

# THE EFFECTS OF GLOBALIZATION ON CHILD IN CONFLICT WITH THE LAW VIEWED FROM THE INDONESIAN CHILD CRIMINAL JUSTICE SYSTEM

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## Abstract

Children are the next generation of the nation who has inherent rights as guaranteed in constitution. Globalization has made information more accessible which makes the children are more vulnerable such as to adult shows depicting violence and immorality. This has frequently caused children to be involved in law-breaking situations. Medan can be categorized as a child friendly city where it fulfilled several indicators of child protection, such as providing facilities for juvenile court. It is expected that the collaboration of government and community would diminish the the number of child who are in conflict with law. This research applied the normative juridical method. The results show that the enactment of Law No. 11 of 2012 on Juvenile Justice System. The children who are in conflict with the law will go through a process of Diversion. Although in fact there are still many who did not receive this treatment. This study analyzes how the effects of globalization on the application of Diversion to children in conflict with law according to the child criminal justice system in Indonesia. In conclusion, to safeguard the rights of underage children in criminal proceedings so that they can be mediated through Diversion process, every law enforcement officer must be certified and prioritizes Diversion before taking them to the court.

**Keyword:** globalization, justice, criminal

## 1. INTRODUCTION

Children are the successors of the nation who have limitations in understanding and protecting themselves from various influences of the existing system (Marlina 2009). Therefore, when they become criminal offenders, the government must provide protection to them. To be able to deal with the responsibility as successors, children need a supportive environment to optimally grow and develop their physical, mental, and social abilities. This includes guiding children to be religious and morally good protection and child welfare should be guaranteed to fulfill their rights without discrimination (Djamil M N, 2013).

Medan is a city hosting a variety of cultures, ethnicities, and religions with a population of 4 million as of 2018-2019, 37% (1.4 million) of the population consists of children under 18 years old. The city has 74 infrastructures dedicated to the playroom for children so that the plurality level of the people is very high and is directly proportional to the crime rate. Therefore, the government needs to provide protection for children.

To be a child-friendly city, Medan must have a juvenile justice agency including special protection for juvenile offenders in accordance with the regulation of the State Minister for Woman Empowerment and Child Protection Number 12 of 2011 concerning Indicators of Child-Friendly Districts/Cities. Although Medan already has decent infrastructure for children, the implementation of child protection has not been carried out at every level of law enforcement institutions by using a restorative justice approach (Peraturan menteri Negara pemberdayaan perempuan dan perlindungan anak Republik Indonesia nomor 10 tahun 2011 tentang kebijakan penanganan anak berkebutuhan khusus).

Restorative justice is the obligation of applying a Diversion. Diversion is an intervention strategy that redirects children from formal criminal justice to outside criminal justice processing. Diversion redirects children away from the normal judicial process that they must follow. The Diversion mechanism allows law enforcement officers (police, prosecutors, and judges) in handling violations of laws involving children without using a formal justice system. The application of Diversion is intended to reduce the negative impact of involving children in a formal judicial process.

Nicholas McBala in his book "Juvenile Justice System" says that children are in the period between birth and the beginning of maturity. This is a period of life development, in which the children have limited ability so as a limitation to endanger others. There is a view stating that every child is reasonably entitled to receive mental and physical protection from parents, society, and the government. The statement is clearly based on the right understanding of humans, including children (Nashriana, 2011)

Law enforcement is closely related to 3 (three) elements in the legal system popularized by Lawrence M. Friedman, namely substance of the law, the structure of law, and legal culture. Humans are a factor which plays a very important role in their efforts to uphold the law. Law enforcement is not only a logical process but also full of human involvement (Rahardjo S, 2002)

Law enforcement functions as a protection of human interests (Marlina, 2010). The community also has an active role in the law enforcement process among law enforcement officials, namely: the police, prosecutors and judges as stipulated in the legislation. The three elements in implementing law enforcement are called the three legal objectives, which are: legal certainty (*rechtssicherheit*), justice (*zweckmassigkeit*), and benefit (*gerechtigkeit*) (Mertokusumo S and Pitlo, 1993).

Wesley Cragg states that minimal use of a legal power is an important principle in the law enforcement process and reduces the motivation to use legal force; because violence often shifts the original morals of someone who receives it. The Diversion process focuses on the consistent nature of different cases, which differs from discrimination which is not based on the law and shows the use of illegitimate criteria. Both of these can be distinguished by the expertise of officers in learning and training. The latest juvenile justice system has been issued, namely Law Number 11 of 2012 and special technical instructions at the level of the public prosecutor by issuing the Attorney General's Regulation No. 006/A/J.A/2015

concerning the Guidelines for a Diversion at the Prosecution Level in which there are rules regarding the implementation of a Diversion.

This study observed a case in the District Court of Medan Number: 39/Pid.Sus-Anak/2017, regarding an underage child committing motorcycle theft in Medan. Initial examination by investigators showed no obstacles in applying the formal criminal justice system in accordance with the law in Indonesia because at the time of writing the investigation report the suspect confessed that he was 19 years old. Therefore, the investigator detained the suspect and delegated the file to the Public Prosecutor and was forwarded to the District Court. However, the family of the suspect provided credentials stating that the age of the suspect was still 16 years old, so the District Court stopped the examination and returned the file to the Prosecutor's Office for a Diversion.

This rule provides legal certainty and justice especially for children as juvenile offenders. There has been an increase in criminal acts committed by a juvenile in Indonesia, especially in Medan. Therefore, to control crime rates and protect the rights of children who are vulnerable to discrimination, the concept of a Diversion is ideal for transferring judicial processes from the formal to the informal justice system.

Based on this background, Medan has been considered as a child-friendly city by having a special juvenile court for children in conflict with the law. However, in terms of law enforcement, the officials in running the special child justice process starting from the police, the prosecutor's office, and the court have not understood the concept of a Diversity in every level of the legal process. Therefore, the author examines the application of a Diversion to children in conflict with the law viewed from the Indonesian juvenile justice system.

## **2. METHOD**

The method used in this study is a normative juridical (Ibrahim J 2006). Research Ronny H S (1988) by analyzing legal materials through a literature review. This research hopefully brings detailed and systematic description solutions to the problems (Soerjono S and Mamudji S 2012).

## **3. RESULTS AND DISCUSSION**

In this globalization era, Indonesia as a law state has enforced legal supremacy with the law as the leading commander of law enforcement. Children are the successors of the nation that should be protected and not discriminated. For legal protection efforts against children in conflict with the law, Indonesians have solved juvenile criminal problems through customary means or better known as deliberation between the perpetrator and the victim since before the independence in 1945.

Every child has the right to live, grow, and develop. The government should protect the rights of the children especially by providing space for children to play and study as well as protection when they are in conflict with the law to avoid violence and discrimination.

Children are the future leaders of the country; they have a strategic function in the future national development plan of a country.

The importance of children was realized by the international community by issuing the Convention on the Rights of the Child which was ratified by Indonesia through the Presidential Decree No. 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child. Subsequently, Law No. 3 of 1997 was issued which was amended by Law No. 11 of 2012 and Joint Decree of the Supreme Court, Attorney General, Chief of Police, Ministry of Law and Human Rights, Ministry of Social Affairs, and State Minister for Woman Empowerment and Child Protection of the Republic of Indonesia regarding the handling of children in conflict with the law on December 22, 2009 and others.

Before the issuance of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which regulates a Diversion System for children in conflict with the law, Indonesia has adopted the Diversion system or better known as deliberation. This has been included in the fourth principle of Pancasila, namely: Democracy led by the wisdom of deliberation among representatives. The word deliberation is interpreted as an agreement between the two parties to achieve a common goal. Therefore, Pancasila as the ideology of Indonesia has implemented the Diversion long before the system was implemented in Indonesia which was recorded in Law Number 11 of 2012. Pancasila has been effective in filtering the legal system from other countries to be adopted into the Indonesian justice system. Therefore, law enforcement officials need to coordinate with other institutions to harmonize the legal rules in the "Criminal Justice System (Mardjono R 1993).

In line with the issuance of regulations concerning the Diversion in the laws of the Republic of Indonesia above, the Supreme Court has also issued the Supreme Court Regulation Number 4 of 2014 concerning Guidelines for Implementing Diversion in the juvenile justice system. Article 3 of the regulation states that: "Judges handling underage cases are required to strive for Diversion in the event that a child is charged with a crime that is punishable by imprisonment under 7 years and charged with a crime punishable by 7 years or more in the form of indictment, subsidiary, alternative, cumulative, and combination." This regulation is different from the main regulation in Law Number 11 of 2012 specifically in Article 7 paragraph 2, which says: "Diversion, as referred to in paragraph 1, is implemented in the event that a committed criminal act is threatened with imprisonment under 7 years; and not a repetition of a crime."

Such difference must be synchronized by every law enforcement officer for not causing differences in applying Diversion at every level of the process be it the police, prosecutors, and courts. As the above-mentioned regulations instruct hopefully, every child in conflict with the law can obtain his rights in the form of physical, mental, spiritual, and social protection.

Law enforcement officials and related agencies/institutions should pay attention to the principles of the convention of child rights. These principles include the principle of non-discrimination; the best interests of the child; the right to live, to grow, and to develop; and respect for the opinions of the child. In line with the principles of the Convention on the Rights

of Child, Indonesia has adopted the seprinciples in its laws and regulations, namely in the juvenile justice system with the enactment of Law No. 11 of 2012.

### **3.1 Police-Level Processing**

When the investigator receives a report of a crime, an investigation is conducted. Then the investigator will contact the Correctional Center (Bapas) to coordinate. Bapas will make a community research report and advise investigators to carry out a Diversion. On the advice of Bapas, investigators will facilitate the Diversion.

Article 7 paragraph 1 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System gives authority to the police as investigators to carry out a Diversion of children as perpetrators of criminal offenses. In addition, it can be seen that child protection with Diversion policy can be carried out at all levels of inspection starting from the community before the occurrence of a crime by taking precautions.

After that, if a child breaks the law, it does not need to be processed by the police. Based on the Law of the Republic of Indonesia Number 2 of 2002 concerning the Republic of Indonesia National Police, for the purposes of investigation, the Police as investigators are authorized to carry out arrests which subsequently detain children suspected of committing crimes based on sufficient initial evidence.

### **3.2 Attorney-Level Processing**

At the prosecution stage, the public prosecutor must seek a Diversion no later than 7 days after receiving the case file from the investigator. A Diversion process will be held for a maximum of 30 days. In the Diversion process, deliberations will be held involving the children and their parents or guardians, the victims and their parents or guardians, community counsellors, and professional social workers.

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System has regulated Diversion to protect children in conflict with the law of being stigmatized due to the judicial process they must go through. This is in accordance with the mandate of Article 7 paragraph 1 and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Concerning Juvenile Courts, there is also a child prosecutor who is authorized to prosecute a child criminal case. This guideline is intended as a reference for Public Prosecutors in resolving child cases at the prosecution level by carrying out the obligation to solve legal problems outside criminal justice through a Diversion based on the Restorative Justice approach (Harve R, Marlina M, Ekaputra M & Ikhsan E, 2016)

### **3.3 Court-Level Processing**

In the trial phase, the head of the court is obliged to assign a Judge or panel of judges to handle a juvenile case no later than 3 days after receiving the case file from the public prosecutor. Judges must seek Diversion no later than 7 days after being appointed by the head of the district court as a judge. A Diversion takes place for a maximum of 30 days (Purwastuti L,

2017). If within 7 days, the judge or panel of judges cannot seek a Diversion, the judge or panel of judges must proceed to the formal justice process while taking into account the best interests of the child (Ohoiwutun YA T&Samsudi, 2017).

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System is a legal umbrella for judges to freely carry out a Diversion in accordance with Article 7. In that Law, there are also conditions and processes for the appointment of judges who specifically deal with juvenile criminal cases listed in Article 43.

#### 4. CONCLUSIONS

Medan is referred to as a child-friendly city because of having a playroom for children and a special juvenile justice court. However, the application of the Supreme Court Regulation Number 4 of 2014 concerning Guidelines for Diversion in the juvenile justice system must be in accordance with the Law Number 11 of 2012 on the Juvenile Criminal Justice System so that the concept of a Diversion in every level of Law Enforcement Officers must be understood uniformly by certified law enforcement officers and encourage the Government to disseminate information to the people of Medan about the implementation of Diversion so that the public understands the existence of Diversion in applying the Criminal Justice System in accordance with the Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

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