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# The Effectiveness of Diversion through Deliberation Process to Legal Consciousness for Juvenile Delinquents

(Case Study Police Resort of Tanah Datar and Police Resort of Payakumbuh)

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**Abstract**— This article discusses the issues discussed about the implementation of the diversion of crimes committed by children and the effectiveness of the criminal acts in the jurisdiction of police resort Tanah Datar and police resort Payakumbuh, West Sumatera. This research was done using qualitative methods by analytical descriptive research type with normative juridical approach as the main approach and empirical juridical as supporting approach. The results of the research show First, the application of diversion in police resort of Tanah Datar and police resort of Payakumbuh done by way of deliberation to reach consensus 'deliberation' of Police, deliberation of the family, and deliberation of the community. Second, the effectiveness of the implementation of the diversion of legal consciousness of children, has been effective because there is one (1) repetition of criminal acts committed child after versioning. Through diversion can change the behavior of naughty children, with the coaching and involvement of family's deliberation, community's deliberation, and the Police deliberation.

**Keywords**— diversion; deliberation; effectiveness; legal consciousness

## I. INTRODUCTION

This article discusses the issue of local wisdom, especially regarding the consensus model for consensus which is the local wisdom among Indonesian society in solving legal problems in society. In the practice and habits of the people in the archipelago, deliberations to reach consensus become the way, mechanism, and procedure that is carried out in solving social problems in the community. The problem then is when the legal system in Indonesia does not specifically regulate this 'musyawarah' mechanism to solve the legal problems that arise. Efforts to solve legal cases through mediation have actually entered the Indonesian legal system through Law No. 30 of 1999 on Arbitration and Alternative Dispute Settlement. However, this law is for civil disputes only. While there is no specific regulation on non-court dispute settlement for criminal cases. At least, until then published Law No. 11 of 2012

Now, based on the regulation Number 11 Year 2012 on Child Criminal Justice System [1] put forward the principle of

Restorative Justice to avoid the effect of retaliation in the form of punishment against Juveniles Delinquent because the child is not to be punished but should be given guidance and coaching, so that it can grow and develop as a normal child who is healthy and fully intelligent [2].

Diversion is one way to realize the spirit of the idea of Restorative Justice's conception [3] in handling child cases because diversion aims to reach a criminal case settlement involving the Juveniles Delinquent outside the judicial process. Understanding Diversion is contained in Article 1 point 7 UU SPPA is "the transfer of the settlement of the Child's case from the criminal justice process to proceedings outside the criminal justice". The diversion process that aims to restore child behavior is in fact still encountered a repetition of criminal acts, especially on minor crimes such as fights, theft and gambling.

Restorative justice is a new idea, concept, theory or paradigm that offers modern punishment model and more humane for the model of punishment against children [4]. As criminal prosecution is more likely to bring about the recovery or compensation of victims than the punishment of perpetrators. This theory is also able to offer comprehensive solutions and effective, the size of the justice is not based on a reply in kind which gives the victim to the perpetrator either mentally, physical or punishment, but the perpetrator's actions are painful healing by providing support to victims and society that the perpetrators to be responsible. According to Robert L. O'Block there are four major components involved in crime prevention efforts, namely: (1) Politicians, (2) Law enforcement officers, (3) Communities and (4) Experts [5].

The question then is whether through the mechanism of diversion as one way to realize the spirit of the idea of Restorative Justice Conception is closely linked to the growing legal awareness of the perpetrators. While awareness law is closely related to perpetrators determined by one's moral. Morality is the moral nature of overall principles and values regard to good and bad [6]. Legal awareness means of awareness about what we should do or should not do or what

we do or do not do, especially against someone else. This means awareness of a right our legal obligations of each of the others. Legal awareness is a factor in the discovery of the law [7].

Sudarto argued that in the criminal justice of children there is activity of examination and termination of case aimed at child interest, that is all activity done by police, prosecutor, judge and other official, must base on a principle is for child prosperity and child interest [8]. With these opinions, the juvenile criminal justice system is a system of child criminal law enforcement implemented in an integrated manner by 4 (four) sub-systems of power, namely the power of investigation, the power of prosecution, the power to adjudicate / impose the criminal, and the power of criminal execution, based on the material criminal law of children, the formal criminal law of children and the law of criminal execution. Children and activities in child criminal law enforcement is more emphasis on the interests of child protection and child welfare goals.

Based on the background that was explained on above, this research limits the problem under study on the mechanism of implementation of the diversion of crime committed by the child in the jurisdiction of Police Resort Tanah Datar and Police Resort Payakumbuh and the effectiveness of the legal awareness of the perpetrators of criminal acts in the jurisdiction of Police Resort Tanah Datar and Police Resort Payakumbuh. The purpose of this research is to analyze the implementation of the effectiveness diversion to the level of legal awareness Juveniles Delinquent

## II. METHOD

Specification of the research is descriptive analysis with normative juridical approach that is supported by the empirical approach. Type of data used are secondary data and primary data. Secondary data were obtained from document studies and literature study while primary data were obtained from field study in Unit PPA Police resort of Tanah Datar and Dharmasraya. Technique of collecting data on primary data is done by semi-structured interview and direct observation. The data obtained are then analyzed qualitatively.

## III. RESULT AND DISCUSSION

### A. Implementation of Diversion in Handling of Juveniles Delinquent at Police resort of Tanah Datar and Police resort of Payakumbuh

Diversion is done by first preparing law enforcement that will implement the Diversion. In practicing of requirement 'formal' (formality) put forward on the terms "substantial" in the appointment of a special law enforcement children. Their legitimacy as law enforcement in the field of children solely based on the letter of appointment as specific Police for children, Specific Prosecutor for Children, Specific Judge for children, and instead of substantial requirements as mandated by the UU SPPA [9].

The diversion process is essentially an attempt to transfer from the criminal justice process to a consensus resolution. In

the application of diversion in Police resort of Tanah Datar and Police resort of Payakumbuh, applied the principle of *musyawarah untuk mufakat* in every decision making in the context of the settlement of criminal cases committed by children. Deliberation is the process of discussing the issue of sitting together by involving the parties concerned in order to reach a mutual agreement. Parties here are not only victims, perpetrators, and families of victims and perpetrators alone but also traditional leaders and community leaders.

Deliberation (*musyawarah untuk mufakat*) done as a way to get a decision that equally benefit both part so that no part is damaged. By deliberation (*musyawarah untuk mufakat*) expected two or several parties of different opinion do not continue to fight and get middle way. In the process of deliberation (*musyawarah untuk mufakat*) required humility and sincerity of self and discard each ego. In community life, deliberation (*musyawarah untuk mufakat*) has several direct benefits, which are as follows:

- Is a great way to cope with cross-references;
- Mechanisms that have the potential to reduce the use of violence in the fight for the interests.
- Avoid and overcome the possibility of future conflicts.

This culture of consensus deliberation (*musyawarah untuk mufakat*) has a philosophical and theological foundation that leads to the restoration of the dignity of all parties involved, replacing the atmosphere of conflict with peace (*silaturahmi*), abolishing blasphemy by forgiving, stopping demands and blaming (the principle of mutual forgiveness).

Clarification that desired not through the court table, but through the table of peace and negotiation (principle of deliberation). The settlement of cases through deliberations is directed at bringing harmony or harmony within the community and does not exacerbate the situation, wherever possible maintaining an atmosphere of peace. Deliberation consensus is already a habit and culture adopted for this by Minang society, including in Tanah Datar and Payakumbuh.

Diversion as a mechanism of restorative justice praxis correlates with local cultural values in Tanah Datar and Payakumbuh at least have the following advantages:

- Decreasing buildup of a court.
- Increasing community involvement or empower the disputing parties in the dispute resolution process.
- Enhance community opportunities to get justice.
- Providing an opportunity for the settlement of disputes that results in decisions acceptable to all. So that the parties do not take an appeal and cassation.
- Settlement of cases is faster and cheaper.
- Is closed or secret, thus reducing family shame.
- Higher level of possibility to execute agreements due to the decision taken is the will of the parties. So the

relationship of parties to the dispute in the future is still possible to be well established.

- Reduce the outbreak of legal mafia at both the level of investigation, prosecution, court and at the level of execution of court decisions.

The diversion process should aim at the realization of Restorative Justice, both for the children and for the victim. Restorative Justice in a Diversion process, is all parties involved in a particular crime together solve problems and create an obligation to make things better by engaging victims, the Children, and the community in finding solutions to improve, reconciliation and reassuring the heart that is not based on retaliation.

Police, as the authority of the party, are given the responsibility of determining the policy mechanisms to be applied in applying the diversion. The result of the research in police resort of Tanah Datar and Police Resort of Payakumbuh can be concluded there are 3 (three) forms of implementation diversion by police, that is:

1) *Deliberation at police office levels:* The parties involved in this process are the police and children (perpetrators). The types of crimes that can be resolved through this mechanism are generally acts criminal offenses and minor offenses. Criminal acts resolved in this way at Police resort of Tanah Datar and police resort Payakumbuh are not recorded as a police report so that the results and news of the event also not found. Cases are resolved in this way, among others, fight, brawl, illegal racing, gambling dexterity, and other misdemeanors.

2) *Deliberation at family level:* The parties involved in the process of diversion in discussion family are the police, the Juveniles Delinquent and/or parents/guardians, and community mentors. The types of crimes that can be resolved through this mechanism are minor crimes, criminal acts without a victim and a crime that the value of the victim's loss is no more than the minimum wage value of the province. Such minor criminal offense shall be a minor offense which the conduct of a child at the time of doing so greatly endangers another person and a minor offense which is a repetition or has previously been given an informal warning or has already been diverted by a police deliberation (*musyawarah untuk mufakat*).

The position of the public counselor here is more as an expert who can provide recommendations on what sanctions are suitable to be given to children. So the duty of the social guidance is not formal as stipulated in Article 65 letter a of UU SPPA which reads Social Supervisor in charge of: make report of social research for the interest of Diversion, mentoring, supervising and supervising to Children during Diversion process and execution of agreement, including give the report to diversion court is not enforced.

The form of sanction that can be given in the form of a mechanism through this family consultation is formal warning (formal caution). These formal warnings can be:

- Returning to the parent/guardian;

- Apology to the victim in public;
- Medical and psychosocial rehabilitation;
- Improvement due to crime
- Payment of compensation.

The children's case ended in line with the formal warning. This formal warning should be recorded in the police log book and should not be submitted to the head of the District Court for a determination.

3) *Community Deliberations (musyawarah untuk mencapai mufakat):* Parties involved in this process are the police, perpetrators, and/or their parents/guardians, victims and/or parents/guardians, community and community advocates (community leaders or from the school). The type of criminal offense that can be resolved through this community consultation is a criminal offense whose criminal threat is under 7 (seven) years and not a repetition of a criminal offense. This meeting begins by providing an opportunity for the perpetrator to explain how the crime was committed and on what basis the offense was committed. The perpetrator who exposes the party desperately expects the victim to be able to accept and understand the conditions and causes why the perpetrator committed a crime that caused the loss to the victim. Furthermore, in the explanation the perpetrator also explained about how he was responsible for the victim and the community for the deeds he had done. And then victims can respond to the perpetrator's explanation.

This is in accordance with social control theory which mentions there are four elements of social bonds that exist in every society, namely *attachment, commitment, involvement, and beliefs* [10]. Elements of *attachment* can be realized through the participation of the community in the implementation of diversion. As long as a person has a close relationship with certain important determinants, he will respect their norms and take over the norms.

Eleman's *Commitment* is one's attachment to conventional sub-systems such as school, work, organization and so on. *Commitment* is a rational aspect of social bonding. All activities undertaken by a person (school, work, organization and so on) will benefit the person. In this context it is necessary to engage the school or the organization within the *Juveniles Delinquent* environment to provide benefits. These benefits can be in the form of property, reputation, future and so on. All investments that will encourage the perpetrators and their families to obey the agreement that has been made. If they do not obey the agreement, then all the investment will be gone. Thus, the *invention* can actually be used as a control for the desire to deviate.

The *involvement* element refers to a thought that if the perpetrator is occupied or actively engaged in various conventional or work activities then he will not have time to think much less engage in deviant behavior. The logic of this understanding is that if the person is active in any activity, then that person will spend time and energy in the activity. So he did not have time to think about things that were against the law. Thus, any activity that may benefit will prevent a person from

committing an act contrary to law. Beliefs element refers to the belief or belief of the perpetrator on the prevailing social values or norms. Belief in the norms or rules that exist will greatly affect a person acting in compliance with or against existing regulations. Children who clearly know the values of norms that have been implanted by society will always be used as a control tool in every action. The cultivation of moral values from an early age will always be attached and will always be embedded in the child. Wrong one moral value that must be implanted to a child who commits a crime is the value of responsibility. The child must have responsibility for every action he does, especially if the consequences of his actions that cause harm to others.

Forms of sanctions that can be given to the perpetrators in this community deliberation are:

- Returning to the parent / guardian;
- Apology to the victim in public;
- Medical and psychosocial rehabilitation;
- Improvement due to crime
- Payment of indemnity;
- Society service;
- Submit to government or private social institutions to attend education and training;
- Other forms corresponding to the case.

The results showed that of the third form of diversion, is most often implemented is the diversion of police as many as 67%, 25% family council and community meetings only 5%. Investigators in this case do not directly apply community consultation but first will conduct police and family deliberation (*musyawarah untuk mencapai mufakat*).

#### B. Effectiveness of "Diversion" Against the Level of Child Legal Awareness at Police Resort of Tanah Datar and Police resort of Payakumbuh

The perspectives of the science of punishment, believed that the imposition of criminal against children tends to harm the development of the child's soul in the future. This adverse tendency resulting from the effects of criminal imprisonment, especially imprisonment, is the stigma (evil stamp). It was also proposed by Barda Nawawi Arief that social protection law requires the abolition of criminal responsibility and is replaced by a view of anti-social action [11].

In the process of children's repeated diversion is often the case when the child's actions are only solved by police deliberation (*musyawarah untuk mencapai mufakat*). This form has not been effective to awaken the child to his deeds. This is due to the absence of sanctions that create a deterrent effect on *Juveniles Delinquent*. In contrast to the form of family and community deliberation (*musyawarah untuk mencapai mufakat*), the form is not encountered repetition rates are many, there is only 1 (one) repetition of crime by children on the law of Payakumbuh Police.

In the form of family and community deliberation (*musyawarah untuk mencapai mufakat*) have been applied sanctions that can make a deterrent child. Besides, the child of the perpetrator is also faced with the diversion process that involves many parties. The role of the community counselor also affects the legal consciousness of the child. Research on children by community guidance officers can provide recommendations on appropriate sanctions to be given to *Juveniles Delinquent*.

*Restorative justice* is considered a new concept or idea of modern and more humanized punishment models for the punishment model of children. As a criminal punishment which further emphasizes the recovery or compensation suffered by the victim than the punishment of the perpetrator. The granting of sanctions and the resulting diversion process will be related to the legal consciousness of the child. Child legal awareness is characterized by the absence of repetition of acts by *Juveniles Delinquent*. This is in accordance with the restoration theory that offers a comprehensive and effective solution to the settlement of cases of *Juveniles Delinquent*. The measure of justice is not based on the due reward of the victim to the perpetrator either psychically, physically or punishably, but the painful act of the perpetrator is healed by providing support to the victim and bringing the community responsible.

The main principle of implementation of the concept of diversion is persuasive action or non-penal approach and provides an opportunity for a person to correct errors. The officer in carrying out the diversion shows the importance of obedience to the law and the rule to the child facing the law (the offender/*Juveniles Delinquent*). Police conduct diversion by persuasive approach and avoid arrest using violence and coercion, to divert a case from formal process to informal process. The transfer process is intended to provide protection against children in conflict with the law.

Diversiones are conducted on the grounds of giving an opportunity for lawbreakers to be good people back through non- formal channels involving community resources. Diversion seeks to provide justice for the case of children who have already committed a crime. Diversified implementation should be done selectively after various considerations. Child delinquency which may be considered in this regard is seen from the category of delinquency, offense or crime it committed. The circumstances of the child as perpetrators vary for each case.

Based on the results of research conducted on children who had undergone diversion 80% among them declared will not repeat his actions again. It terse but triggered by the diversion process that passed. According to them not only as justice will punish but rather to a sort of coaching classes to make them aware of the deeds done. After passing a child diversion know his mistake and realize that the act is harmful to others.

The forgiveness shown by the victims makes them ashamed of their actions. About this case, Krabbe and Kranenburg expressed in the theory of legal consciousness that a certain category of our mental life with which we distinguish between legal and not legal (*onrecht*), among which should be done and should not done [12].

Efforts to be considered effective give positive thought to the mindset of the child before they recognize the existence of a consciousness of the law. Considering the characteristic and characteristic of a child, then in imposing a criminal or acts against a child in conflict with the law, the child is not separated from his / her parents. If the relationship between parent and child is not good or because the nature of the act is very detrimental to the public need to separate children from their parents, should still be considered that the separation is solely for the growth and development of children.

#### IV. CONCLUSION

Implementation of diversion at the police resort of Tanah Datar and Police resort of Payakumbuh requires deliberation (*musyawarah untuk mufakat*) that aimed at harmonization or harmony in society and do not exacerbate the situation, to the extent possible maintain the atmosphere of peace. Deliberation (*musyawarah untuk mufakat*) already is a habit and culture adopted so far by the Minang community in Tanah Datar and Payakumbuh. Mechanisms diversion applied in police resort of Tanah Datar and Police resort of Payakumbuh through deliberation of police, the community council and community deliberation (*musyawarah untuk mufakat*).

The results of research at Polres Tanah Datar and Payakumbuh show effectiveness of the mechanism of diversion to the level of legal awareness of Juveniles Delinquent, seen from no re-occurrence by the perpetrators. Suggestions from the results of this study require more comprehensive research on the effectiveness of diversion for reducing the number of violations and crimes committed by the Juveniles Delinquent, to gain a complete understanding of the relationship between diversion and legal awareness. On the other hand, *musyawarah* as local wisdom, should be practiced in accordance with the customs of the local community. Therefore, the deliberation stage could be done to be only two stages of the Family Deliberation (involving community elders) and Deliberation of Police.

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#### REFERENCES

- [1] Law of the Republic of Indonesia Number 11 Year 2012 about Child Criminal Justice System
- [2] Anak Bukan Untuk Dihukum (Catatan Pembahasan UU Sistem Peradilan Anak), Sinar Grafika, Jakarta, 2013, hlm. 1
- [3] Otong Rosadi, Teori dan Konsepsi 'Restorative Justice' dan Implementasinya dalam Penegakan Hukum Oleh Polri: Pada Proses Penyidikan, makalah disampaikan Rakernis Fungsi Reserse Polda Sumatera Barat dan Jajaran Satuan Reserse Pires Tahun 2017, Padang 15 Mei 2017
- [4] Muhammad Musa, Peradilan Restoratif Suatu Pemikiran Alternatif Sistem Peradilan Anak Indonesia, Riau, Fakultas Hukum Universitas Islam Riau, 2008, hlm. 12
- [5] Abintoro Prakoso, Pembaruan Sistem Peradilan Pidana Anak, Yogyakarta :PT Laksbang Grafika, 2013
- [6] Poespoprodjo, Filsafat Moral:Kesusilaan Dalam Teori dan Praktek, Pustaka Grafika, Bandung , 1999
- [7] Lemaire, Het recht in Indonesie Hukum Indonesia, N.V. Uitgeverij Hoeve -S-Gravenhage-Bandung, 1952
- [8] Sudarto. Hukum Pidana I, Semarang : Yayasan Sudarto, Fakultas Hukum Undip, 1990.
- [9] Paulus Hadisuprpto, Peradilan Restoratif: Model Peradilan Anak Indonesia Masa Datang, Pidato Pengukuhan Guru Besar dalam Bidang Kriminologi pada Fakultas Hukum Universitas Diponegoro, Semarang, 18 Februari 2006
- [10] Yesmil Anwar & Adang, Kriminologi, Refika Aditama, Bandung, 2010
- [11] Barda Nawawi Arief, Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana, Edisi Revisi, Bandung, Citra Aditya Bakti, 2005
- [12] Setya Wahyudi, Implementasi Ide Diversion dalam Pembaruan Sistem Peradilan Pidana Anak di Indonesia. Yogyakarta : Genta publishing, 2011.

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