

The Implementation of Diversion in Children's Lawsuits During the Investigation Stage

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Abstract

Restorative justice for children in legal disputes involves crime reparation. The law requires parties to cooperate to achieve justice. Police always start diversion investigations. The police decide the diversion's success as the Criminal Court System's gatekeeper. The diversion can be used throughout the criminal investigation. Diversion success impacts investigation time and cost. To manage diversion, Indonesian Police investigators must consider this. This research examines children's lawsuit diversion during the investigation. Lawmakers' legally binding products (laws in books) and investigators' diversion verdicts are also covered in this research. The normative/doctrinal approach is used. Supporting data is primary and secondary. Interviews, documentaries, and literature reviews gather primary data. This study uses interactive qualitative analysis. In the investigation stage, "diversion" refers to the compliance with normative regulations and the consent of the perpetrators' or victims' families to avoid legal proceedings. This agreement serves as evidence that it is the most significant law. Opponents of the diversion desire a deterrent; they are concerned that perpetrators will commit crimes and believe that the court system fails victims.

Keywords: Diversion and Investigation

Introduction and Background

The word "Diversion" was first introduced in the report on the implementation of juvenile justice by the President of the Australian Criminal Commission in the United States in the 1960s. The basic idea is this concept, to avoid the negative effects of the conventional implementation of examinations on children. Negative effects, both in the process and stigma (bad label) due to the judicial process. On this basis, it is necessary to divert from conventional methods (Susanti, 2017).

The Restorative Justice approach is assumed to be the most advanced shift from the various models and mechanisms that work in the criminal justice system in handling criminal cases. It is even seen as a paradigm that can be used as a frame for handling crimes, especially in children's cases (Dar Indrawati, at al.,2021).

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Talking about diversion (Article 1 Point 7 of Law No. 11 of 2012) is talking about the resolution model of children having conflicts in law (Article 1 Point 7 of Law No. 11 of 2012). Restorative justice emphasizes restoring the initial condition after criminal acts. To achieve justice, all parties must agree. Victims, perpetrators, their parents, and others are involved.

Restorative justice in diversion should follow norms and agreements. Diversion applies only to criminal acts with a sentence under seven years and no act norm recidivists (Article 7 of Law No. 11 of 2012). The diversion is applicable if the perpetrators are under 18 or older. Furthermore, the diversion is inapplicable if one of the parties does not consent as it pertains to the agreement.

Not all cases can be resolved by diversion, because the basis for considering diversion is not only for the benefit of children (children as perpetrators of crimes) but also considering justice for the victim (Sinaga, 2012).

When discussing the diversion in the context of Law No. 11 of 2012, the law is abstract, but its enforcement should be concrete and a management issue. (Satjipto Rahardjo, 2009) says law enforcement involves enforcing abstract ideas. It also aims to make all ideas real. Thus, enforcement is a management function, and its guidance may not always relate to the law but to the evaluation of a group or individual. (Soekanto, 2011).

Investigation diversion always begins with police as investigators. Diversion success depends on the Criminal Court System. Diversion is available at all stages of criminal lawsuits, but success in the investigation stage will save time and money. Police investigators must manage diversion with this in mind.

In the implementation of diversion for public offenses, the police will seek peace even though there is no initiation from the disputers. This means, under certain conditions, the police are the initiators of peace in diversion (Junarti & Karyoto, 2022).

The result of research conducted by (Karyono, 2018) says that The Cirebon City Municipal Police worked to implement diversion during the investigation. In an interview with AKP Galih Wardani, S.Ik, he said the Municipal Police of Cirebon City has provided seven investigators who meet the criteria in Article 26 Paragraph (3) of Law No. 11 of 2012: (a) experience as investigators, (b) interest, attention, dedication, and understanding of children's issues, and (c) technical training in children's court.

The above research findings show the investigators' readiness to use diversion. The Human Resources department can divert during the investigation.

Research Questions

1. How is the implementation of diversion in the children's lawsuits at the investigation level?

2. What are the challenges associated with implementing diversion in children's lawsuits at the investigational level?

Research Objective

The Criminal Court System of Children Law No. 11 of 2012 and Presidential Decree No. 65 of 2015 govern diversion in juvenile lawsuits. According to Article 30 Paragraph (1) of Presidential Regulation No 65 of 2015, the Indonesian Head Police Decree governs diversion implementation procedures. This research analyzes the investigation-level implementation of diversion of juvenile lawsuits per this normative rule.

Research Method

The positivism paradigm is implemented in this study. The law is conceived as a norm (orders and restrictions) that is the product of a law-making institution that binds (law in books). Specifically, a law is a positive norm in national legislation. Furthermore, this investigation also regards the law as a verdict, which is a diversionary verdict that the investigator has proposed. Consequently, the normative/doctrinal approach is implemented. Secondary and primary data are employed as the supporting data. The data collection technique is implemented through interviews, documentary studies, and literature reviews to acquire primary data. The qualitative analysis in this research is conducted using the interactive model.

Research Object

This research focuses on developing applicable diversion laws during the investigation phase, as evidenced by the agreement between the perpetrators or their families and the victims or their families. The agreement's content is subsequently analyzed to determine whether the diversion is supported or opposed.

Research Outcome and Discussion

1. Children Diversion at Depok Sector Police of Cirebon Regency Municipal Police (The interview result with Sector Police, Municipal Police of Regency Cirebon in 1917).

From January to September 2017, Depok Sector Police handled seven cases. Persecutions, intercourses, obscene acts, and taking underage girls without parental consent are among those cases. Persecution was the only diverted case; the others were processed. This diversion occurred in the persecution case because the suspect apologized to the defendant, and his parents paid the victim/victim's parents IDR 25,000.000.

The suspect or reported party promised not to harm the victim or family. On February 16, 2017, Police Report Number LPB/18/II/2017/Jbr/Sector Police Depok

stated that the victim agreed to end the investigation. This diversion is justified by the criminal act's sentence of less than seven years, and both parties have given their consent.

In the Criminal Code, there are several types of persecution:

1. Common persecution that could be punished with an 8-month detention and a fine of three hundred Indonesian Rupiah (Article 351 Paragraph (1) of Criminal Code);
2. A 5-year detention could be imposed for persecution that results in a severe injury (Article 351 Paragraph (2) of Criminal Code);
3. Persecution leading to a death could result in a 7-year detention (Article 351 Paragraph (3) of Criminal Code);
4. Soerjono Soekanto believes enforcement is a discretionary decision-making process not fully regulated by law because it is assessed. Law enforcement is more than just law implementation; the trend in Indonesia is making it popular. (Article 352 of Criminal Code);
5. Planned persecution that a 4-year detention could punish. If this persecution leads to a severe injury, the detention could be seven years, and if this leads to a death, the detention could be nine years (Article 353 of Criminal Code);
6. Persecution intended to injure others, as is the case with heavy persecution, could result in an 8-year sentence. If this results in a death, the detention could last ten years (Article 454 of the Criminal Code);
7. A 12-year detention could result from the heavy, premeditated persecution. The detention could be 15 years if this results in death (Article 355 of the Criminal Code);
8. The criminal punishments, as stated in Articles 351, 353, 354, and 355, could be added one-third heavier if:
 1. For those who commit a crime to their mothers, fathers, according to Law, wives, and children;
 2. For those who commit a crime against a public official when they are doing legal work;
 3. For those who commit a crime by giving hazardous materials in food or beverages (Article 356 of the Criminal Code).
9. In addition to their responsibility and the actions they have taken, individuals who intentionally participate in an attack or fight that involves many people will be charged for:
 1. 2 years and 8 months detention if that attack or fight causes heavy injuries
 2. 4 years detention if leading to the death of one of them (Article 356 of Criminal Code).

The persecution case was diverted because the suspect apologized to the defendant, and his parents paid the victim's parents IDR 25,000. The suspect or reported party promised not to harm the victim or their family again.

The "Agreement" between the perpetrator and victim to avoid legal proceedings shows that in any criminal case, an agreement is the most binding law that all parties must follow. Sociology calls freedom of contract transactional law, while civil law calls it freedom of contract (Salman, 2003). Both legal natures in the Law of Children's Criminal Court System are legalized (Article 11 of Law No. 11 of 2012).

2. Children Diversion at Lemah Wungkuk Sector Police (The interview result with Sector Police Lemahwungkuk, Municipal Police of Cirebon City in 2018).

Rizky Maulana, a fifteen-year-old, was one of the six motorcycles that Ridwan Subagja passed while providing Fadli Prasajo with a ride. Rizky caused Fadli Prasajo to fall by kicking his motorcycle. The victim was struck after falling. The case of theft with violence, which was reported to the Police Number LP/23/B/2017/JBR/Res Crb Kota/SEK LEMAHWUNGKUK on May 09, 2017, on behalf of the rapporteur of (late) Ridwan Subagja, was subsequently diverted.

Article 365, Paragraph (1) of the Criminal Code punishes theft that is initiated or followed by violence or threats to others to prepare or facilitate the theft or is caught red-handed to facilitate an easy escape with nine years in prison. A group or individual may steal to keep the goods. This article states that the May 9, 2017, case number LP/23/B/2017/JBR/Res Crb Kota/SEK LEMAHWUNGKUK cannot be diverted normatively. Consideration is based on criminal sentences over seven years (Article 7 Paragraph (1) of Law No. 11 of 2012).

By the diversion of case LP/23/B/2017/JBR/Res Crb Kota/SEK LEMAHWUNGKUK, which is subject to 9 years of detention following Article 365 Paragraph (1) of the Criminal Code, there are numerous potential outcomes:

a. Article 365(1) of the Criminal Code applies. The victim and perpetrator agreed to the diversion to resolve the issue. Therefore, the investigator tried diversion. The perpetrator and victim can have their own case resolution model since the crime directly affects them.

b. There is a possibility that what the perpetrator did in the case report No. LP/23/B/2017/JBR/ Res Crb Kota/SEK LEMAHWUNGKUK is a trial of Article 365 Paragraph (1) of the Criminal Code with nine years detention. The criminal punishment would be reduced by one-third if this were the case. This implies that the diversion resolution is applicable. Trials are incomplete criminal acts, not self-willingness. Article 53 of the Criminal Code states that: (1) trying to commit a criminal act is sanctioned if that intention is real according to the initial act and its incompleteness does not refer to self-willingness; (2) the maximum main criminal on trial can be reduced by one third; (3) a death penalty criminal can be sentenced to 15 years; and (3) the additional criminal is equal to complete violence.

c. Case No. LP/23/B/2017/JBR/ Res Crb Kota/SEK LEMAHWUNGKUK may have violated Article 170 of the Criminal Code by destroying, resulting in a 9-year sentence under Article 365 Paragraph (1). Since this article's criminal detention is five years, diversion is allowed if this analysis is correct. Whoever obviously and with other people uses violence on materials is sanctioned with a criminal law for five years at the longest (Article 170 Paragraph (1) of the Criminal Code).

3. Diversion at Kedawung Sector Police (The interview result with Sector Police of Kedawung, Municipal Police of Cirebon City, in 2017.

A motorcycle was stolen on Simega II Street across from Islamic Centre Vocational High School in Kertawinangun Village, Kedawung District, on Friday, August 18, 2017. Tauhid bin Akmadi, 17, was robbed by 16-year-old Koko Riski bin Sukisno.

The Correctional Bureau (BAPAS) of Cirebon, the Social Welfare Service Provider Unit of the Social Agency of Cirebon, and professional workers of the Indonesian Ministry of Social Affairs observed the Kedawung Resort Police of Cirebon Municipal Police diversion on August 31, 2017. The victim, perpetrator, and their parents attended. The offender apologized to the victim.

1. The victim would receive IDR 500,000 in compensation from the perpetrator and his parents to repair the damaged motorcycle, return two mobile phones, and obtain an STNK (Vehicle Registration Certificate).

2. The perpetrator promised not to commit the same criminal act on the victim or other people;

3. The victim would repeal his report and discontinue the investigation process.

Article 362 of the Criminal Code penalizes anyone who unlawfully acquires, partially or entirely, an item belonging to another with the intent to possess it with five years in prison or a sixty thousand Indonesian Rupiah fine.

As defined in Article 362 of the Criminal Code, theft carries a five-year criminal threat, making the diversion applicable. In addition to the broken law, Decree No. 11 of 2012 establishes a perpetrator-victim agreement. Article 11 of Law No. 11 of 2012 validates the diversion agreements in the form of a. reconcilements with or without compensations; b. returning to parents/guardians; c. Involvement

Article 6 of Decree No. 11 of 2012 and Article 2 of Presidential Decree No. 65 of 2015 state that the diversion aims to foster a peaceful relationship between victims and children, resolve children's lawsuits outside of the legal process, prevent the dispossession of children's freedom, encourage community participation, and establish child responsibilities.

The purpose of implementing the juvenile justice system is not solely to impose criminal sanctions for children, but is more focused on thinking as a means of supporting the welfare of children who commit crimes (Hidayat, 2021).

Per the Standard Minimum Rules for Administration of Juvenile Justice (SMR-JJ), Barda Nawawi Arief claims that the children's court's goals are proportionality and juvenile welfare (Muladi and Barda Nawawi Arief, 1992).

Barda Nawawi Arief also believes the criminal court model should prioritize child welfare. This means the children's court model should support punitive sanctions-free principles. In the meantime, proportionality, the second principle's goal, limits last-resort sanctions (Muladi & Arief, 1992).

Arief believes juvenile offenders should be seen as children who need help, compassion, and affection, not criminals. The legal approach to children should prioritize persuasive, educational, and psychological methods. Thus, punitive legal sanctions should be avoided because they discourage children's mental and spiritual well-being and prevent stigmatization, which could hinder their normal development, ability, and independence (Muladi & Arief, 1992).

The settlement of child cases that lead to criminalization is not in accordance with and contrary to the purpose of the Convention on the Rights of the Child, which is the best interest (Rodliyah, 2019).

The protection of children must be in accordance with the Convention on the Rights of the Child which has been ratified by Presidential Decree No. 36 of 1990 concerning the ratification of the Convention on the Rights of the Child. In the convention, one of them mandates to protect and protect children who are facing the law (Zuliah, 2017)

The settlement of legal cases by children outside the criminal law process has more beneficial value. Children who are faced with enforcement will have an effect on their mental state. Not to mention the stigmatization from the community (Ani Triwati, Kridasakana, 2021).

The juvenile criminal justice process often presents itself as a mechanism that is only oriented towards law enforcement by ignoring the interests of children (Ananda, 2018)

The criminal justice process against children often loses its essence, namely as a mechanism that must end with efforts to protect the best interests of children. Children's criminal justice is only oriented towards formal law enforcement and does not favor children (Anzward, & Widodo, 2020).

The above conditions are the basis for considering the need to transfer the legal process from inside the court to outside the court. The diversion from the criminal justice process to the process outside the criminal law, is the juridical meaning of the concept of diversion. Criminal justice is everything related to the judge in deciding criminal cases, to defend or guarantee the observance of material law. Criminal justice is everything related to the judge's duty in deciding cases to enforce the law. Guided by this restriction, the transfer of the settlement of children's cases

from everything related to the judge's duty in deciding criminal cases to enforce the law to an out-of-court process (Suriani, 2018).

Article 8 Paragraph (3) of Decree 11 of 2012 and Article 6 of Presidential Decree 65 of 2015 confirm the following: a. victim interests; b. child prosperity and responsibilities; c. revenge and stigma avoidance; d. community harmony; and f. obedience, decency, and public order during diversion.

After reviewing the diversion agreement at Kedawung Sector Police of Cirebon Municipal Police, the perpetrator apologized to the victim and pledged not to repeat the offense. The criminal write-off theory is shown here.

Justification and forgiveness enable the criminal write-off theory. The act may be wrong, but the law accepts it. Forgiveness may be questionable, but the perpetrators' circumstances may justify it. Justification and forgiveness are limited by the Criminal Code's decrees, job position orders, force power, and irresponsibility.

The criminal write-off of the children is based on Article 45 of the Criminal Code, which considers children under 16 as underage. This underpins Decree No. 3 of 1997 and Decree No. 11 of 2012.

4. Diversion at Weru Resort Police, Cirebon Regency (The interview result with Sector Police of Weru, Municipal Police of Regency Cirebon in 2017).

Didi Paridi was persecuted by Iwan Setiawan bin Sukiman at Jalan Raya Plered on Tuesday, August 22, 2017. The victim's right thigh was nicked as a consequence of the use of a sickle, a sharp weapon.

The perpetrator violated Article 351 Paragraph (1) of the Criminal Code (Case Number: 20/Pid.Sus-Anak/2014/PN.Mks).

The following are the regulations of Article 351 of the Criminal Code: (1) persecution that may result in a fine of three hundred Indonesian Rupiah or a two-year and eight-month detention. The term "persecution" is equivalent to "damaging health."

The diversion in the investigation level at the Weru Sector Police of the Cirebon Regency Municipal Police can be described as follows:

- A. The persecution of Didi Paridi by Iwan Setiawan bin Sukiman occurred on Tuesday, August 22, 2017, at 07:30 local time, on Jalan Raya Plered in Weru Village, Weru District, Cirebon Regency. The perpetrator, Iwan Setiawan, used a sickle to slash the victim, Didi Paridi. Didi sustained an injury to her right thigh. This violates Article 351 Paragraph (1) of the criminal Code (Police Attachment Number: LP/B/77381/VIII/2017/JABAR/RES CRB/SEK WERU/dated on 22 August 2017).
- B. Sector Police Officers called both the perpetrator and victim or his representative.
- C. Weru Sector Police met on September 22, 2017, with victim representative Agung Hidayat bin Sadul and perpetrator representative Sukiman bin Mastura. A

Class 1 Community Counsellor (Mediator), the Head of the Social Welfare Service Provider Unit of the Social Agency of Cirebon (UPT PPKS), the Bhakti Unit of Social Workers, and Weru Sector Police Investigators also attended the meeting. Witnesses included the General Head of Danamulya Village and the General Section of Bode Lor. The meeting agreed on the following:

1. The perpetrator compensated the victim with IDR 2,500,000 (Two Million and Five Hundred Thousand Indonesian Rupiah);
 2. Both the perpetrator and the victim agreed to forgive one another and resolve the issue through kinship.
 3. The perpetrator would continue his studies under the supervision of Cirebon's Class 1 Correctional Bureau and the Cirebon Regency Social Agency.
 4. If this case is considered in the future, it will no longer be applicable.
- D. The perpetrator requested the repeal of Police Report Number LP B/77-381/VIII/2017/JABAR/RES CRB/SEK WERU on September 25, 2017, following the agreement outlined in point 3. The report pertains to a criminal act of persecution, as defined in Article 351 of KUHP, that occurred on Tuesday, August 22, 2017, at 07:30 local time on Jalan Raya Plered-Cirebon, which is a part of Weru Village, Weru District, Cirebon Regency. The rationale for repealing that report is as follows:
1. The persecution act has been solved through kinship;
 2. Iwan Setiawan bin Sukiman, the perpetrator, acknowledged his mistake and pledged to refrain from repeating it.
 3. The perpetrator, Iwan Setiawan bin Sukiman, had compensated the medical costs of Didi Paridi worth IDR. 2,500,000,- (Two Million and Five Hundred Thousand Indonesian Rupiah).
- E. On September 25, 2017, the Official Record of Diversion was made. The record described the following:
1. Time and place of the mediation for the diversion of this case as stated in the Police Report;
 2. Case identity;
 3. Description of Case Scene;
 4. List of people attending the mediation for diversion;
 5. Implementation stages of mediation for diversion;
 6. Conclusion;
 7. Signatures of parties attending the meeting of this case. They are the Community Counsellor of Class 1 of Cirebon (Mediator), Head of the Social Welfare Service Provider Unit of the Social Agency of Cirebon (UPT PPKS), Bhakti Unit of Social Workers, and Investigator of Sector Police Weru. In addition, General Head of Danamulya Village and General Section of Bode Lor also attended the meeting as witnesses.

6. Based on the Official Record of Diversion, the sector police proposed a diversion verdict to the Head of the District Court of Sumber.

7. The District Court of Sumber stipulated the diversion of the case on September 29, 2017, per the Police Report, following the diversion verdict issued by sector police. The court stipulated the following: 1. Endorsing the investigator's proposal; 2. Requesting that all parties adhere to the diversion agreement; 3. Requesting the investigator to issue the Letter of Investigation Termination upon completing the diversion agreement.

Referring to the termination of the above case (which was successfully divided), it seems to imply that there is a criminal abolition because there is an agreement to reconcile between the perpetrator and the victim. According to the Regulation of the National Police Chief Number 08 of 2021 concerning the Handling of Crimes Based on Restorative Justice, reconciliation at the investigation level for certain cases is possible. Even more than that, if the peace deed is made by a notary, it will have permanent legal force (Faishal at.al., 2022).

In certain cases, the strength of the deed of settlement by a notary is so that the case can be issued with SP3 (Investigation Termination Order) because there is not enough evidence. On the other hand, the peace deed is also the reason for the loss of the unlawful nature of the act (Wicaksono, 2022).

. It is no longer an open secret, not a few criminal cases are resolved by peace, although normatively based on the Criminal Code it is not possible (Muhammad Yusuf Siregar, Zaenal Abidin Pakpahan, 2017). In factual, peace is often carried out because it is considered the most beneficial for the perpetrators and victims (Sitorus, 2020).

In the jurisdiction of the city of Banda Aceh, for example, in the case of traffic accidents, it is not uncommon for peace to be carried out at the crime scene (Crime Scene). This is intended to avoid the accumulation of cases (Bantasyam, at al., 2023).

5. Diversion at Municipal Police

From January to September 2017, the Head Unit of Protection of Women and Children (PPA) of the Cirebon Municipal Police, Iwaka Mashadi, S.H., reported 11 child-related crimes. The 11 cases were not diverted because the perpetrators were recidivists. The Correctional Bureau (BAPAS) had concerns, and the families and community figures of the victims were opposed to diversions. The victim parties' opposition posed the greatest obstacle to the diversion.

If victim families, community members, and recidivist criminals object, child diversion is illegal. Three Law of Children Criminal Court System articles can be used to analyze this:

1. The diversion process should consider victims' interests, children's welfare and responsibilities, the avoidance of negative stigma, revenge avoidance,

community harmony, obedience, decency, and public orders (Article 8 Paragraph (3) of Law No. 11 of 2012).

2. Except for violent, light, or victimless crimes or those with losses less than the local province's minimum wage, the diversion agreement must include victims' and/or families' consent and children's and their families' consent.
3. District Court investigations of children's cases should begin with diversion. Article 1 diversion applies to criminal acts: a. threatened with less than seven years and b. not repeated (Article 7 Paragraph (2) Letters a and b Law No. 11 of 2012).
4. Except for violent criminal acts, light criminal acts, criminal acts without victims, and victim losses less than the local province's minimum wage, victims and/or their families must agree to the diversion agreement. Children and their families must also agree.

The Municipal Police of Cirebon justify their denial of diversion of children cases by citing the articles that the families of victims deny the diversion, the community members also deny the diversion, and the criminal perpetrators are recidivists.

6. Diversion at Municipal Police of Majalengka

From January to September 2017, the Municipal Police of Majalengka identified 14 cases in which children were the perpetrators. Only one of the fourteen cases was successfully diverted. The following are the reasons for the unsuccessful cases to be diverted, according to Tutik Sulastris, the Section of Criminal Unit of PPA Municipal Police of Majalengka: (The interview result with Municipal Police of Majalengka in 2017).

1. The parents of the victims were adamant about continuing the cases in court, as they desired justice through verdicts;
2. The diversion did not provide justice for the victims because some instances were deemed too complex to be processed in court;
3. Parents feared their children would commit the same crime if the diversion were used. In other words, the perpetrators' parents wanted to deter their children from committing crimes.;

Each diversion requires the victim's family's consent. According to the law, victims or their families who do not consent can be diverted. An individual can accept or reject the diversion.

These articles help the investigator start the diversion:

The investigator informs children, parents/guardians, victims, and/or victims' parents/guardians within 7x24 of the investigation's start that diversion can resolve the cases. If approved, the investigator sets the diversion date. Otherwise, the investigator submits the case file and official diversion record to the Public Prosecutor if they disagree (Article 14 of Government Regulation No. 65 of 2015).

The following are examples of Official Records of Diversion:

Successful Official Record

Today, Friday, August 24, 2018, by me -----
-----BAGUS-----

Titled AIPTU Nrp. 24082018, Positioned as Head of Crime Unit of Sector Police of Kesambi, as the investigator in this Sector Police, together with:-

1. BUDI, 37 years old , POLRI, Aspol, Sector Police Kesambi-----
2. IWAN, 37 years old, POLRI, Aspol, Sector Police Kesambi-----

Referring to-----

1. Police Report Number:-----
2. Investigation Order Number:-----

Order Letter of Litmas on behalf of Hasan bin Atmo-----

Making a diversion in the form of -----

Sending an invitation letter to the victim party, **Cakil bin Mumun**, to meet **Hasan binn Atmo** and the parents/family of the suspect, held on Friday, August 24, 2018, at the Room of

Criminal Unit of Sector Police of Kesambi-----

-The result of diversion is as follows -----

The diversion was conducted on Friday, August 24, 2018, at 08:00 a.m. in the Meeting Room of Sector Police of Kesambi. Both parties and Litmas officers were present (the attendee's list is attached), and a peaceful agreement was reached.

This Official Record is legitimately created following the position that each party has sworn to close and signed.

1. Diversion begins within 30 days. An investigator, children, victims, a community counselor, and professional social workers deliberate. Religious figures, teachers, community figures, lawyers, and Legal Assistance Provider advocates may act as a diversion for children and parents/guardians. Social Welfare Workers can replace Professional Social Workers (Article 15 of Government Regulation No. 65, 2015).

2. The Community Counsellor is the vice facilitator and the investigator diversion deliberation facilitator. This diversion deliberation included children, parents/guardians, community counselors, professional social workers, religious figures, teachers, lawyers, and/or advocates of legal assistance providers (Article 16 of Government Regulation No. 65 of 2015).

3. If the diversion deliberation is unsuccessful, the Investigator creates an Official Record of Diversion, forwards the case file to the public prosecutor, and proceeds with the court proceedings (Article 17 of Government Regulation No. 65 of 2015).

Unsuccessful Official Record

Today, Friday, August 24, 2018, by me -----

-----BAGUS-----

Titled AIPTU Nrp. 24082018, Positioned as Head of Crime Unit of Sector Police of Kesambi, as the investigator in this Sector Police, together with:-

1. BUDI, 37 years old, POLRI, Aspol, Sector Police Kesambi-----

2. IWAN, 37 years old, POLRI, Aspol, Sector Police Kesambi-----

Referring to-----

1. Police Report Number:-----

2. Investigation Order Number:-----

3. Order Letter of Litmas on behalf of Hasan bin Atmo-----

Making a diversion in the form of -----

Sending an invitation letter to the victim party, **Cakil bin Mumun**, to meet **Hasan binn Atmo** and the parents/family of the suspect, held on Friday, August 24, 2018, at the Room of

Criminal Unit of Sector Police of Kesambi-----

-The result of diversion is as follows -----

The (peaceful) agreement was not achieved, and it was made a diversion on Friday, August 24, 2018, at 08:00 a.m. in the Meeting Room of Sector Police of Kesambi. Both parties and Litmas officers attended (the attendees' list is attached).

This Official Record accurately represents the position sworn to be closed and signed by each party.

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4. The diversion agreement is signed by the following individuals: victims and/or their parents/guardians, children, community counselors, and professional social workers. The Official Record of Diversion is the repository for all diversion processes.

5. The Investigator submits the agreement letter to his direct supervisor if the diversions are agreed upon. Within three days of reaching that agreement, the direct supervisor and investigator submit them to the Head of Public Court for a verdict (Article 19 of Government Regulation No. 65 of 2015).

6. The District Court stipulated the status of material evidence within three days of receiving the Letter of Diversion Agreement and Official Record of Diversion, and a diversion verdict was issued.

7. Within three days of the verdict date, these were subsequently submitted to the Investigator and Community Counsellor (Article 20 of Government Regulation No. 65 of 2015).

8. The investigator requested the diversion from related parties after a verdict. The investigator's direct supervisor oversaw the diversion. Community Counsellors

advised and oversaw diversion agreements (Article 21 of Government Regulation No. 65 of 2015).

Diversion agreements are mostly conditional. If the diversion is not implemented, the legal process will continue. The Judge's verdict 1/Pid.Sus-Anak/2017/PN.Cbn illustrates diversion denial. The first party, Dhewana Alnafis Han Bin Deni Rohmawan, the criminal, agreed to compensate the family of Late Soniu Wijaya bin Muhidin for the traffic accident. This scheme was used to deliver compensation:

1. First Submission worth IDR 50,000,000,- (fifty million Indonesian Rupiah) shall be paid at the signing time of the agreement;
2. The second submission worth IDR10,000,000,- (ten million Indonesian Rupiah) shall be made on April 20, 2017, at the District Court of Cirebon;
3. The third submission worth IDR 25,000,000 (twenty-five million Indonesian Rupiah) shall be made on July 04, 2017, at 04:00 p.m. at the District Court of Cirebon.

According to the compensation submission's condition scheme, both parties agreed to return Dhewana Alnafis Han Bin Deni Rohmawan to his parents as the criminal perpetrator. The criminal only provided IDR 50,000,000 at the agreement's signing. The second and third submissions were incomplete because he could not obtain additional funds and believed IDR 50,000,000 was sufficient bereavement pay (Karyono, 2018).

9. The Community Counsellor can work with other agencies to rehabilitate and reintegrate children. If necessary, professional social workers may work with other institutions to rehabilitate and reintegrate victimized children. (Article 22 of Government Regulation No. 65 of 2015).

10. The Community Counsellor produced the diversion agreement implementation report for the investigator's direct supervisor. Article 23 of Government Regulation No. 65 of 2015 requires the report to be submitted in two parts: a brief version within 1x24 (one in twenty-four hours) of diversion completion and a comprehensive version within 3x24.

11. (1) The investigator issued a Letter of Investigation Termination verdict:

a. If the diversion was a peace agreement without compensation or the return of children to their parents or guardians, the court verdict must be received no later than three days;

b. If it was the compensation payment, return to the initial conditions or completion of community service no later than five days following the diversion agreement;

c. If it requires children to participate in education or training at an institution or LPKS, the diversion must be completed within five days of the agreement's execution; or

d. At the latest, in five days starting from the diversion agreement took place.

(2) The Investigation Termination Letter also specified the status of the evidence following the verdict of the local District Court. According to Article 24 of Government Regulation No. 65 of 2015, this letter, the diversion process report, and the official record were forwarded to the Public Prosecutor, with copies also being sent to the Head of Local Public Court, Professional Social Workers, Community Counsellor, and children and/or their guardians.

12. The Community Counsel will notify their direct supervisor of the investigation to copy the pre-trial hearing to the local District Court if the diversion agreement cannot be implemented. The investigator will investigate the report within seven days of acceptance. The investigator gives the prosecutor case files, and the pre-trial hearing begins. (Article 25 Presidential Regulation No. 65 of 2015).

CONCLUSION

Not all criminal acts can be normatively diverted during the investigation. The implementation and foundation of diversion are the consent of the perpetrators and victims or their families to exchange apologies, the compensation provided by the perpetrators to the victims, and the commitment to refrain from repeating the same actions later.

The diversion implementation at the investigation level is impeded by the following: the cases are too complex to be processed in court, the diversion is perceived as not representing justice for the victims, there is concern that the perpetrators will commit the same criminal acts, and there is a willingness to provide a deterrent effect.

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