikasi terhadap anak yang melakukan tindak pidana penganiayaan di wilayah hukum Kota Pekanbaru dan menganalisis hambatan serta upaya mengatasi hambatan tersebut. Jenis penelitian yang digunakan adalah penelitian hukum sosiologis dengan pendekatan efektivitas hukum. Sumber data yang digunakan adalah data primer yang dianalisis secara kualitatif. Hasil penelitian menunjukkan bahwa penerapan diversifikasi terhadap anak yang melakukan tindak pidana penganiayaan di wilayah hukum di Kota Pekanbaru belum terlaksana dengan baik pada tahun 2021 sampai 2023 dimana masih terjadinya kegagalan diversifikasi terhadap anak pelaku tindak pidana penganiayaan berat. Beberapa hambatan yang melatarbelakangi kegagalan tersebut antara lain karena: *Pertama*, Faktor hukum, yaitu ketentuan hukum yang mewajibkan kesepakatan antara pelaku dan pihak korban untuk diversifikasi, sedangkan tidak ada kesepakatan ganti rugi. *Kedua*, Faktor aparat penegak hukum, yaitu: kurang dilibatkannya pihak Dinas Sosial Kota Pekanbaru dalam proses diversifikasi. *Ketiga*, Faktor masyarakat, yaitu: Keinginan masyarakat bahwa pelaku harus dihukum.

Kata Kunci: Diversifikasi, Anak, Tindak Pidana Penganiayaan.

INTRODUCTION

The state provides protection to its people, especially children, as mandated by Article 28I paragraph (5) of the Republic of Indonesia Law, which states that: "Protection, advancement, enforcement and fulfillment of human rights are the responsibility of the state, especially the government." This guarantee is strengthened through the ratification of the international convention on the Rights of the Child, namely the ratification of the Convention on the Rights of the Child through Presidential Decree Number 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child 1989. "The substance of protection for children is regulated in Article 3 paragraph (2) of the Convention on the Rights of the Child 1989, which states that countries participating in the convention are obliged to strive to ensure that children receive the protection and care needed for their welfare, taking into account the rights and responsibilities for children and for this purpose, will take all steps that every child has the inherent right to life and the state will guarantee this to the maximum extent for the survival and development of children."¹

Referring to the UN Convention on the Rights of the Child, "A child means every human being under the age of 18 years, unless under the laws applicable to the child, adulthood is attained earlier. Therefore, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection defines a child as a person who is not yet eighteen years old, including a child who is still in the womb."²

Negative impacts have brought changes to children's behavior, namely behavioral deviations or unlawful acts/crimes committed by children, as well as acts - among others - caused by factors outside the child so that the children then face the law. Therefore, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System was born, which accommodates the needs of Children in Conflict with the Law (ABH) as perpetrators of criminal acts or Children in Conflict with the Law. As victims/witnesses in criminal acts. Theoretically, "the juvenile criminal justice system (The Juvenile Justice System) is a term used to mean that several law enforcement institutions within the scope of the court, including the police, public prosecutors and legal counsel, supervisory institutions, child detention centers, and child development facilities." One form of crime committed by children that meets the elements of a criminal act

¹ Fukue-jima Island et al., "福家悠介 1 · 岩崎朝生 2 · 笹塚 諒 3 · 山本佑治 4" 71, no. 1 (2021): 63-71.

² M. Nasir Djamil, *Anak Bukan untuk Dihukum*, (Jakarta: Sinar Grafika, 2013), hlm. 10.

is serious abuse, especially serious abuse committed by children against children. Abuse is a form of physical violence. "What is categorized as physical violence is slapping, kicking, hitting/punching, strangling, pushing, biting, banging, and threatening with sharp objects and so on."³

In the review of the concept of diversion, it is interpreted as a transfer of the settlement of cases of children suspected of committing certain crimes from the formal criminal process to a peaceful settlement between the suspect/defendant/perpetrator of the crime and the victim, the implementation of which is facilitated by the family and/or community, child social guidance, police, prosecutors, or judges. Therefore, the settlement of such children's cases is an alternative solution by prioritizing the Restorative Justice approach."⁴

Strengthening the provisions of the Restorative Justice approach in diversion is legally regulated in Article 5 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which states that: "The Juvenile Criminal Justice System must prioritize the Restorative Justice approach." "Restorative Justice is a primary approach, which currently, based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, must be carried out in cases of children in conflict with the law. This approach places more emphasis on conditions for creating justice and balance for perpetrators of criminal acts and their victims. The mechanism of procedures and criminal justice that focuses on punishment is changed to a process of dialogue and mediation to create an agreement on the settlement of criminal cases that is fairer and more balanced for victims and perpetrators."⁵

However, based on observations made by the author in the initial research, it was found that from 2021 to 2023 in its implementation in the jurisdiction of the Pekanbaru City Police, the fulfillment of diversion rights by the police against children who committed serious crimes against other children had not been fulfilled in 9 cases.

This research is important to do because both in the Indonesian constitution and Law Number 35 of 2014 concerning Amendments to Law

³ Purnama Rozak, "Kekerasan Terhadap Anak Dalam Rumah Tangga Perspektif Hukum Islam," *Sawwa* 9, no. 1 (2013): 45-70.

⁴ M Nasir Djamil, *Anak Bukan, Op. Cit*, hlm. 137.

⁵ Ulang Mangun Sosiawan, "PERSPEKTIF RESTORATIVE JUSTICE SEBAGAI WUJUD PERLINDUNGAN ANAK YANG BERHADAPAN DENGAN HUKUM (Perspective of Restorative Justice as a Children Protection Against The Law)," *Jurnal Penelitian Hukum De Jure* 16, no. 4 (2017): 425, <https://doi.org/10.30641/dejure.2016.v16.425-438>.

Number 23 of 2002 concerning Child Protection in general provide protection for children's rights. Then specifically the protection of children Law Number 11 of 2012 concerning the Child Criminal Justice System regarding the right to diversion has been regulated as special protection for children who commit crimes. Related to law enforcement officers as state organizations both in the Indonesian constitution and the two laws are also burdened with obligations for child protection.

This research seeks a solution/problem solving for the non-implementation of diversion for several children who commit serious abuse in Pekanbaru City so that in the future the intended diversion can be fully implemented, especially by the Pekanbaru City Police, as a form of problem solving. Several literatures that conduct studies on the implementation of diversion for child perpetrators of crimes and their problems have been carried out and written by several previous researchers which were then used as a literature review in this thesis research as the author describes as follows:

First, literature in the Indonesian Legislation Journal written by Diah Ratna Sari Hariyanto and Gde Made Swardhana with the title "Optimizing the Implementation of Diversion in the Juvenile Criminal Justice System Oriented to Restorative Justice in Denpasar City" In the journal it is stated that: "The research that has been conducted shows that the implementation of diversion in the jurisdiction of the Denpasar City Police is based on the desired filtering by Article 7 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which can only be carried out on juvenile crimes that are threatened with imprisonment of less than 7 years and are not recidivists. However, such filtering still means that the intended diversion cannot be fully implemented due to obstacles faced in the field.⁶

Second, literature from the Science Collaboration Journal written by Priska G. Purnama, Osgar S. Matompo and Ida Lestiwati entitled "Effectiveness of Diversion Use by the Central Sulawesi Regional Police in Resolving Child Cases According to Law Number 11 of 2012", where the author states that: "The settlement of cases with child perpetrators in the jurisdiction of the Central Sulawesi Regional Police has been attempted by the police to be maximized, especially for child perpetrators of theft and use of sharp weapons, but several obstacles cause this case to have to be resolved

⁶ Diah Ratna Sari Hariyanto and Gde Made Swardhana, "Optimalisasi Pelaksanaan Diversi Dalam Sistem Peradilan Pidana Anak Yang Berorientasi Pada Restorative Justice Di Kota Denpasar," *Jurnal Legislasi Indonesia* 18, no. 3 (2021): 394, <https://doi.org/10.54629/jli.v18i3.787>.

penally in the formal criminal justice system. The obstacles faced by the police are the difficulty of bringing thinking into the same perception between children as perpetrators and victims, Human Resources and the lack of public understanding regarding Diversion. Several solutions to overcome these obstacles can be done and will be applied to the resolution of diversion cases in the future."⁷

RESEARCH METHODS

This research is descriptive with a sociological/empirical type of research, namely: "A legal research method that functions to be able to see the law in a real sense and examine how the law works in a community environment." Data was taken primarily by carrying out several research steps, namely conducting direct observations, interviews with several informants related to the research object, and supplemented with secondary data. Primary data was obtained from: Head of the Criminal Investigation Unit of the Pekanbaru City Police; Head of the Pekanbaru Correctional Center; Head of the Pekanbaru City Social Service; Head of the Pekanbaru City Women's Empowerment, Child Protection and Community Empowerment Service; Children who are perpetrators of serious abuse in the jurisdiction of the Pekanbaru City Police who are not given Diversion rights from 2021 to 2023; Children who are victims of serious abuse by minors in the jurisdiction of the Pekanbaru City Police from 2021 to 2023; Parents of children who are victims of serious abuse by minors in the jurisdiction of the Pekanbaru City Police Department from 2021 to 2023. The approach is a legislative approach and a case approach. Data is analyzed qualitatively. Meanwhile, conclusions are drawn inductively. The Pekanbaru City Police Department was used as a research location for several reasons, namely: First, in the last 3 (three) years, namely 2021 to 2023, there were 9 (seven) cases of serious abuse committed by children against other children who had not been given the right to diversion even though the act was punishable by imprisonment of less than 7 (seven) years and was not a repetition; Second, Article 7 paragraph (1) and paragraph (2) of Law Number 11 of 2012 concerning the Child Criminal Justice System have not been implemented properly against children who commit serious

⁷ P G Purnama, O S Matompo, and ..., "Efektifitas Penggunaan Diversi Oleh Kepolisian Daerah Sulawesi Tengah Dalam Penyelesaian Kasus Anak Menurut Undang-Undang ...," *Jurnal Kolaboratif ...*, no. 11 (2019): 1976-86, <http://jurnal.unismuhpalu.ac.id/index.php/jom/article/view/723>.

abuse committed against other children so that protection for children as desired by law has not been achieved properly.

RESULTS AND DISCUSSION

Implementation of Diversion for Children Who Commit Crimes of Abuse in the Jurisdiction of Pekanbaru City

Based on the results of the author's interview with the Head of the Criminal Investigation Unit of the Pekanbaru City Police, it is known that the purpose of implementing diversion is. According to him, "divestion has a goal that is felt to be more suitable for children on the grounds that when children commit delinquency, crime or criminal acts, it is not immediately necessary to put the child in prison as a form of applicable criminal sanction, but how the concept of giving sanctions is felt to make children change towards goodness, provide a deterrent effect without suppressing the child's psyche and psychology in order to realize the continuity of protection for children and prevent deviations that have negative implications that are not desired."⁸

Balanced justice between the interests of children as perpetrators and children as victims of criminal acts is prioritized in diversion. The balanced justice approach is obtained based on the results of deliberations between child perpetrators and child victims of criminal acts involving their parents/guardians. This is as stated in Article 8 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which states that: "diversion is carried out through deliberations involving children and their parents/guardians, victims and/or parents/guardians, Community Guidance Officers, and Professional Social Workers based on the Restorative Justice approach."

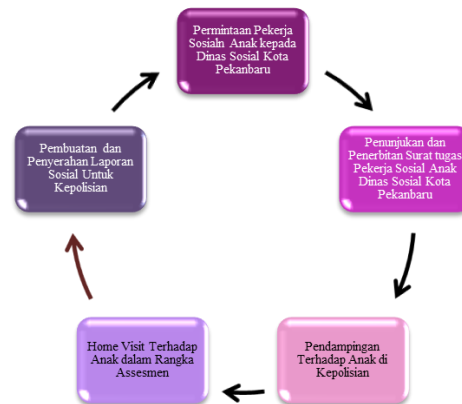
Based on observations made by the author, it is known that Diversion at the police level is not only about the police themselves as the implementers but also involves the Pekanbaru City Correctional Agency; Pekanbaru City Social Service; UPT PPA, Women's Empowerment Service, Child Protection and Community Empowerment of Pekanbaru City and the community.

Based on the results of the author's interview with the Head of the Pekanbaru City Social Service, in this case represented by the Head of the Sub-Coordination for Rehabilitation and Child Protection of the Pekanbaru City

⁸ Hasil Wawancara Penulis dengan Bapak Kompol Bery Juana Putra, S.I.K., MH, Selaku Kepala Satuan Reserse Kriminal Kepolisian Resor Kota Pekanbaru, Pada Hari Senin, Tanggal 18 Desember 2023, Pukul 11.15. WIB, di Markas Kepolisian Resor Kota Pekanbaru.

Social Service, it is known that the procedure for making the Social Report in question includes several stages as the author presents in the following image:

Figure 1. Procedure for making a Social Report in the Diversion Process by a Child Social Worker at the Pekanbaru City Social Service



Source: processed primary data, 2024

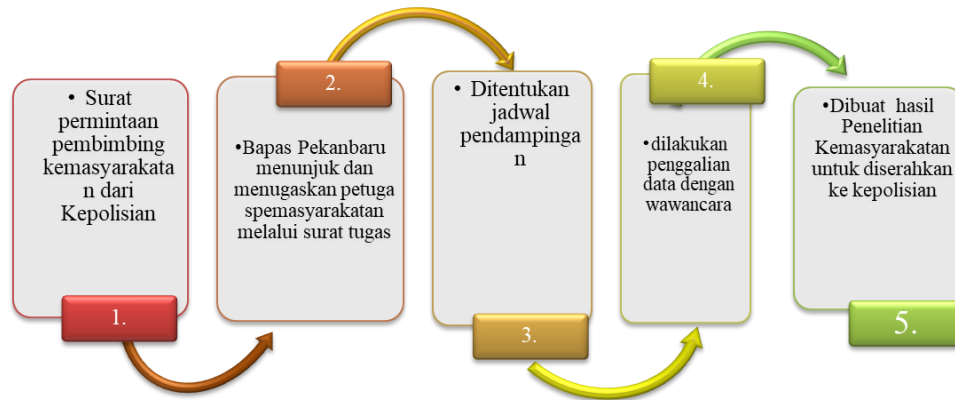
Based on the results of the author's interview with the Head of the Pekanbaru City Social Service, in this case represented by the Head of the Sub-Coordination for Rehabilitation and Child Protection of the Pekanbaru City Social Service, the above Figure of the Procedure for Making a Social Report in the Diversion Process by a Child Social Worker of the Pekanbaru City Social Service can be explained as follows: "First, the police ask the Pekanbaru City Social Service to assign a Child Social Worker to provide assistance to children as victims or perpetrators of crimes; Second, the Pekanbaru City Social Service appoints a Child Social Worker who will be assigned and issues a Task Order; Third, the Child Social Worker provides assistance at the relevant police office; Fourth, the Child Social Worker conducts a home visit to the child as a victim or perpetrator of the crime in order to conduct an assessment; Fifth, from the results of the assessment, the Child Social Worker makes a Social Report (Lapsos) which is one of the requirements so that the case can be P-21 at the Police level if there is a failure of diversion at the police level.⁹

Based on the results of the author's interview with the Head of the Pekanbaru Correctional Center, in this case represented by the Head of the Child Client Guidance Sub-Section of the Pekanbaru Class II Correctional

⁹ Hasil Wawancara Penulis dengan Kepala Dinas Sosial Kota Pekanbaru, Dalam Hal Ini Diwakili Oleh Ibu Fajrina, S.IP Selaku Kepala Sub Koordinasi Rehabilitasi dan Perlindungan Anak Dinas Sosial Kota Pekanbaru, Hari Rabu, Tanggal 6 Desember 2023, Pukul 14.00. WIB, di Kantor Dinas Sosial Kota Pekanbaru.

Center, the procedure for compiling Community Research Results by the Pekanbaru Class II Correctional Center is known, as the author presents in the form of the figure below:

Figure 2. Procedure for Compiling Community Research Results By Class II Pekanbaru Correctional Center in



Diversion

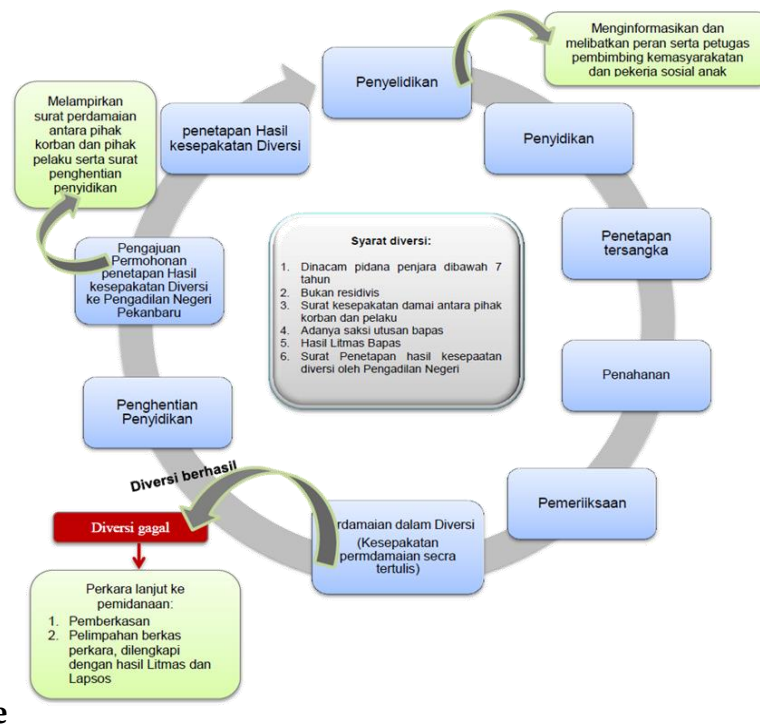
Source: processed primary data, 2024

Based on the results of the author's interview with the Head of the Pekanbaru Correctional Center, in this case represented by the Head of the Child Client Guidance Sub-Section of the Class II Pekanbaru Correctional Center, the Figure of the Procedure for Compiling the Results of Community Research by the Class II Pekanbaru Correctional Center in Diversion, above he explained as follows: "*First*, the police ask the community guidance officer to write to the Class II Pekanbaru Correctional Center; *Second*, the Class II Pekanbaru Correctional Center appoints and assigns a correctional officer through a letter of assignment related to the implementation of diversion for child perpetrators of criminal acts, both at the level of investigation, inquiry, supervision and reporting; *Third*, the Community Guidance Officer of the Class II Pekanbaru Correctional Center determines the schedule of assistance with a mutual agreement between the police and the Child (perpetrator) and the child's parents (perpetrator); *Fourth*, the Community Guidance Officer of the Class II Pekanbaru Correctional Center conducts data collection through interviews; *Fifth*, the Community Guidance Officer of the Class II Pekanbaru Correctional Center makes a report in the form of the results of community

research and is sent as soon as possible to the police as additional or supporting data."¹⁰

Based on the results of the author's interview with the Head of the Criminal Investigation Unit of the Pekanbaru City Police, it is known that the diversion procedure at the police level in the Pekanbaru city area is within the scope of the integrated juvenile criminal justice system. The author presents the procedure in the form of a figure below:

Figure 3. Procedure for Implementing Diversion for Child Criminal Offenders at the Police Level in the Jurisdiction of the Pekanbaru City Resort



Source: processed primary data, 2024

Based on the results of the author's interview with the Head of the Criminal Investigation Unit of the Pekanbaru City Police, the Figure of the Implementation Procedure for Diversion for Child Criminal Offenders at the

¹⁰ Hasil Wawancara Penulis dengan Kepala Balai Pemasarakatan Pekanbaru, Dalam Hal Ini Diwakili Oleh Ibu Marlina, S.Sos, Selaku Kepala Sub Seksi Bimbingan Klien Anak Balai Pemasarakatan Kelas II Pekanbaru, Pada Hari Selasa, Tanggal 2 Januari 2024, Pukul 14.20. WIB, di Kantor Balai Pemasarakatan Kelas II Pekanbaru.

Police Level in the Jurisdiction of the Pekanbaru City Police, above, he explained as follows:¹¹

1. Investigation
2. Investigation
3. Determination of suspects
4. Detention
5. Examination
6. Peace in Diversion, with the following provisions:
 - a. Diversion requirements: Threatened with imprisonment of less than 7 years; Not a recidivist; Peace agreement letter between the victim and the perpetrator; The presence of a witness sent by the Pekanbaru Class II Correctional Agency; Results of Community Research by the Pekanbaru Class II Correctional Agency; Letter of determination of diversion results from the Pekanbaru District Court.
 - b. Deliberation for consensus in diversion, with the following provisions: Deliberation for consensus to produce a diversion agreement between the perpetrator and the victim is not required for Criminal Acts in the form of violations, Minor Criminal Acts, Criminal Acts without victims; Carried out between the victim and the victim's family/parents with the perpetrator and the perpetrator's family/parents; Accompanied by a community guidance officer from the Pekanbaru Class II Correctional Agency and a Child Social Worker from the Pekanbaru City Social Service; Compensation for the victim's losses, especially medical expenses

At this stage of consensus, two things are likely to happen, namely:

- a. Diversion is successful. If the diversion is successful, a written peace agreement is made and signed by the victim and the perpetrator as well as their parents/family.
- b. Diversion fails. Diversion fails if there is no peace agreement between the victim and the perpetrator where this diversion agreement must exist as stipulated in Article 9 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System,

¹¹ Hasil Wawancara Penulis dengan Bapak Kompol Bery Juana Putra, S.I.K., MH, Selaku Kepala Satuan Reserse Kriminal Kepolisian Resor Kota Pekanbaru, Pada Hari Senin, Tanggal 18 Desember 2023, Pukul 11.15. WIB, di Markas Kepolisian Resor Kota Pekanbaru.

- c. If the diversion fails, the procedure continues to the criminalization stage as follows: Filing; Transfer of case files to the Pekanbaru District Attorney's Office, complete with the results of Community Research and Social Reports; and Transfer of the Suspect to the Pekanbaru District Attorney's Office
 7. Termination of Investigation, carried out by the police if the diversion is successful, then a request for determination of the results of the Diversion agreement is submitted to the Pekanbaru District Court
 8. Submission of a request for determination of the results of the Diversion agreement to the Pekanbaru District Court, accompanied by: A letter of peace between the victim and the perpetrator; A letter of termination of investigation from the Pekanbaru City Police; and the Results of the Community Research of the Class II Pekanbaru Correctional Agency
 9. Determination of the results of the diversion agreement by the Pekanbaru District Court with the following provisions: The letter of determination of the results of the diversion agreement is given to the Pekanbaru City Police; A copy of the letter of determination of the results of the diversion agreement is given to the Class II Pekanbaru Correctional Agency

Collective justice according to Aristotle, states that: "If an action occurs that is considered unfair (unfair prejudice) in social relations, then the law plays a very important role in reversing the situation, so that the justice that has been lost (the lost justice) can be found again by the party that has been unfairly treated (wronged, exploited)." The abstract form of collective justice as such is contained in Article 7 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System as referred to above, which states that: "At the level of investigation, prosecution and examination of Juvenile cases in the district court, Diversion must be attempted."

In granting diversion to children who have committed criminal acts, the conditions as stipulated in Article 7 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System apply, which states that: Diversion as referred to in paragraph (1) is implemented in cases where the crime is committed:

1. Threatened with imprisonment of less than 7 (seven) years; and
2. Not a repeat of the crime

If referring to the criminal threat for children who commit serious child abuse, then diversion can be given to children who commit

the crime as we can see from Article 351 paragraph (2) Jo. Article 354 paragraph (1) of the Criminal Code Jo. Article 80 paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection Jo. Article 81 paragraph (2) of Law Number 11 of 2012 concerning the Child Criminal Justice System, with the following description of the Article:

1. Article 351 paragraph (2) of the Criminal Code which states that: "If the act results in serious injury, the guilty party shall be subject to a maximum imprisonment of five years."
2. Article 354 paragraph (1) of the Criminal Code which states that: "Anyone who intentionally seriously injures another person shall be subject to a maximum imprisonment of 8 years for committing serious assault."
3. Article 80 paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which states that: "In the event that a child as referred to in paragraph (1) is seriously injured, the perpetrator shall be subject to a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah)."
4. Article 81 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which states that: "The maximum prison sentence that can be imposed on a child is 1/2 (one half) of the maximum prison sentence for adults."

The condition of serious injury as the basis for determining that the criminal act of abuse committed is serious abuse, based on the results of the author's interview with the Head of the Criminal Investigation Unit of the Pekanbaru City Police, is identical to the conditions of the victim as follows: "Falling ill or suffering from injuries that are not medically indicated will not heal at all or have the potential to be fatal; Not being able to continue to carry out job duties or work in the context of a livelihood; Losing one of the five senses; Experiencing serious disability; Suffering from paralysis; Experiencing impaired thinking for more than four weeks; and Miscarriage or death of a woman's pregnancy."¹²

However, the provisions of Article 7 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System alone are not

¹² Hasil Wawancara Penulis dengan Bapak Kompol Bery Juana Putra, S.I.K., MH, Selaku Kepala Satuan Reserse Kriminal Kepolisian Resor Kota Pekanbaru, Pada Hari Senin, Tanggal 18 Desember 2023, Pukul 11.15. WIB, di Markas Kepolisian Resor Kota Pekanbaru.

sufficient because judicially in the same regulation there are also other requirements which are regulated in Article 9 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which states that: "The Diversion Agreement must obtain the approval of the victim and/or the family of the Child Victim and the willingness of the Child and his/her family, except for: Criminal acts in the form of violations; Minor criminal acts; Criminal acts without victims; or The value of the victim's loss is not more than the value of the local provincial minimum wage."

The existence of this regulation in its implementation is strengthened by the results of the author's interview with the Head of the Criminal Investigation Unit of the Pekanbaru City Police. In the interview, he stated that: "Basically, law enforcement is not only about law enforcement officers, but all the interrelationships between law enforcement officers, laws/regulations, society and the culture that develops in society itself. One form of the attachment of law enforcement officers to the law/regulations in the series of law enforcement is the provision in Article 9 paragraph (2) of Law Number 11 of 2012 concerning the Child Criminal Justice System where the diversion agreement must be with the approval of the victim/parent/guardian/family of the victim.

The diversion agreement in the form of peace is the main obstacle to the implementation of diversion, especially for children who commit minor assault crimes at the Pekanbaru City Police Resort. Such legal conditions are supported by the community, namely the victim/parent/guardian/family of the victim who do not agree to diversion and the legal culture factor that has developed in society where by imprisoning the perpetrator, according to the victim, this has provided justice for the victim so that there is satisfaction for them without considering the condition of the perpetrator who is still a child with all the negative effects that he will receive later in serving his sentence in prison. That is entirely the right of the victim/parent/guardian/family of the victim, which clearly the police have facilitated, mediated and made efforts so that the diversion is successful."¹³

The influence of the success of law enforcement as explained by the Head of the Criminal Investigation Unit of the Pekanbaru City Police Resort above is in line with the Theory of Legal Restraint, where in law enforcement, law enforcement officers are likely to face the following things: "To what

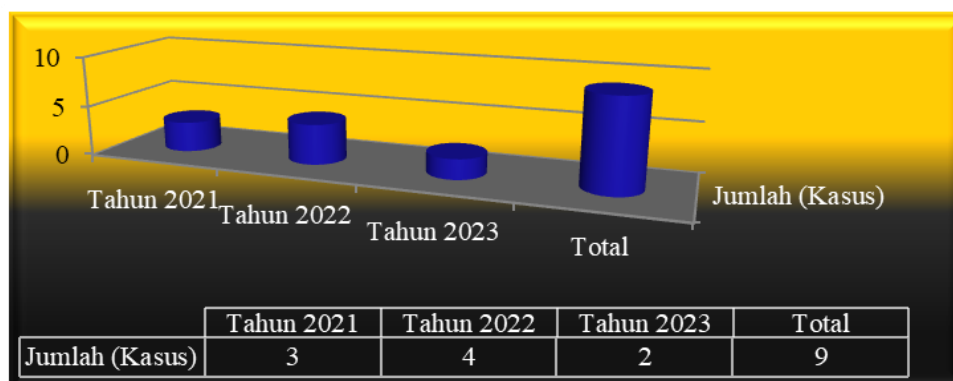
¹³ Hasil Wawancara Penulis dengan Bapak Kompol Bery Juana Putra, S.I.K., MH, Selaku Kepala Satuan Reserse Kriminal Kepolisian Resor Kota Pekanbaru, Pada Hari Senin, Tanggal 18 Desember 2023, Pukul 11.15. WIB, di Markas Kepolisian Resor Kota Pekanbaru.

extent are officers bound by existing regulations; To what extent are officers willing to provide policies; What kind of example should officers provide to the community; and To what extent is the degree of synchronization of the assignments given¹⁴.

Satjipto Raharjo provides an understanding of the concept of legal protection, that: "legal protection is an action to provide protection to parties who are harmed and whose basic rights are violated and this protection is given to the community so that the community can enjoy their rights which have been legally granted by law."¹⁵ Therefore, in the realm of diversion, this protection should be given by law enforcers in law enforcement institutions as state organs that carry out government in the field of law enforcement as stated in Article 7 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, namely the police, prosecutors and courts.

However, as mentioned in the previous paragraph, the fact is that in the Pekanbaru City Police Resort area, the right to diversion has not been fully fulfilled for child perpetrators of serious abuse committed against children, especially in 2021 to 2022. So it can be said that the legal protection and justice in question have not been fulfilled as the author presents in the graph below:

Figure 4. Number of Cases of Serious Child Abuse Against Children in the Jurisdiction of the Pekanbaru City Police Department Whose Diversion Rights Have Not Been Fulfilled in 2021 to 2023



Source: processed primary data, 2024

Based on the results of the author's interview with the Head of the Criminal Investigation Unit of the Pekanbaru City Police, the Graph of the

¹⁴ Zainuddin Ali, *Filsafat Hukum*, (Jakarta: Sinar Grafika., 2018), hlm. 95.

¹⁵ Satjipto Rahardjo, *Permasalahan Hukum di Indonesia*, (Bandung: Alummni, 1983), hlm. 121.

Number of Cases of Serious Child Abuse Against Children in the Jurisdiction of the Pekanbaru City Police for which Diversion Rights Have Not Been Fulfilled from 2021 to 2023, explained by him that: "In 2021 there were 3 cases; In 2022 there were 4 cases; In 2023 there were 2 cases; The total number of cases from 2-21 to 2023 was 9 cases"¹⁶

The author describes several cases of diversion failure as follows:

First, Case of serious abuse in 2021 where the perpetrator and victim were both minors, namely SA as the perpetrator and AN as the victim. In mid-2021 in the jurisdiction of the Pekanbaru City Police, precisely in Rumbai District, there was a fight between children because they were teasing each other. The fight ended in abuse that caused serious injuries to the victim. This statement is supported by the results of the author's interview with the Head of the Criminal Investigation Unit of the Pekanbaru City Police. In his interview with the author, he stated that: "One case of serious abuse with the perpetrator and victim who were both minors that occurred in Rumbai District, Pekanbaru City. Initially SA (12 years old) and AN (11 years old) with their other friends were playing in the field, but in their jokes suddenly without them realizing it they teased each other until SA (12 years old) was angry. SA (12 years old) then beat AN (11 years old) until AN (11 years old) suffered a broken leg and had to be rushed to the hospital to undergo surgery to install a pin. Their friends who were at the scene of the crime had tried to break up the two, but because both of them were bigger than their friends, their friends were unable to break up the assault. Diversion was attempted at the Pekanbaru City Police Resort which handled the case, but it was unsuccessful until finally the case rolled in the Pekanbaru District Court and SA (12 years old) was sentenced to prison and a fine."¹⁷

The statement regarding the parents' disagreement with diversion was reinforced by the results of the author's interview with the child victim of a serious assault by a minor in the jurisdiction of the Pekanbaru City Police in 2021. In the interview, the victim stated that: "His leg was broken so he had to have surgery and a pin installed, at that time he was unable to go to school for quite a long time because he also had to use a cane, it was difficult to walk.

¹⁶ Hasil Wawancara Penulis dengan Bapak Kompol Bery Juana Putra, S.I.K., MH, Selaku Kepala Satuan Reserse Kriminal Kepolisian Resor Kota Pekanbaru, Pada Hari Senin, Tanggal 18 Desember 2023, Pukul 11.15. WIB, di Markas Kepolisian Resor Kota Pekanbaru.

¹⁷ Hasil Wawancara Penulis dengan Bapak Kompol Bery Juana Putra, S.I.K., MH, Selaku Kepala Satuan Reserse Kriminal Kepolisian Resor Kota Pekanbaru, Pada Hari Senin, Tanggal 18 Desember 2023, Pukul 11.15. WIB, di Markas Kepolisian Resor Kota Pekanbaru.

Therefore, he did not want to make peace with the perpetrator SA (12 years old). SA (12 years old) was imprisoned but is now free again because it has been a long time."¹⁸

Second, A case of serious abuse in 2023 where the perpetrator and victim were both minors, namely FZ as the perpetrator and FE as the victim. Regarding the failure of the diversion, the author confirmed by interviewing the victim's parents. In his interview with the author, the person concerned stated that: "He, as the parent of the victim FE (10 years old), did not accept his child being beaten by the perpetrator FZ (15 years old). The medical expenses and compensation he wanted could not be met by the parents of the perpetrator FZ (15 years old). According to the parents of the perpetrator FZ (15 years old), the compensation they wanted was too large and the parents of the perpetrator FZ (15 years old) did not have that much money. Therefore, he did not want to make a peace agreement with the perpetrator FZ (15 years old) and his parents and did not agree to the diversion. His biological child who was the victim of abuse in 2023 had to be rushed to the hospital and with broken arms and legs and was unconscious for several days in the hospital. He wanted the perpetrator FZ (15 years old) to be imprisoned. His wish came true and the perpetrator FZ (15 years old) is currently still serving his prison sentence."¹⁹

The author also conducted an interview with the child of the perpetrator of a serious assault crime in the jurisdiction of the Pekanbaru City Police who was not given the right to Diversion in 2023. In his interview with the author, the person concerned stated that: "He admitted that he was deterred and would not repeat his actions again because as a result of assaulting Victim FE (10 years old) until his legs and arms were broken and he was unconscious for several days, he was once imprisoned. At that time the police had tried to reconcile them, but Victim FE (10 years old) and his parents did not want to reconcile and wanted him to be imprisoned. The parents of Victim FE (10 years old) asked for compensation and very large medical

¹⁸ Hasil wawancara Penulis dengan AN Selaku Anak Korban Tindak Pidana Penganiayaan Berat Oleh Anak di Bawah Umur Dalam Wilayah Hukum Kepolisian Resor Kota Pekanbaru Tahun 2021, Wawancara Dilaksanakan Pada Hari Rabu tanggal 10 Januari 2023, Pukul 10.20. WIB, di Rumah yang Bersangkutan.

¹⁹ Hasil wawancara Penulis dengan AH Selaku Orang Tua Dari Anak Korban Tindak Pidana Penganiayaan Berat Oleh Anak di Bawah Umur Dalam Wilayah Hukum Kepolisian Resor Kota Pekanbaru Tahun 2023, Wawancara Dilaksanakan. Wawancara Dilaksanakan Pada Hari Rabu tanggal 10 Januari 2023, Pukul 14.40. WIB, di Rumah yang Bersangkutan.

expenses at that time which his parents could not afford considering that his parents were only odd-job workers."²⁰

Related to the perpetrator's punishment based on the verdict of the Pekanbaru District Court, the author conducted an interview with the Head of the Pekanbaru Correctional Center, in this case represented by the Head of the Child Client Guidance Sub-Section of the Pekanbaru Class II Correctional Center. In the interview, he stated that: "the perpetrator FZ (15 years old) had been a client and a Correctional Resident at the Pekanbaru Class II Correctional Center based on the verdict of the Pekanbaru District Court. At that time, the Pekanbaru City Police Resort attempted diversion witnessed by them, but the diversion failed because both the Victim FE (10 years old) and his parents did not want to reconcile where the compensation and medical expenses requested by the parents of the Victim FE (10 years old) were not able to be afforded by the parents of the Victim IP (14 years old). Finally, they wanted the perpetrator FZ (15 years old) to be imprisoned."²¹

The failure of diversion at the police level for children who commit serious abuse with children as victims does not only occur in the jurisdiction of the Pekanbaru City Police, but also in Banda Aceh City. The author found out based on research conducted by the author by means of document/literature studies sourced from a journal, that: "In Aceh Besar City, the failure of diversion occurred at the police level for children who committed serious abuse with other children as victims. The case was raised to the Banda Aceh District Court and diversion was successfully implemented at this general judicial institution level. Basically, the judge can make efforts in the form of guidance for children who commit serious abuse. So the judge immediately made diversion efforts to be returned to the parents, where the child is 17 years old and can be held accountable and can even have a deterrent effect with guidance."²²

²⁰ Hasil wawancara Penulis dengan FZ Selaku Anak Pelaku Tindak Pidana Penganiayaan Berat di Wilayah Hukum Kepolisian Resor Kota Pekanbaru yang Tidak Diberikan Hak Diversi Tahun 2023, Wawancara Dilaksanakan Pada Hari Selasa, Tanggal 2 Januari 2024, Pukul 15.10. WIB, di Kantor Balai Pemasarakatan Kelas II Pekanbaru.

²¹ Hasil Wawancara Penulis dengan Kepala Balai Pemasarakatan Pekanbaru, Dalam Hal Ini Diwakili Oleh Ibu Marlina, S.Sos, Selaku Kepala Sub Seksi Bimbingan Klien Anak Balai Pemasarakatan Kelas II Pekanbaru, Pada Hari Selasa, Tanggal 2 Januari 2024, Pukul 14.20. WIB, di Kantor Balai Pemasarakatan Kelas II Pekanbaru.

²² Elly Septiani dan Nurhafifah, "Perlindungan Hukum Terhadap Anak Korban Penganiayaan Berat yang Dilakukan Oleh Anak (Suatu Penelitian di Wilayah Hukum Pengadilan Negeri Banda Aceh)", *Syi'ah Kuala Law Journal*, Vol. 4 No. 1 April 2020, hlm. 100.

Obstacles and Efforts to Overcome Them in the Implementation of Diversion for Children Who Commit Criminal Acts of Abuse in the Jurisdiction of Pekanbaru City

Based on the results of the author's interview with the Head of the Criminal Investigation Unit of the Pekanbaru City Police, it is known that the obstacles and efforts to overcome them in the implementation of Diversion for children who commit crimes of abuse in the jurisdiction of Pekanbaru City are as follows: *First*, Legal factors, namely the provisions in Article 9 paragraph (2) of Law Number 11 of 2012 concerning the Child Criminal Justice System, which requires an agreement between the perpetrator and the victim or their family for diversion, while on the other hand the victim wants the legal case to continue because one of the compensation agreements has not been reached. Efforts to overcome this should be for law enforcement officers to work harder so that a consensus between the two parties is achieved so that all forms of legal processes undergone by child perpetrators can be stopped by means of diversion. *Second*, Community factors, namely the strong desire of the community that the perpetrator must be punished regardless of his status as a child. Efforts to overcome this should be in the process of community diversion, especially the victim's family must be educated that the community must sympathize with the growth and development of children who should not come into contact with the law so that it would be better to resolve it amicably. *Third*, the cultural factor that develops in society, namely the legal culture of society that tends to be satisfied seeing perpetrators being prosecuted. Efforts to overcome this should be carried out by socializing the law to the community about the importance of diversion for child perpetrators of criminal acts so that the community can play an active role in realizing legal cases for child perpetrators that do not have to be resolved in court to achieve justice but are resolved amicably. ¹²³

Based on the results of the author's interview with one of the children who committed a serious assault in the jurisdiction of the Pekanbaru City Police who was not given the right to Diversion from 2021 to 2023, it is known that the obstacles and efforts to overcome them in implementing Diversion for children who commit assault in the jurisdiction of Pekanbaru City come from community factors, namely, "the victim's family's sense of revenge so that they want the perpetrator to be imprisoned. Efforts to overcome this should be for

²³ Hasil Wawancara Penulis dengan Bapak Kompol Bery Juana Putra, S.I.K., MH, Selaku Kepala Satuan Reserse Kriminal Kepolisian Resor Kota Pekanbaru, Pada Hari Senin, Tanggal 18 Desember 2023, Pukul 11.15. WIB, di Markas Kepolisian Resor Kota Pekanbaru.

the victim's family to be moved to forgive him on the condition of peace that does not burden him.¹²⁴

Furthermore, based on the results of the author's interview with the Head of the Women's Empowerment, Child Protection and Community Empowerment Service of Pekanbaru City, in this case represented by the Counselor of the Technical Implementation Unit for Women and Children's Protection of the Women's Empowerment, Child Protection and Community Empowerment Service of Pekanbaru City, it is known that the obstacles and efforts to overcome them in the implementation of Diversion for children who commit crimes of abuse in the jurisdiction of Pekanbaru City are as follows: "*First*, the legal factor, namely Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which requires a consensus between the perpetrator and the victim and their family so that diversion is fulfilled, where usually the victim or the victim's family wants to make peace and agree to diversion on the condition that there must be compensation for medical reasons which if not fulfilled by the child perpetrator or the child perpetrator's family, the legal process will continue for the sake of justice for the victim. Efforts to overcome this should be from the police or the relevant local government to provide an understanding to the community about the importance of resolving legal cases amicably. *Second*, the law enforcement factor, namely considering the role of the UPT PPA of the Pekanbaru City Women's Empowerment, Child Protection and Community Empowerment Service as a counselor for children, the police are often late in informing the UPT PPA of the Pekanbaru City Women's Empowerment, Child Protection and Community Empowerment Service that there are children involved in the law so that when the information is given, there are already other institutions handling it together with the police. The effort to overcome this is that the police should improve coordination with the UPT PPA of the Pekanbaru City Women's Empowerment, Child Protection and Community Empowerment Service. *Third*, the community factor, namely the conservative justice mindset so that the community still wants the legal process to run in order to achieve justice for the victim and does not look at the perpetrator who is still a child. The effort to overcome this is that the victim's family should be given education that resolving cases before the law

²⁴ Hasil wawancara Penulis dengan SA Selaku Anak Pelaku Tindak Pidana Penganiayaan Berat di Wilayah Hukum Kepolisian Resor Kota Pekanbaru yang Tidak Diberikan Hak Diversi Tahun 2021, Wawancara Dilaksanakan Pada Hari Senin, tanggal 8 Januari 2023, Pukul 14.20. WIB, di Rumah yang Bersangkutan.

for child perpetrators is not good for their growth and development, so the problem should be resolved amicably.²⁵.

CONCLUSION

1. The concept of implementing diversion for children who commit crimes of abuse in the jurisdiction of Pekanbaru City has not been implemented properly, as evidenced by the failure of diversion from 2021 to 2023 due to the mandatory provisions for diversion approval from children as victims and their parents in Article 9 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System
2. Obstacles and efforts to overcome them are: First, Legal factors, namely legal provisions that require an agreement between the perpetrator and the victim for diversion, while there is no agreement on compensation, efforts to overcome this should be for law enforcement officers to provide an understanding of the importance of peace. Second, Law enforcement factors, namely: the lack of involvement of the Pekanbaru City Social Service in the diversion process and the police are often late in informing the UPT PPA of the Pekanbaru City Women's Empowerment, Child Protection and Community Empowerment Service, efforts to overcome this should be for the local police to improve coordination and cooperation with these agencies. Third, Community factors, namely: The desire of the community that the perpetrator must be punished, efforts to overcome this should be for the victim's family to be educated; The conservative justice mindset so that society assumes that criminalization can achieve justice for victims, efforts to overcome this should be to educate the victim's family that resolving litigation cases for children is not good for their growth and development; The victim's family's sense of revenge so that they want the perpetrator to be imprisoned, efforts to overcome this should be to forgive the victim's family with the condition of peace that does not burden the perpetrator; society tends to be satisfied seeing the perpetrator being punished. Efforts to overcome this should be to provide legal socialization regarding the importance of diversion for children

²⁵ Hasil Wawancara Penulis dengan Kepala Dinas Pemberdayaan Perempuan Perlindungan Anak dan Pemberdayaan Masyarakat Kota Pekanbaru, Dalam Hal Ini Diwakili Oleh Ibu Rizqah Zikrillah Aulia, SH, Selaku Konselor Unit Pelaksana Teknis Perlindungan Perempuan dan Anak Dinas Pemberdayaan Perempuan Perlindungan Anak dan Pemberdayaan Masyarakat Kota Pekanbaru, Pada Hari Rabu, 3 Januari 2023, Pukul 11.00, WIB di Kantor Unit Pelaksana Teknis Perlindungan Perempuan dan Anak.

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