

## CRIMINAL JUSTICE SYSTEM MODEL TO PROTECT RIGHTS OF CHILDREN IN CONFLICT WITH LAW

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### ABSTRACT

Children who have violated the law is influenced by several other factors beyond the child such as social, educational and playmates. To make the protection for children from the influence of the formal process of the criminal justice system, then the thought of issuing a child who committed the crime of the criminal justice process. Based on this thought, it gives birth to the concept of diversion. This study aims to find the factors that encourage delinquency or crime so that children in conflict with the law in the Border Region of Central Java; Furthermore, this study also aimed to assess the concepts or models of diversion in the settlement of cases of children in conflict with the law and also to find a concept or model that is appropriate diversion in the settlement of cases of children in conflict with the law. The approach used in this study is phenomenological. The analytical approach used is to use sociological theory of Rosco pound law, namely the law as a tool of social engineering. The results showed that the delinquency or crime Border child in Central Java was driven by several factors such as economic hardship, lack of education, the association of children, environmental factors and causes of low practice religious values adopted children. As for the models of diversion in the Criminal Justice System Child starts from the investigation, prosecution and trial. The Diversion Model that is applied in the form of consultations involving families of both parties (victims and perpetrators), community leaders, religious leaders and police officers.

Keywords: Child Delinquency, Diversion, the Child Justice System, Conflict with Law

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### Introduction

The aim of juvenile criminal justice are philosophically to give priority to the protection and rehabilitation of perpetrators of child as a person who still has some limitations compared with adults. Children need protection from the state and the society in which they live a long life (Nicholas MC, 2002: 5). Therefore, the children who become perpetrators of criminal acts are required to use the diversion mechanism (Haines, 1998: 73).

The concept of diversion based on the fact that the criminal proceedings against the child offender through the criminal justice system have caused more danger than good. The basic reason that the court will give the stigmatization of children for their actions as the child is considered evil, so it is better to avoid it outside the criminal justice system.

Diversion is an attempt to divert, or channel out, youthful offenders from the juvenile justice system" (Folk, 2003). While the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, point 6 and 11 contained statements regarding the diversion, that is, as the process of devolution of children in conflict with the law of the criminal justice system to the informal process as returning to civil society organizations either governmental or non-governmental.

States such as Victoria, New South Wales and Queensland dare to reform their legal system to support the implementation of the program of diversion. Wundersitz says that the diversion implementation in such countries as the principle of the frugality of punishment (Folk, 2003: 6).

Based on the views of experts, the children in conflict with the law should receive special approach, special attention, special considerations, special services and special care and special protection in accordance with the established in the Beijing Rules, Act No. 11 of 2012 on the Justice System Child criminal and Law No. 35 of 2014 on Protection of Children (Mardiah, 2012).

Alternative dispute resolution is not a new thing, because since time immemorial traditional Indonesian society has been using the alternative dispute resolution. It can be seen from the customary law that puts the head of customs as a mediator and give the verdict customary for disputes between citizens. Settlement of disputes carried the head of customs is considered effective and is mediating in the society today (Hadikusuma, 1992: 247).

Alternative dispute resolution outside the criminal court in Indonesia is a habit of the Indonesian nation itself deeply rooted in various aspects of social life and become a culture in solving every problem, both in traditional society, which is known as deliberation. In short alternative out of court settlement of problems both concerning issues that could be classified in the field of civil and in criminal field has been entrenched in Indonesian society.

Kids are actors in the country change the future. Therefore, the future they should be protected and cared for. If not, then the future they will be finished in court. Problems of deviant behavior of children late enough to invite the attention of many people, particularly the children observers, either misdemeanors or serious criminal behavior.

In connection with cases involving minors, the police had also been united the Alternative Dispute Resolution namely through deliberations without going through the judicial process, so that the settlement of these problems would be more equitable and beneficial. To overcome the various cases involving children and as a form of protection for children involved in criminal cases, the government has issued Law Number 11 year 2012 on the Criminal Justice System Children in which strictly regulates the diversion for children.

Related to the above, this paper will describe two issues associated with children who have a legal problem. First, will be described diversion concept in the Child Justice System in Indonesia. Second, factors that encourage children to conflict with the law.

## Research Design

This type of study is a qualitative research, with a combination of normative and empirical approach. Therefore there are three approaches used in this paper, they are the statute approach, conceptual approach, and cases approach (Marzuki 2005 and Ibrahim, 2005). Data taken in this research is primary and secondary data. In the collection of primary data, the researchers are working to collect data to be more flexible in using the technique that will be used, resulting in the collection of data is not a lot of obstacles later (Moleong, 2001). Data were analyzed by descriptive qualitative, so found the relationship between the dimensions of the question in this study (Moleong, 2001).

## Results and Discussion

### 1. Diversion In The Child Justice System In Indonesia

Based on the survey results revealed that the implementation of the concept of diversion is done with the intention to avoid children from the negative implications of the existing criminal justice system and prevent children from entering the juvenile justice system and eliminate the criminals label to children who have already become victims association exists. This diversion concept shows their success in rescuing and providing protection to children (Marlina, 2012: 13).

In the implementation of diversion, law enforcement officers put forward the imposition of imprisonment rather than sanctions to improve the moral of the child. Knowledge of law enforcement officers, especially in Indonesia about handling children is still lacking. Rules are applied is also almost the same with the application of the rules for the treatment of adult convicts. Psychological considerations and the interests of the child to be number two. Whereas for handling cases of children should be very different from the treatment of adult offender.

The judge hearing the child in cases of children in conflict with the law in Banda Aceh District Court has made penal mediation to achieve restorative justice paradigm. This penal mediation in accordance with the intent and purpose of Article 16 of Law No. 23 of 2002 on Child Protection, which is for the best for the child, both children as perpetrators or victims. With the implementation of penal mediation, then there has been a paradigm shift in the juvenile justice system that is nothing inherently private law into the realm of public law, and is a breakthrough law by the judge (Mardiah et al, 2012).

Implementation of non litigation path, or diversion in the case of children in any jurisdiction in Purwokerto, yet fully Bappas as the application of restorative justice models (Angkasa et al., 2009). This condition indicates that the child settling disputes through out of court have not been implemented consistently and achieve its objectives, namely the child welfare.

In the development of criminal law the word "diversion" was first put forward as a vocabulary on a report on the implementation of juvenile justice submitted the Australian Crime Commission President in the United States in 1960 (White, 1995: 1). Before put forward diversion term implementation practices that are shaped like a diversion had been there before 1960 were marked by the establishment of juvenile justice before the 19th century, namely diversion from the formal criminal justice system and the formalization of the police to carry out a warning. His practice was run in the state of Victoria in Australia in 1959 was followed by the state of Queensland in 1963 (Challinger, 1985: 4).

The concept of diversion based on the fact that the criminal proceedings against the child offender through the criminal justice system have caused more danger than good. The basic reason is that the court will give the stigmatization of children for their action as the child is considered evil, so it is better to avoid it outside the criminal justice system.

Consideration do versioned by the court's philosophy is to protect and rehabilitate the child offender. Versioned action also made the effort to prevent a child offenders become adult criminals. Child prevention efforts that brought law enforcement officials to take discretionary authority or in the United States is often referred to as not instituting of the formal criminal justice system. Diversion is done with a reason to provide the opportunity for offenders to become a good person back through non-formal pathways involving community resources. Diversion attempts to provide justice to the cases of children who have already committed a criminal act until the law enforcement officers as law enforcement authorities. The equity is presented through a study of the circumstances and situations to obtain appropriate sanctions or measures (Walker, 1993: 1-2).

Acts of violence during an arrest to bring the nature of necessity as a result of law enforcement. Avoidance arrest with violence and coercion be the goal of the implementation of the diversion. The goal is to enforce the law without committing acts of

violence and painful by allowing someone to correct the problem without going through the criminal penalties by the state that have full authority. One example of the importance of background diversion policies do because of the high number of children who enter the criminal justice and disconnected with the prison and abused while undergoing a series of processes in the criminal justice system, namely the Philippines. Philippine state involvement in the numbers of children with a crime and the judiciary to undergo imprisonment is quite high and 94% are children of criminal offenders for the first time (first-time Offender). The number of children who underwent imprisonment not accompanied by their policy of diversion and crime prevention programs formal child, otherwise efforts to return the child support to the community is very low. Law No. 11 t1hun 2012 Article 6 states that the diversion aims:

- a. Achieve peace between the victim and the Son;
- b. Children resolve the case outside the court process;
- c. Avoid Son of deprivation of liberty;
- d. Encourage the public to participate; and
- e. Instilling a sense of responsibility to the Son.

Police as the first gate who deal with children in conflict with the law be the determinant of whether a child will proceed to litigation or other informal actions. For serious offenses such as murder, rape, theft with violence, police proceed to trial or detention. The detention of children continue to be guided by the rule of law regarding the rights of children contained in the existing rules on the rights of children, child rights conventions, Law No. 11 of 2012 and Act No. 35 In 2014, Human Rights and the Beijing Rules.

The child is in Juvenile cases that have reached the age of 8 (eight) years, but has not reached the age of 18 (eighteen) years old and have never been married. So the child is restricted between the ages of 8 (eight) years until the age of 18 (eighteen years (Article 1 (2) of Act 3 of 1997). In the Criminal Code, the Son is immature if not yet 16 years old. The provisions of article 45,46 and 47 Criminal Code has been abolished with the enactment of law No. 3 / 1997. The law No.11 of 2012 on the Criminal Justice System child states that children in conflict with the law is that the age of 12 (twelve) years up to the age of 18 ( eighteen) years. From some of the children mentioned above related to this study, we used the notion of children according to Law No.11 / 2012 on the Criminal Justice System.

Problems the Age of Criminal Responsibility of this, each country vary among the countries in the world, depending on the historical and cultural background of each. In Yugoslavia child age limit liability is relatively higher when compared to in Indonesia, namely:

- a. Children under the age of 14 years (Article 65: 1) can not be convicted or subjected to
- b. Children aged 14 years but has not reached 16 years (junior children), can not be convicted, but may be subject to educational measures (Article 66: 1)
- c. Children aged 16 years but has not reached 18 years of age (seniors) may be liable and subject to the action (Article 66: 2) (Arief, 2002: 99-100)
- a. In Indonesia, people who can be tried in court event the child is determined in a limited manner, which is the minimum age of twelve (12) years and a maximum age of 18 (eighteen) years.

## 2. Factors that Encourage Children to Conflict With The Law

Juvenile / child commonly referred to as Juvenile comes from the Latin Juvenile, which means that children, young people, the characteristic features of the youth, distinctive properties in adolescence, while delinquent comes from the Latin "delinquere" which means neglected, which was later expanded it mean to be nasty, naughty, anti-social, criminal, fleas and so forth.

Juvenile delinquency or juvenile / child is evil behavior or delinquency of young children, a symptom of illness (pathological) socially in children and adolescents due to a form of social neglect, so they developed a form of deviant behavior. The term juvenile / child refers to a broad range, from the behavior unacceptable social community. Can be affirmed that the tendency of juvenile / child is the tendency of adolescents / children to commit acts that violate the regulations could result in the loss and damage both to themselves and others by adolescents / children under the age of 17 years. While the factors that influence the tendency of juvenile / child, among other problems caused by identity / identities and escort themselves performed or experienced by the children themselves.

Issues of identity, age teenager or a child there was a time at the stage where teens / children have identity problems. Changes in biological and social enable the two forms of integration in the personality of teenagers: one, the formation of a sense of consistency in his life and two, the achievement of the identities of the role, more or less by combining motivations, values, abilities and style that belongs to young people with role demanded of teens. In search of identity, teenagers sometimes make the wrong choice. While the problem of self convoy, juvenile delinquency can also be described as a failure to develop escort self sufficient in terms of their behavior.

Some youths fail to develop self convoy essential that already belongs to someone else during the growth process. Most teens have to learn the difference between acceptable behavior and behavior that is not acceptable, but teens who do not recognize this delinquency. They may fail to distinguish between behavior that is acceptable and unacceptable, or maybe they actually know the difference between the two but failed to develop an adequate escort themselves in using those differences to guide their behavior.

On the other hand there are also several factors that cause crime / offenses committed by children, such as family factors, environmental factors and economic factors. Of these three factors, all three can be cumulative as well as a factor contributing to the offense / crime or just one that is most dominant in driving the violations / crimes committed by children.

First, the family factor. This factor can occur for several reasons, such as disharmony in the family every day seen by children, so children tend to seek escape outside. Yet out a lot of negative influences that may actually impair mental and behavior. This could form the children toward the negative, because the family has a very strong influence in directing behavior, relationships and compliance with the norms of the child. Disharmony may occur due to the divorce of parents, parents are super busy with work, parents who are discriminated against children, the lack of appreciation for children and others.

All of it makes the child feel alone in dealing with the problem at the school and the environment, there is an exemplary role model at home, lack of attention, always in a position to blame, even child was treated unfairly in the family.

Factors that trigger child family disharmony easily violate the norms as revealed above, according to sociological approach may be a perfectly normal and in line with the law of cause and effect. Yet another case that triggered precisely when a parent or elder by the child. That is violation of norms is actually legalized by a parent or a more dangerous condition if the breach of norms are supported, conditioned and coordinated by the parents themselves.

Secondly, environmental factor. After the family, where children socialize is the school environment and the neighborhood playground. Inevitably, the environment is the second educational institution after the family, so control in school and who is child's play also affect the tendency of the delinquency that led to the unlawful acts. Not all children with no family harmony has a tendency to violate the law, because there are also cases where children as perpetrators turned out to have a harmonious family. This is because how strong the influence of environmental factors play children can impact / negative consequences. Children with a family disharmony background, would be more likely to find their own environments outside the family who can accept what is. If the environment is positive it will solve the problem of the child and took him in a positive direction as well. Conversely, if the negative environmental obtained, this is what would plunge the child on things negative, including start committing an offense, such as theft, pickpocketing, fight among friends at school even to the problem of wear / use and deliver drugs / involved drug network issue.

Activity groups or commonly known as "gang" seemed to need more attention from parents, teachers and community leaders, whether it is grown in the school and in society. A community of "gang" is usually viewed negatively. The danger, this community has a high level of solidarity, because the child wants to keep its existence is recognized in the "alley" is, for the child in the family and the school was not recognized. Consequently, the assessment of whether the act of a "gang" is right or wrong is no longer a problem, which is important the child has a place where he could hang out or play and taken for granted.

Third, the economic factor. Reason demands that economics is a classic reason has become one of the causes of the crimes since the early development of the science of criminology (the study of crime). Starting from the needs of families, schools up to want to increase the pocket money is often the reason when children do mischief, either in the form of law violations / crimes.

These three factors mentioned above, only part of the trigger of a child in violation of the law. Need serious attention by the three institutions the education of children, the family, school and neighborhood. Parents should give extra attention to the child, whether it is education or playmate.

On the other hand, the school also must monitor the maximum, although the presence of children in school is not long, but the minimum time it is expected to prevent the proliferation of "alleys" that naughty in school and avoid fights between students and brawl between schools. Last, but not least important is the factor of social control of public figures and religious leaders, as well as the role of government and the private sector to provide space for children to play in their environment, so that children do not play street and the community that is negative.

Based on the results of research conducted in the jurisdiction of Police Resort Rembang data showed that background that causes the child to delinquency / crime in those jurisdictions is for educational and social factors. Which child in his education mostly still in junior high school and high school as well as socially and supervision low causing the child can easily be a criminal offense.

In addition, religious education factor gained less practiced by child in their daily life. While other factors mentioned that the socio-economic status of parents also affects the behavior of children, where there is a tendency that the low economic status of parents (poor) can lead children to commit crimes. (Interview with Mrs. Aiptu Rukmini On August 3, 2013). From results of these interviews can be emphasized that there are several factors that can encourage children to delinquency / crime that each of these factors vary its potential to influence delinquency. Factors are: 1.faktor association; 2.faktor lack of parental supervision of children; 3.pendidikan children and older people are low; Economic 4.status parents is low (poor); and 5, the lack of practice of religious values of the child.

From the results of research in the area of law police forces Resort Brebes data showed that there are several factors that can encourage children to delinquency / crime, among others: because it is often used to see such actions surrounding (environmental factors), low average education (primary school graduates). Factors who tend to be socially worse, the economic level of parents is low (poor), and the education of parents is low (the interview with Bob Herman, children who never in conflict with the law, dated August 2, 2013). While the research results obtained from the Police Jurisdiction Resort Jepara data showed that background that causes the child to delinquency / crime are:

- 1) naughty,
- 2) broken home (separated / divorced) and do not care and attention to the child's affection,
- 3) bad environment for children as well as a lack of parental supervision of children.

Poor education makes children behave distorted and mischief and are encouraged by bad environment for child psychology. In addition, children less attention from their parents because they are living in the boarding school. The cultural factor means the environment is bad and hard in children may encourage deviant child behavior and become naughty. Association of children with bad friends / deviate too easily encourages children to become naughty. (Interview with Bripda Farid)

By looking at the results of these interviews can be affirmed that the background or the factors that encourage children to have delinquency / crime is not much different in the two areas of law Police at others, both police Resort of Rembang and Brebes), the factor of the child which already has the makings of a rogue, economic factors of parents are low, social factors, environmental factors, lack of attention / affection of parents, factor the practice of religious values is minimal.

According to our analysis by looking at the results of studies showing that the factors that could push the issue of delinquency / crime the girl is still relatively the same from the three regions sampled (Jurisdiction Police Resort of Rembang, Jepara and Brebes) so it is quite necessary approach is relatively similar anyway, to provide solutions and fostering prevention. Things that can be done to prevent and nurture a child's behavior that deviates / mischief / crime in order to get back into a good boy, among others can do the steps as follows:

1. The need for affection and attention from parents in any case.
2. The supervision of a parent who does not curb. for example: parents should just let him do whatever is reasonable, and if, according to parental supervision he had crossed a line that should be, then as parents need to tell him the impacts and consequences to bear if he keeps doing that crosses the line the.
3. Let him hang out with friends of the same age, the age difference is only 2 or 3 good years older than him. Because if let him hang out with friends playing very own age, whose lifestyle is certainly different, then he can also carried a lifestyle that probably should not need him to live.
4. The necessary of supervision and intensive communication media such as TV, internet, radio, mobile phone, etc.
5. The need for guidance personality in school, because that's where a child spent more time than at home.
6. The need for religious teaching as early as possible, such as worship and to visit places of worship in accordance with his faith.
7. Need to support the hobby he wants as long as it is positive for him. Never prevent her hobbies and the opportunity he had developed a talent he liked during positive. Because of the ban could disrupt the personality and confidence.
8. Parents should be a convenient place to vent for a child, so as to guide when he was in trouble.
9. Parents also need to provide vocational training for children can be erect to be able to meet their needs complaint or at least understand the economic condition of the parents so with little flaws do not make it do things that are negative, such as theft.

Given the variety of factors that could affect the delinquency / crime children, each factor will have an effect not the same for each child, but in general the above factors become dominant factors that cause crime prevention and child coaching. Therefore, to each offender delinquency / crime takes their child care and foresight, both from the law enforcement officers, parents community and other parties watchdog children.

## Conclusion

Diversion is done with a reason to give an opportunity for offenders to become a good person back through non-formal pathways involving community resources. Diversion attempts to provide justice to the cases of children who have already committed a criminal act until the law enforcement officers as law enforcement authorities. The equity is presented through a study of the circumstances and situations to obtain appropriate sanctions or measures (Appropriate treatment. Implementation of diversion motivated desire to avoid negative effects on the psyche and development of children by involvement with the criminal justice system.

Implementation of diversion by law enforcement authorities based on the law enforcers called discretion. The implementation of diversion in New Zealand can be a picture of the successful implementation of the functions of law enforcement officers in dealing with children in criminal cases. In New Zealand versioned history began with the success of family group conferencing that negotiations between the parties in the settlement of victims and perpetrators of criminal acts in the community, which ultimately carried out the reform of the juvenile justice law in 1989. The implementation of the child's special court has provided space for the implementation of widespread diversion.

In Indonesia, the criminal justice system, there are four sub-system components, namely the police, prosecutors, courts and prisons. The fourth sub-system should be collaborated. While in Law No.11 of 2012 on Children in the Criminal Justice System Article 7 Paragraph (1) and Paragraph (2) states that At the level of investigation, prosecution, and the case investigation in court Children Diversion shall be pursued. Diversion is referred to in paragraph (1) shall be implemented in the case of criminal offenses committed:

- a. imprisonment under seven (7) years; and
- b. not a repetition of criminal acts.

Police as the first gate who deal with children in conflict with the law be the determinant of whether a child will proceed to litigation or other informal actions. For serious offenses such as murder, rape, theft with violence, police proceed to trial or detention. The detention of children continue to be guided by the rule of law regarding the rights of children contained in the existing rules on the rights of children, child rights conventions, Law No. 11 of 2012 and Act No. 35 In 2014, Human Rights and the Beijing Rules.

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