DIVERSION AS A FORM OF RESTORATIVE JUSTICE FOR CHILD OFFENDERS IN INDONESIA: A STUDY ON THE IMPLEMENTATION OF SOCIAL RESEARCH RECOMMENDATIONS

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ABSTRACT

Objective: This research wants to examine whether community research is taken into consideration in carrying out Diversion in the stages of the juvenile justice system. Even though it is a recommendation in nature, meaning that it may be considered, Community Research is the initial foundation for knowing the condition of child offenders who conflict with the Law.

Theoretical framework: This research is certainly different from the 3 studies above; although it is related to restorative justice and Diversion in juvenile justice, it has a different study focus, which is related to the results of community research conducted by Correctional Centers that produce recommendations: Diversion or not a diversion. This is mainly related to the basis of Diversion, namely recommendations from Community Research on cases of children in conflict with the Law.

Methodology: The method used is normative legal research and qualitative data analysis. The approach used is an inventory of laws relating to restorative justice contained in the stages of handling child cases by the justice sub-system, namely the police, prosecutors and courts. Vertical horizontal synchronization is used to see harmony between existing regulations, especially with regard to social research in diversion decisions. Then the legal principles approach is used to examine the principles contained in restorative justice whether they are in accordance with the principles contained in existing regulations for handling cases of children in conflict with the law.

Results and conclusion: The study results found that community research recommendations were considered in proposing Diversion at the Police, prosecutor’s, and court stages. It is just that the results of social research are sometimes hindered by the diversion requirement relating to a 7-year sentence, so the results of the study of the condition of the offender’s child still produce recommendations for non-diversion. However, depending on the policy in the judge’s decision, conditional or supervisory punishment can be recommended.

Originality/value: This paper examines how social research recommendations are considered in implementing Diversion in the judicial stages as an embodiment of restorative justice.

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DIVERSÃO COMO FORMA DE JUSTIÇA RESTAURADORA PARA CRIANÇAS INFRATORAS NA INDONÉSIA: UM ESTUDO SOBRE A IMPLEMENTAÇÃO DE RECOMENDAÇÕES DE PESQUISA SOCIAL

RESUMO

Objetivo: Esta pesquisa pretende examinar se a pesquisa comunitária é levada em consideração na realização do Desvio nas fases do sistema judiciário juvenil. Ainda que seja uma recomendação de natureza, o que significa que pode ser considerada, a Pesquisa Comunitária é a base inicial para conhecer a condição dos menores infratores que entram em conflito com a Lei.

Estrutura teórica: Esta pesquisa é certamente diferente dos 3 estudos acima; embora esteja relacionada com a justiça restaurativa e o Desvio na justiça juvenil, tem um foco de estudo diferente, que está relacionado com os resultados da pesquisa comunitária conduzida pelos Centros de Correção que produzem recomendações: Desvio ou não um desvio. Isto está principalmente relacionado com a base do Desvio, nomeadamente recomendações da Pesquisa Comunitária sobre casos de crianças em conflito com a Lei.

Metodologia: O método utilizado é a pesquisa legal normativa e análise de dados qualitativos. A abordagem utilizada é um inventário das leis relativas à justiça reparadora contidas nas fases de tratamento dos processos infantis pelo subsistema de justiça, nomeadamente a policia, os procuradores e os tribunais. A sincronização horizontal vertical é usada para ver a harmonia entre os regulamentos existentes, especialmente no que diz respeito à pesquisa social em decisões de desvio. Então, a abordagem dos princípios legais é usada para examinar os princípios contidos na justiça reparadora se eles estão de acordo com os princípios contidos nos regulamentos existentes para lidar com casos de crianças em conflito com a lei.

Resultados e conclusão: Os resultados do estudo constataram que recomendações de pesquisa comunitária foram consideradas ao propor Desvio nas fases policial, promotora e judicial. Só que os resultados da pesquisa social às vezes são prejudicados pelo requisito de desvio relativo a uma sentença de 7 anos, de modo que os resultados do estudo da condição do filho do infrator ainda produzem recomendações para o não desvio. No entanto, dependendo da política na decisão do juiz, a punição condicional ou de supervisão pode ser recomendada.

Originalidade/valor: Este artigo examina como recomendações de pesquisa social são consideradas na implementação do Desvio nos estágios judiciais como uma encarnação da justiça restauradora.

Palavras-chave: diversão, sistema judiciário juvenil, justiça restaurativa.

1 INTRODUCTION

Currently, restorative justice is considered a way of settling criminal cases. In each stage of the justice system, a restorative justice menu can be selected. From the police stage, prosecutors and courts have rules regarding restorative justice. Included in

The phenomenon of juvenile delinquency has emerged as a pervasive global issue, transcending geographical boundaries and affecting societies across the spectrum of development. Its influence is observed in both developing and developed nations, where it manifests through various forms of organisation, ranging from highly structured to less formalised patterns. In modern societies, the criminal justice system holds a paramount importance due to its role in upholding the principles of the rule of law and ensuring equitable treatment for all individuals within the society (Abhishek, R., Balamurugan, J. (2023). Factors and Patterns Associated with Juvenile Delinquency with reference to Juvenile Crimes in India, *Journal Of Law And Sustainable Development*, vol 11 No 11, (2023))

To begin, the primary goals of restorative justice are not punishment but rather the restoration of the offender's relationship with the community. Restorative justice provides a route forward for these youths, allowing them to make amends for their wrongdoing and start anew. Second, the community is engaged in the dispute resolution process via restorative justice. (Priambada, B., S., Hartiwiningsih., Purwadi, H. (2023). Restorative Justice in The Shadow of Terrorism: Child Rehabilitation or the Illusion of Judgment?)

The implementation of juvenile justice is based on restorative justice and the child's best interests. The form of implementation of restorative justice in child cases is called Diversion. This is one of the peculiarities of the juvenile justice system in Indonesia.

The diversion program avoids the negative effects of the formal criminal justice process, which aims to avoid the stigma of bad children. Stigma (bad label) is an act of violence against children. The diversion program is carried out by diverting formal judicial examinations to coaching programs outside the judicial process and to avoid being labeled as evil to children (Yudaningsih, 2016).

The diversion process itself can be carried out if it meets certain requirements, such as the act committed by the offender's child is not an act that is punishable by more than 7 years of imprisonment and is not an act of repeating a crime.

Diversion aims to achieve peace between the victim and the child; settle cases outside the judicial process; prevent children from deprivation of independence; encourage people to participate; instill a sense of responsibility in children. Of the 5 goals
of Diversion regulated in the Law on the Juvenile Criminal Justice System, one goal involves the victim, namely the goal of achieving peace between the victim and the child.

Children can face the Law in cases involving child victims or adults. As long as the requirements for Diversion are met, both victims are children and adults; Diversion must still be pursued at every stage of the criminal justice system.

Based on information from Nahar, Deputy for Special Protection for Children of the Ministry of Child Protection conveyed the number of cases of violence against children from 2019 to 2022. In 2019 the number of cases of violence against children was recorded at 11,057 cases. In 2020 it increased by 221 cases to 11,278. Then, a significant increase occurred in 2021, reaching 14,517 cases. The next significant increase will occur in 2022, reaching 16,106 cases. Of the various types of violence received by children, sexual violence was the dominant type, with a total of 9588 cases. The perpetrators of violence against children consist of various groups, namely in the home, 53 percent, by friends or girlfriends, 29 percent by parents, and 21 percent. (Santoso & Arlyanto, 2023)

From the data above, it can be seen that 29 percent of the perpetrators of violence against children are peers. This means that he is a child. Or in other words, the parties dealing with the Law in a criminal law event are children, both perpetrators, and victims. The process of Diversion will certainly involve both parties, who are children. The Law states that children in the diversion process must be accompanied by their parents or guardians.

Several examples of cases of violence involving children occurred. Take, for example, the case of violence in Sukabumi on Saturday, March 4, 2023. Victim R's child was slashed with a sharp weapon in the neck, immediately collapsed, bathed in blood, and died on the spot. Victim R's child is still in 6th grade in elementary school in Sukabumi Regency. The perpetrators were junior high school students; there were 14 children who were involved and became executors, motorcyclists, and providers of sharp weapons, or are called children who conflicted with the Law (Santoso & Arlyanto, 2023).

Another incident involving children is a well-known violent crime in Indonesia, Klitih. A year ago, on April 4, 2022, to be exact, a class XI student at Muhammadiyah 2 Yogyakarta High School named Dafa Adzin Albasith breathed his last after becoming a victim of a glitch. Violence by children against children also occurred in Blitar, namely the stabbing of an elementary school boy in Blitar. A 14-year-old boy with the initials NA in Blitar had to be taken seriously to the hospital after being stabbed by his friend,
GA (13). The stabbing was called because GA did not accept the victim's ridicule by mentioning the perpetrator's father's name. This event occurred on March 9, 2023 (Santoso & Arlyanto, 2023).

There are many other criminal incidents involving children as perpetrators and victims. Of course, settlement with Diversion is an effort that must be carried out before a child who is in conflict with the Law is brought before the court.

It must be understood that the protection provided by the Law on the Juvenile Criminal Justice System should be able to reach all parties involved. Children in conflict with the Law are not only perpetrators but children of victims and witnesses. Especially in juvenile crime cases involving perpetrators and victims who are children. Of course, protection must be given to all parties, both the child of the perpetrator and especially the child of the victim. It must also be remembered that the Law in the juvenile justice system has the principle of restorative justice, which means recovery as a result of the crime that occurred; this recovery is not only for the child of the perpetrator but also for the child victim and society.

Previous research on restorative justice in the juvenile justice system has been carried out by Brian Septiadi Daud and Litya Surisdani Anggraeniko with the title Weaknesses of Settlement of Juvenile Criminal Cases Through Restorative Justice in the Juvenile Criminal Justice System. This paper focuses on the weaknesses in implementing restorative justice for children as actors in the juvenile justice system (Daud & Anggraeniko, 2023).

Another researcher, namely I Made Sugita, with the title Application of Diversion in the Juvenile Criminal Justice System in Realizing Restorative Justice in terms of the Perspective of Sociology of Law, in this paper the focus the study is on the application of Diversion for child offenders by looking at the principle of the best interests of the child, especially labeling in public (Sugita, 2022).

The two studies above focus on restorative justice for child offenders through Diversion regulated in the juvenile justice system law. The next researchers are Chepi Ali Firman Zakaria, Ade Mahmud, and Aji Mulyana, titled Legal Protection for Child Victims of Sexual Harassment in the Perspective of Restorative Justice. This paper focuses more on protecting child victims of sexual violence by using restorative justice; the protection in question can be in the form of psychosocial support, treatment, and recovery, and protection and support in court proceedings (Zakaria et al., 2023).
This research is certainly different from the 3 studies above; although it is related to restorative justice and Diversion in juvenile justice, it has a different study focus, which is related to the results of community research conducted by Correctional Centers that produce recommendations: Diversion or not a diversion. This is mainly related to the basis of Diversion, namely recommendations from Community Research on cases of children in conflict with the Law. This research wants to examine whether community research is taken into consideration in carrying out Diversion in the stages of the juvenile justice system. Even though it is a recommendation in nature, meaning that it may be considered, Community Research is the initial foundation for knowing the condition of child offenders who conflict with the Law.

2 THEORETICAL FRAMEWORK

The embodiment of the principle of restorative justice in the juvenile justice system is the existence of Diversion for the offender's child. Diversion is applied so that children do not feel traumatized in the law enforcement process and avoid the label or label of a criminal attached when they have gone through the criminal justice system. The perpetrator's child is still considered a victim in the occurrence of a crime, so the process carried out may not result in a second victim (secondary victimization), and the perpetrator's child must be treated as a victim. Diversion is currently the right choice in dealing with cases involving children as perpetrators.

Subsequently, attention turned to the problem of net-widening, and the question of whether diversion, along with other child welfare practices, was actually drawing children into the justice system by labelling them, rather than decriminalizing their behaviour, as intended (Smith, 2021).

Judging from the motivation for committing a crime, children who commit crimes are not based on evil motives (evil will/evil mind) that come from the child himself. Based on that, for children who deviate from social norms, social experts are more amenable to giving the meaning of "bad children" or the term "juvenile delinquency". With this term, you can avoid groups categorized as criminals (criminals) (Sambas, 2019).

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Settlement of legal issue with a child in conflict with the law is to use a restorative approach, commonly known as restorative justice. In the development of vriminal law, there is a shift in paradigm of the philosophy of child criminal judicature, in which the child criminal judicature is initially in the form of retributive justice, which shifts to rehabilitation, and lastly to restorative justice (Lewoleba et al., 2021).

Crimes committed by children arise because, from a personal point of view, they experience physical and mental development. His emotions are unstable; he is easily offended and sensitive to criticism, so it influences him to act, which is sometimes unusual and outside the rules that apply in society. Besides that, criminal acts committed by children are also caused by environmental influences. The psychological influence of individuals who live in community life, which leads to discord, can shape the norms that apply in the society in which the individual lives. The influence of psychiatric disorders that cause deviant behavior causes the individual to be unable to distinguish between good deeds and criminal acts. (Effendi, 2014)

Diversion becomes one of the legal tools that is considered accommodative to some parties (law authorities, suspects, victims, and society) in completion of a case whether it is outside of jurisdiction or else. In a functional way, the appliance of diversion is used as education tool as well as guidance system, and a society protection. Such law system of children is made to satisfy, to serve, and for importance of children (Wahyudi & Angkasa, 2018).

In this context, of course, restorative justice plays a role in restoring the child of the perpetrator, who is the victim, in becoming a child who is acceptable and able to continue living in a society without being disturbed by the processes of the criminal justice system.

Restorative Justice is essential because it offers an alternative to criminal punishment for crime prevention and does not sidestep the obligation to provide justice for victims of crime. A doctrine known as restorative justice emphasizes repairing the losses and broken relationships brought about or incurred as a result of criminal behaviour. It is possible to regain both these losses and these relationships through collaborative methods that involve all of the relevant stakeholders (interested parties). The primary goal of both restorative justice and the formal criminal justice system is to
discourage criminal behaviour by allowing offenders to participate in alternative punishment that do not result in incarceration (Rochaeti et al., 2023).

According to (Sambas, 2019) in general, there are three types of Diversion, namely:

a. Diversion in the form of a warning

Diversion in the form of a warning is given by the Police to children who commit minor offenses. As part of the warning, the perpetrator will apologize to the victim. The Police recorded the details of the incident in a file at the police station. Diversion in the form of warnings like this has often been practiced and is an act of police discretion.

b. Informal Diversion

Informal Diversion is applied to minor violations where it is felt inappropriate if it only warns the perpetrator and the perpetrator requires a comprehensive intervention plan. Victims should be consulted using various media to ascertain their views on informal Diversion and what they want in the plan. Informal Diversion must positively impact victims, children, and their families. Namely, it must be ensured that children with problems with the Law are suitable for informal Diversion. In this informal diversion plan, the child feels responsible, recognizes the needs of the victim and the child, and, if possible, the parents are asked to be responsible for the incident.

c. Formal Diversion

Formal Diversion is carried out if informal Diversion cannot be carried out but does not require court intervention. Some victims will feel the need to tell the child how angry and hurt they are or want to hear it directly from the child. Because the problem may arise within the child's family, it is better if other family members are present to discuss and develop a good diversion plan for all parties affected by the act.

The three types of Diversion above, in practice, involve the victim; of course, if the victim is a child, this victim's child will also be involved in the diversion process. Representation of child victims in the diversion process is an important matter to study, whether parents can represent the needs of child victims, or only child victims themselves can decide what kind of needs and desires for justice are desired from the diversion process.
Article 1, point 7 of the Law on the Juvenile Criminal Justice System provides the notion of Diversion, namely the transfer of settlement of child cases from the criminal justice process to processes outside the criminal justice system. This process outside the criminal justice system makes children, both perpetrators, and victims, avoid the negative stigma of the criminal justice system.

Diversion is as old as the juvenile court itself: The major goal of the first juvenile courts, established at the turn of the century, was to provide an alternative to, and thereby divert youths from, the criminal court. The juvenile court was created to avoid the unfair and inhumane treatment to which juveniles were subjected when processed through the criminal court and incarcerated with adult felons. (Robert, 2014)

Diversion is preventing the child from formal procedures in court and reducing the possibility of recidivism occurring in the future. The mission of the idea of Diversion for children is to provide an alternative to formal procedures in court to provide a second chance for minor offenders who are committing crimes for the first time through programmed activities and provide a real form of social service to the community, while the main goal is to ward recidivist for program participants. With this opportunity, young people can become new figures who are clean of criminal records (Iman, 2018).

Seeing the above, how Diversion will be very helpful for the perpetrator's child in avoiding the negative effects of the law enforcement process, especially punishment. Settlement out of court and peace with the program make Diversion different from the usual criminal law enforcement process. This is the specialty for children who are in conflict with the Law. This protects child perpetrators who conflict with the Law.

Diversion refers to procedures whereby a juvenile is treated, or supervised, outside the formal procedures of juvenile courts or juvenile institution. Diversion does not mean a youngster is not supervised at all or is free to go his or her own way. Rather, the concept means that the youth is handled by other agencies than the courts or correctional facilities (Shoemaker, 2009).

Settlement of juvenile criminal cases through Diversion is full of family values. Therefore, Diversion will keep the child away from bad effects that can disrupt the child's development and future. Diversion should pay more attention to children's human rights (Harefa, 2015).

There are 4 (four) scopes of children's basic rights, which are formulated in the Convention on the Rights of the Child: the right to survival, the right to development, the
right to protection, and the right to participate in community life (participation). (Harefa, 2015) describes the role of Diversion in criminal justice, namely as follows: \textit{First}, the role of Diversion as an effort to protect the right to survival. \textit{Second}, the role of Diversion as an effort to protect the right to develop (development). Third, the role of Diversion as an effort to protect the right to protection. Fourth, the role of Diversion is to protect the right to participate in community life (participation).

In many cases, victims in child incidents can be children or adults. Diversion can still be carried out because diversion looks at the perpetrator's child, not who is the victim. This means that the victim of the child's actions will get the opportunity to get restorative justice in the diversion process, both children and adults. Restorative justice, the basis of Diversion, is justice-oriented toward recovery due to a crime. Of course, the victim is the first party that must be recovered because it is the party that suffers losses as a result of the crime committed by the perpetrator's child.

Thus, Diversion is expected to provide justice for the perpetrator's child and the victim, especially if the victim is a child. Looking at legal cases involving children, from the data available at the Ministry of Womens Empowerment and Child Protection not a few child victims of violence are peers, which means that the diversion involved children as victims. Therefore, eliminating labeling for child perpetrators must be balanced with the goal of recovery for child victims.

The Diversion that is carried out does not only focus on the perpetrator's child but also the victim's child as the concept of restorative justice to recover the consequences of a crime; of course, this will make the application of Diversion a form of restorative justice by the justice expected so far. Justice shifts from retributive justice, which focuses on the perpetrators. Diversion is expected to provide protection to child perpetrators by not being victimized by criminal justice and provide protection to child victims by not being intimidated by the criminal justice process in terms of recovering losses from criminal acts.

3 METHODOLOGY

The research method uses normative legal research methods. Normative legal research can examine a building system of norms. The system of norms referred to relates to principles, norms, rules of law, court decisions, agreements and doctrines (teachings). (Fajar & Achmad, 2010), in this study the building of
the norm system in question is related to social research in handling cases of children in conflict with the law.

The normative law research method (Soekanto & Mamudji, 2007) uses secondary data in the form of library data (Soemitro, 1990). The data studied are in the form of legal regulations and decisions regarding diversion in the stages of the criminal justice system.

The approach used is an inventory of laws relating to restorative justice contained in the stages of handling child cases by the justice sub-system, namely the police, prosecutors and courts. Vertical horizontal synchronization is used to see harmony between existing regulations, especially with regard to social research in diversion decisions. Then the legal principles approach is used to examine the principles contained in restorative justice whether they are in accordance with the principles contained in existing regulations for handling cases of children in conflict with the law.

The data used is secondary data in the form of literature, research results, court decisions and is complemented by the results of interviews with social workers. The results of the study are described descriptively so that you can see the application of the principles of restorative justice in implementing diversion in Indonesia.

4 RESULTS AND DISCUSSION

As stated above, Diversion is a settlement of criminal cases in the juvenile justice process, which embodies restorative justice so that it is considered as one thing that can provide protection for children who are perpetrators of criminal acts.

In the case of children dealing with the Law and relationships with victims, three types of crimes can be committed by children. First are crimes with no victims, such as traffic violations, narcotics, carrying sharp weapons, etc. Second, crimes that involve adult victims, such as theft, destruction, collection, etc. Third are crimes involving other children who become victims, such as rape, sexual harassment, violence, beatings, abuse, etc. This third type of crime creates victims who are also children, so they need protection by the Law in the juvenile justice system, not only the perpetrator's child but also the victim's child.
In the first type of crime, mandatory Diversion is applied. Minor violations committed by children will be forgiven, and the child is considered a victim so that the child's best interests must be treated and the stigmatization of criminal justice is avoided. Children are also considered victims in the second type of crime, and Diversion must be carried out in their settlement. Usually, adults who become victims will forgive and give excuses to the perpetrator's child. In the third crime, some children become victims, needing recovery and protection from the juvenile justice system. However, unfortunately, some of these types of crimes do not meet the requirements for Diversion due to threats of more than 7 years (such as sexual harassment, violence, etc.), so Diversion is not recommended to be pursued.

The practice of diversion starts from the Community Research stage conducted by Correctional Centers (BAPAS). The assigned Community Advisor will provide initial assistance to the offender's child to ensure all processes are carried out properly. This refers to Article 2 to Article 4 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which relates to the rights of children in conflict with the Law and the principles of administering juvenile justice.

Initial assistance is carried out when the child is determined as a suspect or suspected of committing a crime. The condition that the child can be detained depends on the alleged crime committed. Community research is carried out after all stages of the Police Investigation Report in the Police have been completed. The Social Counselor conducts community research on the offender's child by examining the condition of the perpetrator's child's social environment. The things that are done are data mining concerning identity, birth, growth, and development of the child, including the psychological realm. Another part is also the social environment where the child grows and socializes with parents, the community, schools, nature, and even the local government. Because sometimes the child's character is determined by the demographics or the environment in which the child grows and develops.

Community Research is intended to objectively reveal and find information about the development and background of children in conflict with the law life from various sociological, psychological, economic aspects, and so on. This data and information can reveal the factors/background of the crime committed by children in conflict with the law.

All these things are examined to determine the factors that cause children to commit crimes because, after all, children who commit crimes are victims of the
environment, circumstances, situations, or whatever it is that makes them commit crimes. An overview of the causal factors is given in detail so that recommendations are obtained from community research on whether this child will be diverted or not. It can also be in the form of recommendations for alternative solutions to solving problems and by providing juridical and sociological considerations for the best interests of children in conflict with the law.

Two recommendations will appear from the results of the Community Research, namely recommendations for Diversion and recommendations for not Diversion. Both types of reports are submitted to the Investigator. If the result is a diversion recommendation, the social research report will be submitted to the police investigator to schedule a diversion deliberation process. If the recommendation is not a diversion, then the Community Research is handed over to the Investigator to transfer the file to the prosecutor's office as a further law enforcement process.

If the recommendation is Diversion, then the next stage is deliberation. In the diversion deliberation process, various parties were present with the police diversion facilitator. The child of the perpetrator, the victim, parents or guardians, assistants, social workers, the school, or other necessary parties can be present in the diversion deliberation process.

This diversion process also involves the victim or the victim's parents, or the victim's guardian. The perpetrator's child and the victim's party are given the same opportunity to convey their needs and desires. Victims are sometimes accompanied by their parents and even social workers. Especially if the victim is a child. In Diversion, there is no obligation to make peace, but he is allowed to convey his wishes for the losses suffered by the victim. In order to obtain an agreement that provides justice for both parties. If the agreement is amicable, peace is implemented, but if the agreement proceeds to the next process, the case continues through the juvenile justice system.

The results of the diversion deliberations at the police stage, if an agreement is reached for Diversion, can be submitted to the District Court for a stipulation by the Chief Justice. The agreement obtained is carried out by the parties at the agreed time. A diversion will be called successful if the agreement can be carried out properly, and Diversion will be called a failure if the parties cannot carry out the agreement agreed upon in the diversion process.
In the results of social research, an overview is given of the condition of children who conflict with the Law (children of perpetrators). Life history and development of children in conflict with the law starting from birth, physical growth, and psychosocial growth. The educational history, formal and non-formal, includes education in the family. Behavioral history is also a part of social research, such as the talents and potential of the offender's child, social relations with parents or family, religious observance, good or bad child habits, and attitudes at school, including whether there is a history of violations of the Law; and also a history of smoking, drug and alcohol use.

In addition to the child's condition, the condition of the parents of the offender's child is also described in social research. Parents' marriage, social relations in the family, work, family economic conditions, and even the condition of the house where the child lives. This will certainly affect the growth and development of the child. The condition of parents who are economically capable or economically incapable will also affect the behavior of the child.

Larger social conditions are also a part that must be observed in conducting social research. The child has good social relations with the community or not. Then natural conditions such as ease of transportation, damaged roads, and access to cities also affect the child's mental state. Including the local community. Such as work as a livelihood, social strata where children live, and level of education in community members. For example, many graduates from junior high or high school or maybe a bachelor's degree.

Another important thing is also related to the pattern of relationships (social interaction) in society. Are the conditions in the community favorable for children? This is related to community concern for children or children having concern for community life. This concern is also related to concern for education, concern for religious activities, as well as concern for law enforcers, and applicable norms.

The various things above will certainly affect the child's growth and development, including the behavior of naughty children who may deviate and even violate prohibited laws or norms and harm other parties. Community research also explains the crimes committed and their analysis so that recommendations are produced on whether to diversion or not a diversion for crimes committed by the offender's child. As in the social research report for the diversion process of Class II Serang Penitentiary, with No. 04/LDIV/A/IV/2023 on behalf of MIN with the case of receiving Article 480 of the Criminal Code. What is recommended for Diversion with the analysis results is related to
criminal acts committed by children in the form of enjoying the proceeds of the criminal act of collecting with their friends. However, victims who experience material losses know that the perpetrators are minors and still have family ties. The victim does not mind if this case is resolved peacefully. The perpetrator's child admits to his actions and that the fund gets a profit of Rp. 50,000 rupiah as money to keep quiet. The perpetrator's child feels sorry and promises not to repeat the unlawful act and will be more careful in behaving in the future.

The attitude of the family, community, and local government supports the perpetrator's child not repeating the act and being careful in social interactions. The family will supervise properly so as not to commit crimes again. Especially the attitudes and responses of victims and their families, who are open and fully submit this matter to the applicable legal rules and have no objection to legal Diversion. The victim and his family are willing to resolve this problem through deliberation and only hope that the victim's motorbike will return soon.

The conclusion from the social research, in this case, is the disclosure of the main factors that cause the perpetrator's child to be involved in a crime, namely:

a. Children in conflict with the law psychological condition is still in the unstable category, and he cannot think about the consequences of his actions;

b. Non-fulfillment of care, children in conflict with the law daily needs, and guidance from the child's parents as a whole;

c. Lack of inherent supervision from parents and children in conflict with the law closest family;

d. The existence of opportunities and situations that allow the occurrence of criminal acts;

e. Lack of knowledge about Law and religion for both children in conflict with the law and children in conflict with the law grandparents and children in conflict with the law mates.

From the causal factors above, the perpetrator's child is a victim of the environment around him. There is the role of parents and the environment that makes children involved in criminal acts. Therefore, efforts to Diversion should be carried out in resolving children in the juvenile justice system.

On the other hand, the victims who suffered material losses because of the items they stole have forgiven and have no objection to this case being resolved amicably.
considering they are still in a relationship. This is where restorative justice is implemented, considering that victims are part of the peace process and have the opportunity to express their opinions and wishes.

Therefore, in this case, the recommendation of the social advisor in social research is that Diversion can be carried out at all levels, with various considerations related to ABH, family, and community attitudes. Especially considering that deliberations have been held with the victim/victim's family and resulted in an agreement that the victim does not mind if this problem is resolved through the kinship route considering that they are still in the same area, there are still family ties and the age of ABH is still underage. The local government and the Police also facilitated this meeting.

The diversion process is a form of implementation of restorative justice. Justice meant here is not justice which means imposing a punishment according to the actions of the perpetrator, but a justice known as restorative justice. Restorative justice is a process that involves together how to deal with the consequences of a crime with implications for the future. The restorative justice approach is a justice process that is fully carried out and achieved by society (Ernis, 2016).

It is also necessary to emphasize the importance of the involvement of victims, affected communities, and perpetrators on the importance of the involvement of professionals who are trained and have special expertise in adolescent behavior in the process of restorative justice (juvenile justice professionals). Its roles include: facilitating mediation, determining certain places that are valuable to the community in case community service obligations are to be carried out by the perpetrator, developing empathy groups and victims' panels, organizing panels; the community, institutions or committees that discuss with the perpetrator for the benefit of the victim, the community and the perpetrator, facilitating the process of apologizing to the victim's community, raising awareness of the victim and others (Ernis, 2016).

If Diversion is not achieved at the investigation stage, the juvenile prosecutor can seek Diversion at the prosecutor's office. In this case, the community counselor continues to assist in implementing Diversion at the prosecutor's level. For example, in Determination No. 68/ Pen.Div/2022/PN. TNG in the case of DF's son. In the stipulation, it is stated that it is ordered to carry out Diversion relating to matters where the child has confessed his actions, expressed remorse for the action, conveyed an apology to the
victim, and has submitted a request for a peaceful and amicable resolution orally and in writing, and promised not to repeat his actions in later. See figure 1 for diversion process:

In addition to the statement of the perpetrator's child, another important part is the clause that the victim states that he has been forgiven sincerely and unconditionally for the child's actions against the victim, and the victim will not demand anything. This is where restorative justice is manifested. Apology from the victim, regret, and forgiveness from the victim. In this case, no compensation was requested by the victim. If the victim wants it that way, that is the justice that both parties want to achieve.

The Tangerang District Court's decision above was based on a request letter from the Tangerang District Attorney regarding the request for a diversion determination because a diversion agreement had been reached and it had been implemented. The success in implementing this diversion agreement was not spared from the report on the results of the diversion implementation assistance at the prosecutor's level by the community advisor.
Thus, in this case, the Head of the Tangerang District Prosecutor's Office issued a Decision Letter on Termination of Prosecution Number: Print-2337/M.6.16/Eku.2/09/2022 on behalf of DF. The reason for terminating the prosecution in the form of a diversion agreement in the form of peace without compensation or handing back the child to the parent/guardian has been carried out.

The conception of restorative justice thinking is one of the efforts to keep children away from the unnecessary criminal justice system. This approach prioritizes the settlement of criminal acts outside the criminal justice system. Restorative justice is a way of responding to criminal behavior by balancing the needs of society with victims and perpetrators. This evolving concept may give rise to different interpretations in different countries (Sianturi, 2016).

With the existence of restorative justice through a diversion approach in the criminal justice system, the goal to be achieved is to bring together the perpetrators or their parents with the victims, and the perpetrators are responsible for their actions. Meetings between perpetrators, victims, and other parties involved try to produce an agreement to end the criminal cases they experience. Often the implementation fails to reach an agreement due to various factors behind it (Mansari, 2016).

One of the results of the study showed that the factors hindering Diversion were determined because the victim wanted the settlement of child cases through a formal court mechanism, the amount of compensation was too large, the community's understanding of Diversion was still lacking, the law enforcement officials who had been trained were transferred to another place, the victim's family was never present during the diversion process, and the child committed repeated crimes (Mansari, 2016).

In the judicial process, the inhibiting factors for applying Diversion are people's understanding of bad children, the environment, and a lack of understanding about state responsibility for children. This factor can be interpreted as often the failure of the diversion process in the judicial stages is due to a lack of understanding of the parties, especially parents and the wider community, regarding bad children. Hence, people tend to be reluctant to accept or forgive a child who has committed a crime. Diversion rarely succeeds, moreover, because the culture of forgiveness that exists in society tends to be lacking. Society believes that someone who has committed a crime must be rewarded, even though he is a child (Komariah & Cahyani, 2016).
In the practice of Diversion in Indonesia, social research is the initial foundation for Diversion or settlement through the judiciary. Based on the Community Research that has been done, the factors that cause children to commit crimes and the child's relationship with the environment have been clearly described. Also, it includes the attitude and response of the victim to the child and the incident.

So that recommendations from community research results can be used as a consideration for the criminal justice sub-system to carry out Diversion at every level. If, at the police stage, an agreement on Diversion is not successful, then the social research report can be used as consideration for Diversion at the prosecutor's stage. If that is not successful either, it can still be attached to the file to seek Diversion at the court stage to be used as a consideration in determining Diversion in court. The community advisor will continue to provide assistance until this case is completed.

5 CONCLUSION

Community Research Recommendations for implementing Diversion in Indonesia embody restorative justice in the juvenile justice system. This can be seen from the social research process, which identifies the offender's children by observing the child's condition, birth history, family history, and educational history. Not only is the child's condition personal, but it also includes the social relationship between the child and the family, the surrounding environment, the school, and the environment where the crime is committed. From these conditions, an overview of the factors that cause children to commit crimes will be obtained to find solutions to problems for the best protection of the child's interests. In the process of Diversion, Victims are involved as parties who have the opportunity to express their views and recover as a result of criminal acts. The agreement made must be based on the consent of the victim. The perpetrator's child feels sorry and apologizes to the victim, and the victim forgives and gets recovery, unconditional or conditional (payment of compensation). Everything is done without coercion and voluntarily so that both parties achieve justice.
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