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Diversion in the settlement of the criminal act of disposal of infants

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ABSTRACT

The rise of child promiscuity has resulted in children becoming pregnant out of wedlock and then giving birth. This act is a criminal offense of child neglect. The perpetrator of child neglect who is under 18 years of age is of course handled differently from adults. This research aims to find out how the reasons for dumping babies and what sanctions will be given and the form of diversion carried out by the police. This research method uses empirical juridical, where the actions committed by the perpetrators (parents) of baby dumping under the age of 18, are not included in the Child Protection Law, so they must be held accountable and the settlement must use diversion as a form of protection for living babies. The results of this study indicate that child offenders who dump their babies have violated Article 78 B of Law Number 35 of 2014 concerning Amendments to Law Number 11 of 2012 concerning Child Protection, and can be subject to sanctions for babies dumped as babies. The perpetrator is married and is obliged to take care of the discarded baby until adulthood. The perpetrator is still a child and the child born also needs protection and care, so the settlement of the case is through diversion by bringing together the perpetrator's parents, community, and religious leaders. and mediated by the police.



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Introduction

The State of Indonesia, which is a democratic state based on the existence of Pancasila and the Constitution of the Republic of Indonesia Year 1945, upholds human rights, guarantees all citizens in law and government, and is obliged to uphold the law and government with no exception. Talking to the law is indeed inseparable from the community because good law is the law that lives in the community (living law) and therefore the State of Indonesia which is a state of law already has regulations that regulate all aspects of society (Hidayat, 2016). Therefore, Indonesia is a State of Law, this can be seen from Article 1 Paragraph 3 of the Constitution of the Republic of Indonesia which affirms: "The State of Indonesia is a State of Law." In the concept of the legal state, it is idealized that what must be done by the commander in the dynamics of state life is law, not politics, not economics. Laws or regulations function to regulate the existing order of life of the community aim to create order and security, and have an impact on all activities and behaviors of all levels of society that must be under the positive legal values of Indonesia.

Positive Law includes several elements, one of which is that sanctions against violators of the law are firm (Kamelia, 2017). Punitive sanctions in Indonesia are a guide for all people because punitive sanctions are

considered a tool to eradicate various kinds of crimes, where currently Crime is growing rapidly and law enforcement is required to solve various legal problems. What is the function of the law is there is no vagueness of law and justice in the eyes of the law which results in achieving benefits can be achieved. The main thing in crime is done by children ((Prasetyo, 2011); (Sudanto, 2017)). In general, what is meant by The definition of a child is a person who is under a certain age and not yet adult and unmarried (Sambas, 2013).

In this case, children are part of the citizens of the State, who must get protection because they will become the future generation of the Nation who will continue the leadership of the Indonesian nation (Darmini, 2019). Children are an inseparable part of human life and from the development of a nation and state (Kurniawan, 2015). In Indonesia, children have an important role in the country's constitution. It is known that the state guarantees the rights of every child which includes the right to live, grow, and develop and the state also protects children from violence and discrimination. Children who commit crimes or who face the law are handled differently from adults (Lubis & Putra, 2021). According to Law Number. 11 Year 2012 concerning the Juvenile Criminal Justice System, children facing the law are children who are involved in legal proceedings because they commit actions stipulated in the law, both actions that harm themselves and others (Republik Indonesia, 2012). In addition, it is stated that children who have legal problems are divided into 3 (three) types, namely: first, children who conflict with criminal rules, second children who are witnesses of criminal acts, third, children who are victims of criminal acts.

One example of a child facing the law is a baby dumping case that occurred in Cirebon Regency carried out by a pair of unmarried vocational high school students. The two abandoned the baby out of fear. The baby dumping case was revealed after several residents heard the sound of crying babies on the roadside of Semplo Village, Palimanan District, on Saturday (25/2) at around 22:30. Residents then looked for it on the edge of the rice field and found a baby wrapped in a yellow blanket. They then reported the discovery of the baby to the Gempol Sector Police. The police took the baby girl to the nearest health center for treatment. The police then investigated the case by seeking information about childbirth at the puskesmas and clinic on that day (Ashri, 2023).

The case above is different from what will be examined if the case above perpetrator is one is still 16 years old while the other is an 18-year-old man. While the cases to be examined are both not yet 18 years old, the female is 15 years old while the male is 16 years old, so both are still said to be Children. The protection of children has been regulated in Article 34 of the 1945 Constitution which reads:

"The state protects the poor and abandoned children."

The Declaration of the Rights of the Child states that children, due to their physical and mental immaturity, need special protection and care, including appropriate legal protection before and after birth (Wulan, 2014). The increasingly complex and diverse life of the current of globalization causes positive and negative influences on the progress of the times followed by changes in human behavior (Dewi, 2021). Negative behavior that does not conform to social norms is considered a social problem by society. Negative behavior is sometimes not realized or is not understood, it turns out that the act is a criminal offense. Based on the fear of being discovered and scolded by their parents they commit the crime. Research conducted by (Laksmi, Dewi, & Sudibya, 2021) states that the Judges' Consideration in determining Diversion against the perpetrators of dumping of babies by children, this case is contained in case Number 18/Pid.SusAnak/2016/PN.Dps, children are given the opportunity to correct mistakes and returned to their parents to be guarded and guided and to be fostered so that the child does not commit the act again. Chris Graveson also gave the opinion that, diversion is a process that has been recognized globally, because it is the best way in the process of resolving cases regarding children who are dealing with legal processes (Tia Juliasari, 2020). According to (Djamil, 2017) the diversion process is implemented when all parties involved in a particular criminal offense jointly address the problem and create an obligation to make things better by involving victims, children and the community in finding solutions to repair, reconcile, and improve the quality of life. the community in finding a solution to repair, reconcile, and reassure the reassurance that is not based on retaliation.

Disposal of a baby with the perpetrator (his parents) of the child is a criminal offense, it can be said to be a crime (Justitia, 2018). Children who commit crimes have the same rights as their victims that must be protected. This research is interesting, on the one hand, the perpetrator is still a child and the victim is also a child (baby). However, even though the perpetrators are still children, they must be held accountable for their actions. For criminal accountability in Indonesia, it is known as the Criminal Justice System, while for child offenders who face the law through the Juvenile Criminal Justice System, where there is something called diversion. Then how is the implementation of diversion carried out by investigators, diversion is carried out to ensure the survival of infants and perpetrators who are still children to get their rights. Therefore, the researcher

wants to conduct research with the aim of knowing how the reasons for dumping babies and what sanctions will be given and the form of diversion carried out by the police.

Method

This research is through an empirical juridical or sociological approach, where this research will plunge directly or field research into its object to obtain legal knowledge (Soekanto, 1986). The focus of this research is how children commit criminal acts and their criminal responsibility as well as the process of diversion or *restorative justice* applied to criminal acts committed by children in the investigation stage at the Cirebon Police Station. In analyzing data, after obtaining data, qualitative analysis is carried out, namely discussing the data obtained by referring to theoretical foundations (Fajar & Achmad, 2010). After that, the data is described descriptively to obtain a picture that can be understood in a directed manner to answer the problem studied, namely diversion in solving the crime of infant disposal in the investigation stage at the Cirebon Police Station.

Results and Discussions

Children who conflict with the law will certainly be different in handling adults, based on the Juvenile Justice System Law that "children who conflict with the law are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime. Based on Article 1 of Law No. 23 of 2002 concerning Child Protection, what is meant by the child is: "A child is a person who is not yet 18 (eighteen) years old including children who are still in the womb" (Republik Indonesia, 2002). Before the birth of Law No. 23 of 2002 concerning Child Protection, problem children were categorized in terms of child delinquency, which refers to Law No. 3 of 1997 concerning Juvenile Court. The term juvenile delinquency changed to a child in conflict with the law (ABH). Similarly, Law No. 11 of 2012 concerning the Juvenile Criminal Justice System uses the term child in conflict with the law

The criminal act of dumping babies in Cirebon Regency turned out to be a child. It was known after the perpetrator was arrested and testified, that he was 15 years old and had inflated the baby because he was told by his 16-year-old girlfriend (FE) that the boyfriend was still not ready to handle the baby's expenses and feared social sanctions in his village. At 05.00 am, one of the 40-year-old residents (DE) found a baby in Pabedilan village, Cirebon Regency. Finally the resident reported the discovery of the baby to the Cirebon police station. Then the Cirebon police deepened the case, after deepening the case the Cirebon police found someone (MA) who disposed of the baby. The act of disposal of newborn babies is included in the criminal act of child neglect, this act does not reflect the humanist side in humans themselves, acts that by the rule of law are declared criminal or delinquent. According to their form and nature, these criminal acts are unlawful. These actions can also harm society, in the sense that they contradict or hinder the implementation of an order in society that is considered good and just (Saleh, 1983).

There are legal instruments that regulate what is done by the Supreme Court and his girlfriend FE which is a criminal offense, namely: Article 305 of the Criminal Code which reads:

"Whoever places a child under the age of seven years in a place to be collected by another, or with intent to be free from the maintenance of the child, abandons him, shall be punished with imprisonment for not more than five years and six months."

Article 305 of the Criminal Code provides an understanding that there are 2 (acts) that fulfill the elements of the article, namely abandoning children under the age of 7 (seven) years and leaving children with the aim of releasing the child from the responsibility of the perpetrator. The difference between the two crimes is that if someone disposes of a child it means that the act can be done by anyone (everyone), while the act to release a child from the responsibility of the perpetrator is certain that the act can only be done by a child. If the child abandons the child is his parent, this is aggravated by the criminal sanction is further aggravated, namely added to 1/3 who has a blood relationship with the discarded child (his parents or can also be his guardian (one-third) as stipulated in the provisions of Article 307 of the Criminal Code.

What was done by both of them was a criminal act/crime, commonly called child neglect so they had to end up being responsible for their actions. Neglect comes from the word abandoned which is interpreted as unmaintained, as well as inadequacy, his life is not maintained, not maintained, not taken care of, no one takes care of it, neglected. Abandonment means to be abandoned, to leave abandoned while neglect is the process or way of abandonment. In the context of criminal law, child neglect is the practice of abdicating responsibility and claiming offspring by illegal means. This means that every child has the right to appropriate treatment from his parents or guardians which includes not discriminating, taking steps in the best interests of

the child, meeting the standard of decent living needs, survival and dignity of the child, and providing space for the child to express his aspirations and opinions (Ahmad Sofian, 2022).

Various criminal acts are carried out by overthrowing the criminal justice system or criminal justice system, but because the perpetrator is a child, the solution uses the juvenile criminal justice system hereinafter referred to as SPPA (Akbar, 2023). Regulation A quo introduces a new institution of justice called diversion and restorative justice, where to achieve restorative justice, is pursued through diversion which aims to avoid stigmatization of children who conflict with the law. The need for appropriate case resolution as stipulated in the SPPA Law which entirely sets forth the general principles of non-discrimination and, the best interests of children for survival, respect, and growth, thus requires a juvenile criminal justice system in which there is a process of solving children's cases outside conventional criminal methods (DS. Dewi Fatahillah and A Syukur, 2011).

Based on the Law on SPPA, if the perpetrator (both parents) of the disposal or abandonment of the baby is still a child, it can be subject to Article 76 B and Article 77 B. Article 76 B states that:

"Everyone is prohibited from placing, allowing, involving, ordering to involve the Child in situations of mistreatment and neglect."

While Article 77 B states:

"Any person who violates the provisions as referred to in Article 76B shall be punished with a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp100,000,000.00 (one hundred million rupiah)."

The settlement system through SPPA where the perpetrator of the crime is a child, must be diversion with category & 2, 8 Paragraphs 1, 2 & 3 and 9 Paragraph 1 of Law Number 11 and 12 concerning the Juvenile Criminal Justice System, wherein the article of the article, that the crime committed must not be a threat of more than 7 (seven) years and is not a repetition of the criminal act (recidivist), Then the diversion process must pay attention to: a. the interests of the victim, b. the welfare and responsibility of the child, c. the avoidance of negative stigma, d. the avoidance of retaliation, e. community harmony, f. the decency and decency of society and public order. In addition, it must also consider: a. the category of criminal acts, b. the age of the child, c. the results of Bapas' research, d. support for the family and community environment.

By considering the above, the actions carried out by the parents of the baby who are still children, it is necessary to make diversion efforts. Thus, diversion will be carried out properly in accordance with applicable laws in Indonesia. "As an effort to handle this case, we the Cirebon Police are trying to use diversion, this is also based on various considerations in accordance with the mandate of the law. These considerations include; the category of criminal acts, the age of the child, the losses caused must be less than the UMR of Cirebon Regency, and look at the condition of the perpetrator. In this case, because the victim is a baby who cannot speak, we use Police Report Model 1A, which is a Police report made by a member of the National Police who experienced, knew, or discovered firsthand the events that occurred. For the sake of achieving justice in this case. To approach through Diversion, the Cirebon Police divided it into two stages; the first is pre-mediation, and the second is post-mediation." (Interview with Iptu Dwi Handayani, July 22, 2023).

Diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal court (Wagiati Soetodjo, 2006) and must be carried out at all levels of investigation, prosecution, and examination in court. For this reason, diversion at the investigation stage needs to be as soon as possible after evidence of criminal acts committed by children, and in the process, the role of all parties is needed by involving perpetrators, investigators BAPAS, and the community. In the Juvenile Criminal Justice System, perpetrators of criminal acts committed by children cannot be detained or arrested, but can only be summoned and examined with the assistance of Guardians or Parents and Representatives from BAPAS for further assistance and guidance. To prevent the deviant act from happening again. The Cirebon Police in terms of implementing diversion, approached the first stage of Pre-mediation, the investigator was tasked with collecting data and recording information related to the case at issue, then proceeded to make a mutual agreement.

When it enters the next stage, namely mediation efforts, in this case, the investigator who acts as a mediator has the task of persuading to get a fair middle ground, but in mediation, the perpetrators are then allowed to be able to find a way to solve each other's problems. The perpetrator is allowed to explain the purpose of his actions and is allowed to apologize and realize the mistake and will not repeat his actions. In this case, the perpetrator is also required to compensate materially in the form of responsibility by being given three days and the suspect is required to be responsible for the baby and his girlfriend, the suspect and the family can finally fulfill the demand and the family agrees to marry the couple and both parties agree to raise the child.

After an agreement that has been mediated by the investigator, the two perpetrators of child neglect are advised to carry out assistance. As stated by Mr. Gianto Acting Head of the Cirebon Correctional Center Office (Bapas),

"In addition to getting assistance, children facing the law also get a guidance program. With these efforts, it is hoped that children will have the spirit to change their personalities for the better and rise from their adversity."

"Therefore, we from Bapas, are obliged to report to the applicant one month 4 times in the next 6 months. To control the behavior of the perpetrator so that he does not repeat his actions and can rise from adversity for a better life."

The assistance is a sanction to the perpetrator, namely in the form of mandatory reporting 1 (one) month 4 (four) times within 6 (6) months). This sanction is certainly a form of diversion so that children of criminals are not subject to criminal punishment or imprisonment. This means that criminal law is used as the last means, (*Ultimum Remedium*) (Sudikno Mertokusumo, 2014) If a case can be taken through other channels, such as mediation, administrative law, or civil law, the other route should be carried out first.

Conclusions

Diversion is carried out through 2 stages, first; The pre-mediation stage is: Pre-mediation investigators are tasked with collecting data and recording information related to the case at issue, then proceed with making a mutual agreement. In mediation, in this case, the investigator who acts as a mediator has the task of persuading to get a fair middle ground, but in mediation, the perpetrators are then allowed to be able to find a way to solve each other's problems. The perpetrator is allowed to explain the purpose of his actions and is allowed to apologize and realize the mistake and will not repeat his actions. In this case, the perpetrator is also required to compensate materially in the form of responsibility by being given three days and the suspect is required to be responsible for the baby and his girlfriend, the suspect and the family can finally fulfill the demand and the family agrees to marry the couple and both parties agree to raise the child. In addition, there is also assistance from BAPAS, in the form of in the form of mandatory reporting 1 (one) month and 4 (four) times within 6 (six) months).

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