

Implementation of Versioning against Legally-Facing Children

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Abstract : Article 7 paragraph (1) of the Children's Criminal Justice system Act. The version is only performed in the case of criminal acts : A. Threatened with imprisonment under 7 (seven) years; and B. Not a repetition of a criminal offense. Unknown article 3 PERMA Allow versioning against children against the threat of law over 7 (seven) years with consideration of Subsider, or alternative. Thus, it becomes a breach of the Diversion in the case of its subsidation under 7 (seven) years. But against the given version in the case with the threat above 7 (seven) years and the charges of the population is also above 7 (seven) years, Then the judge in its application is based on the principle of restorative justice without compromising the provisions of the Child Criminal Justice System Act. The consequences of the law are given to the subject of the children facing the law with the threat of imprisonment over 7 (seven) years, against the deal can be canceled, because it does not qualify the version in accordance with article 7 of the Criminal Justice System Act And the child's judicial process can continue. Against law enforcement that seeks the versioning there is no sanction whatsoever. Because there is no rule stating that the law enforcement who provided the versioning is inappropriate or unconditionally granted a legal or sanctioned remedy.

Keywords: Diversionon, Children, Dealing with the law.

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I. INTRODUCTION

The son is the mandate of the one true God in whom he is attached to the dignity of the whole person. Every child has a proper dignity, and every child who is born must obtain his rights without the child requesting (Jauhari, 2015). This is in accordance with the provisions of the Convention on the Rights of the child which is ratified by the Indonesian Government through Presidential Decree No. 36 year 1990, then also set forth in Law No. 4 year 1979 concerning Child welfare and Law number 23 of 2002 on child protection as amended by law of the Republic of Indonesia number 35 year 2014 concerning amendment to law Number 23 year 2002 on child protection. All of them convey the general principles of child protection, namely non-discrimination, the best interest for children, survival and growth, and appreciate the participation of children.

Child protection is an important work that all elements of our Negera have to do. These forms of child protection are carried out from all aspects, ranging from coaching to the family, social control of child associations and proper handling through the good rules made by a Negera. But in the long way to date what is mandated in the law is constrained by the facilities and infrastructures provided by the Government, such as special prison children who only exist in large cities. This of course causes the unfulfilled rights of the child as mandated by the law and the rights of the Child's Convention. In addition, the lack of integrated and thorough socialization done to law enforcement officers including the police to the bottom line leads to ineffectiveness of the provision of protection.

The Law of the Republic of Indonesia No. 11 of 2012 on the Children's Criminal justice system (hereinafter abbreviated as the SPPA LAW), which is an advocate of law No. 3 of 1997 on the Children's Court, has firmly set forth the fairness of justice in Restorative and versioned are intended to avoid and alienate the child from the judicial process so as to avoid the stigma of the child facing the law and the child can return to the social environment reasonably. It is therefore indispensable for the participation of all parties in the realization of the matter. The version is expressly referred to in article 5 paragraph (3) that in the child criminal justice system shall be sought in version. Which in article 1 digit 7 UUSPA mentions that "Diversi is a transfer of the provisions of the child from criminal justice proceedings to proceedings outside the criminal justice." Furthermore, in article 8 paragraph (1) the SPPA LAW has also arranged that the DIVERSI process is conducted through deliberation involving the children and their parents/guardian, victims and/or their parents/guardian, community advisers, and professional social workers. Based on the restorative justice approach.

In the case of child perpetrators of the law, they deserve assistance from their lawyers during the judicial process. Besides the interests of victims who are also not allowed to ignore, but nevertheless should still pay attention to the rights of child rights as suspects. Therefore, this child is as much as possible to be kept away from the act of condemnation as it is commonly done to adult criminals.

In addition, the role of social workers must also be empowered, including mentoring for children who have recently completed coaching within the institution. Because in article 33-35 Act No. 3 of 1997 on the Children's Court is explained about the provisions of the social Worker of the social department in charge of guiding, assisting, and supervising the rogue child based on a conditional criminal court ruling, Criminal supervision, and criminal penalties, are handed over to State and must follow a work exercise or a child who acquires a parole of the prison. Social workers are also tasked with

assisting and supervising children in conflict with the law based on the court's decision to be handed over to the social department to attend work Education and training.

Child detention is not allowed in the case of a child obtaining a guarantee from a parent/guardian and/or institution that the child will not flee, will not eliminate or damage the evidence, and/or will not repeat a criminal offence. So mentioned in article 32 paragraph (1) of the SPPA Act, further detention of children shall be governed in article 32 paragraph (2) of the SPPA Act:

Child detention can only be made on the following conditions:

- a. Children aged 14 (fourteen) years or older;
- b. Alleged to commit a criminal offence with a jail criminal threat 7 (seven) years or more".

In principle, the version must be done as mentioned in the provisions of article 7 of the SPPA Act.

- (1) At the level of investigation, prosecution, and examination of the case of children in the District Court shall be sought in version.
- (2) The version as referred to in paragraph (1) shall be executed in the event of a criminal offence:
 - a. Threatened with imprisonment under 7 (seven) years; and
 - b. Not a criminal offense.

Although the law governs the above, but based on the preliminary data obtained, it is known that the Diversion is performed against children who commit crimes in the form of violent theft. In the rules for each criminal offence with the threat of punishment over 7 (seven) years is not allowed to be done in version, but in reality there is a difference in the implementation by the judge, in addition to the absence of technical rules under the SPPA ACT is also a A particular obstacle in the Diversion practice.

The research site is in the Aceh High Court of Law, while the research population includes nineteen district courts, state and police prosecutors in the Aceh provincial law area and other related institutions or institutions.

Data analysis is the process of simplifying data into a more readable and interpreted form (Effendi, 1989). Given that this research is empirical research, then the data that has been collected through the means described above, then conducted qualitative analysis.

II. LITERATURE REVIEW

The spirit to save children to be freed from prison sentence is very appropriate to the principle of best interest for children. Of course the spirit must be in tandem with the rules of the Child criminal justice system that has been available. The Diversion effort should also be aware of and based on the rules in Indonesia.

The version in its application has a requirement that is as stated in the SPPA Act article 7 paragraph (2). The child is attempted in a version if threatened with imprisonment under 7 (seven) years; Instead of repetition. These two points are the main requirements required to be paid for the child facing the law.

So the law enforcement officials before working on the versioning should pay attention to the terms given in version. When versioned does not qualify as stated in the SPPA LAW, the child may proceed to the next court proceeding.

The consequences of the law are given in version on the subject of children facing the law with the threat of imprisonment over 7 (seven) years, the deal can be cancelled, and the child's judicial process can continue. Against law enforcement who seeks to do so, there is no sanction. Because there is no rule stating that law enforcement officials who provide an improper or unsuitable condition are given a legal or sanctioned effort.

In accordance with Article 96 of the SPPA ACT, sanctions are available i.e. if law enforcement does not implement versioned to a child facing the law, the threat of prison is at most 2 (two) years and a maximum fine of Rp. 200.000.000, 00 (two hundred million rupiah). But against law enforcement implementing versioning on matters not eligible in version is not yet available for the criminal sanctions.

The agreement in principle is the same as the general agreement. The agreement may be cancelled or null and void if the deal violates the agreement's legal terms. Pursuant to article 1320 of the Civil Code ("Civil Code"), there are 4 (four) terms of an agreement, namely:

1. Agreement of the Parties to the agreement.
2. The proficiency of the Parties to the Agreement (capacity).
3. A certain certainty of terms.
4. The halal cause (considerations).

The object element referred to in a Diversion agreement does not refer to article 1332 of the Civil law (where the object of the Agreement shall be only goods that can be traded) but in accordance with article 11 of the SPPA ACT, the results of a version of the agreement can Form:

1. Peace with or without indemnity;
2. Submission back to parent/guardian;
3. Participation in education or training at an educational institution or LPKS for a period of 3 (three) months; Or
4. community service.

While the proficiency element is also not referring to article 1330 of civil law, because the purpose of the SPPA act precisely protects and guarantees the rights of the suspect is the son himself. In the Diversion agreement, the child who becomes a suspect and/or victim also counts the vote and his opinion in the making of the Diversion agreement. However, the Diversion process should involve adults such as the child's parent/guardian.

The relationship of the SPPA and the civil LAW applies Adegium "Lex specialist Derogat legi generalist" or the special law waives the general law. In the case of a criminal offense, a minor criminal offence, without a victim, or a victim's loss value of no more than the value of the local provincial minimum wage, a diversion agreement does not have to obtain the victim's approval and/or the child's family And willingness of the son and his family. Further article 13 of the SPPA LAW explains the criminal justice proceedings of the child proceeding in case of:

1. Diversi process does not result in agreement; Or
2. The diversion agreement is not implemented.

So, as with ordinary agreements, a version agreement may be prosecuted or null and void if the agreement violates the legal terms of the agreement as set forth in article 1320 of the civil law, including if only violating the elements agreed (For example if a victim does not approve the results of a version). As a consequence of the agreement, the child's criminal case will proceed to the child's criminal justice process and the file is passed to the Prosecutor in accordance with the provisions of the SPPA ACT.

III. THE FACTORS THAT LEAD TO THE VERSION OF THE CHILD WHO COMMITS A CRIMINAL OFFENCE WITH THE THREAT OF PUNISHMENT OVER 7 (SEVEN) YEARS.

Application of versioning in the completion of children's matters starting from the issuance of Law No. 11 of 2012 on the Children's Criminal justice system or abbreviated as the SPPA LAW which entered into force in the year 2014 and the implementation guideline on the version of SPPA Perma Number 4 Year 2014, certainly does not necessarily make all the resolutions of the child dealing with the law through the Diversion. Because the version of the SPPA in accordance with the ACT of limiting the version of the child in relation to the law with the threat of punishment under 7 (seven) years and not the repetition as mentioned in article 7 paragraph (2) of the SPPA ACT.

Accordingly, if it is based on the SPPA ACT then against the child facing the law if it is at the with threats above 7 (seven) years then there is no opportunity for him to be attempted in the version, although between the defendant and victims to peace or Achieving a family settlement agreement.

This is because for children who are subject to threats above 7 (seven) years of serious criminal action, then the child should be given a prison sentence. And against repetition, in the previous case that has succeeded in versioning is a warning for the child not to repeat committing a criminal offence, and against it should not be done in the version again (Hakim Anak Pengadilan Negeri Banda Aceh, 2018).

In a version of the implementation of the Lhokseumawe District Court, the article numbered 15/Pid. Sus-Children/2016/PN-NGOs have a slightly different consideration of the granting of the version. Visible child or accused Usman Fazil Bin Ilyas Ar reached an agreement with the victim, with the provisions of the victim has forgiven and the perpetrator's parents submit the cost of compensation to the victim. Presented as a facilitator in Versi is Apriyanti who is also a judge of the state court of Lhokseumawe.

The determination of a version issued by the Chairman of the Lhokseumawe Court dated 1 December 2016 contains the disagreement of the version by the judge and instructs the parties to carry out a deal in the version. So far, the role of judge in pursuing a version is in accordance with the discussion of deliberations in the version to solve the case. But the effort should be paid to pay attention to the child facing the law.

In this case, the accused Usman Fazil Bin Ilyas Ar, charged with the indictment of Primair, Subsidair and more Subsidair namely (Negeri):

1. Primair, article 365 paragraph (2) the 2nd Jo Act No. 11 year 2012 on the Child criminal justice system,
2. Subsidair, Article 363 paragraph (1) of the 4th KUHP Jo Act No. 11 Year 2012 on child criminal justice system,
3. More Subsidair, article 363 of the KUHP Jo Act No. 11 year 2012 on the Child criminal justice system

The public prosecutor in the case numbered 15/Pid. Sus-Child/2016/PN-NGO to make an indictment in the form of a subsia based on the deepening of the matter. So drafted article demands according to the threat level penalty.

Basically, the drafting of the indictment remains in article 14 of the Criminal Code, but the prosecutor in drafting the allegation in the case of children should forward the version in advance, as LAW 11 years 2012 Article 7 paragraph (1) and (2). The point of the prosecutor if in such cases is not achieved in the version it will be continued with the process of the case delegation to the court with the indictment that has been prepared based on the fact of the material.

The judge adhered to Perma No. 4 of 2014 on the implementation guidelines of the Diversi which reads: "A child judge is obliged to pursue a version in the event that a child is charged with a criminal offence that is threatened with imprisonment under 7 (seven) years and also charged with a criminal offence threatened with imprisonment of 7 (seven) years or more in the form of a letter Alternative, cumulative or combination (combined)" (Maulizar, 2018).

So if there is a subsideritas, alternatives and others, if there is one of the cases of threat under 7 (seven) years can be done in the version of the matter (Apriyanti, 2018). For the alleged subsidation and alternatives, not all children are subject to such charges. As long as the prosecutor believes in fulfilling 2 (two) proof tools, it can be asked for a single indictment (Rachman, 2018).

Against the case with the defendant had committed a criminal offence or repetition it should not be given a version. If there is a repetition that successfully Diversion then the error lies in the law enforcement (human error). Because the child is faced with a law that has been convicted or denied, no version should be made (Apriyanti, 2018).

It can be concluded that the version is given to the indictment of a subsidiary, alternative or merger, if one of them contains a threat under 7 (seven) years. But in the case numbered 15/Pid. Sus-Child/2016/PN-NGO with the accused Usman Fazil Bin Ilyas Ar to all his costs contained a threat over 7 (seven) years.

Article 365 is a criminal act of theft accompanied by violence and is included in severe criminal acts. Only mild theft, which is not allowed to be attempted in version, is a heavy theft or the case charged with article 365 of the CRIMINAL code should not be versioned. Because the threat of criminal clear over 7 (seven) years.

It appears that article 365 paragraph (2) of the threat of punishment is above 7 (seven) years, but the judge continues to seek the version. It is certainly not appropriate,, even if referring to the PERMA though, the Subsidair and more Subsidair also threats above 7 years. Article 365 is an article of theft with violence. Here's the original sound:

- (1) threatened with imprisonment of at least nine years of theft preceded, accompanied or followed by violent or violent threats, against persons with a view to preparing or facilitating theft, or in the event of being caught To allow escaping or other participants, or to remain in possession of stolen goods.

- (2) threatened with imprisonment for a period of twelve years:
 1. If the deed is done at night in a closed house or yard in which there is a house, on a public road, or in a train or tram that is running;
 2. If the deed is done by two or more persons with fellowship;
 3. If entering into a place of committing crimes by damaging or climbing or by wearing a false key child, false injunction or false attire;
 4. If the deed results in severe injuries.
- (3) If the deed resulted in death, it was threatened with imprisonment for a maximum of fifteen years.
- (4) Threatened with death or imprisonment for life or for a certain period of at least twenty years, if the deed resulted in severe injury or death and was carried out by two or more allied persons, accompanied by one of the things Described in No. 1 and 3.

Similarly, for the alleged subsidiary, article 363 paragraph (1) 4 is a theft article with the announcement that the legal threat of the law is raised to a maximum of 7 (seven) years. This article cannot be released from the genus chapter 362 which reads: "Whoever takes things, which are wholly or partly belonging to another, with a view to being possessed against the law, is threatened by theft, with Imprisonment for five years or a fine of at most sixty rupiahs".

Article 363 Paragraph (1): "Threatened with imprisonment of seven years long; the 4th theft committed by two or more allied people".

Meanwhile, the last, more Subsidair: article 363 of the Criminal Code of law No. 11 year 2012 on the child crime system, mentioning the association or related to article 363 with the SPPA ACT, where the indictment is based on the defendant's condition which is A child. It is shown that the claim that is intended for the child is still above 7 (seven) years. Therefore, according to the available rules, there is no such thing as allowing the granting of versioning.

The judge reasoned that the child has acknowledged and good faith, so as to see the best interests for a child who commits a criminal offence, even if it does not comply with the provisions of the version stipulated in the SPPA Act. Although the threat of punishment is above 7 (seven) years, but it is done in version. According to the judges, the main requirement for the implementation of the version in this case is the recognition of the perpetrator's child and the victim's approval to be done in the version (Apriyanti, 2018).

From the above it appears that, the spirit of seeking in the version is not in accordance with the available procedures. Therefore, it is necessary to set clearly and concrete the form of any criminal act which should not be given in the version. Because on some clauses the alleged criminal threat has a time span of threats.

Against the child who is dealing with the law that commits the act of the threat of his or her own criminal offence over 7 (seven) years and the child who commits the repetition of the act remains granted such rights as the examination is conducted by the child's special law enforcement; The lighter detention period of adult actors; Place of detention conducted in special place (LPAS); The examination process is different from adult actors; The role of BAPAS by doing Limtas (Susanta, 2018).

In addition to the Supreme Court Regulation No. 4 of 2014, concerning implementation guidelines in the Children's criminal justice system, there is a government Regulation No. 65 year 2015 which also contains technical guidance on the implementation of Diversion. "That to carry out the provisions of article 15 and article 21 paragraph (6) of Law No. 11 of 2012 on the Child criminal justice system, it is necessary to set up government regulations on the Guidelines for implementation of children under the age of 12 (two Sixteen) years.

With the additional rules, guidelines and technical Instructions on the implementation of versioning, but still in its implementation, not all law enforcement apparatus has the same view in providing a diversion decree.

IV. CONCLUSION

In practice, the version is not solely subject to the law of the Children's criminal justice system (the SPPA ACT), because the provisions are rearranged in PERMA No. 4 year 2014 which contains technical instructions on the implementation of Diversion. In article 3 PERMA allows versioning against children against the law of threats above 7 (seven) years in consideration of Subsider, or alternative. Thus, it becomes a breach of the Diversion in the case of the alleged subsidation under 7 (seven) years. But against the given version of the case with the threat of over 7 (seven) years and the charges of the subsidiary is also above 7 (seven) years, the judge in its application is only based on the principle of restorative justice without respect to the provisions In the SPPA ACT.

REFERENCES

- [1]. Mahendra Putra Kurnia, *Pedoman Naskah Akademik PERDA Partisipatif* (Yogyakarta: Kreasi Total Media, 2007).
- [2]. Jauhari, Iman, *Protection of Child Rights in Perspective of Human Rights in Indonesia (Analysis Approach to Islamic Law)*, I, Version I, 2015, Global Journal of Human Social Science, Vol. XV, p. 29.
- [3]. Effendi, Masri Singarimbun dan Sofian, *Metode Penelitian Survei*. Jakarta : LP3ES., 1989. p. 263.
- [4]. Muhtari, *Implementasi Diversi Terhadap Anak Yang Berhadapan Dengan Hukum*. [interv.] Hakim Anak Pengadilan Negeri Banda Aceh. April 16, 2018.
- [5]. Pengadilan Negeri, SIPP Pengadilan. SIPP. [Online] [Cited: Mei 1, 2018.] sipp.pn-lhokseumawe.go.id.
- [6]. Maulizar, *Implementasi Diversi Terhadap Anak Yang Berhadapan Dengan Hukum*. [interv.] Jaksa Kejaksaan Negeri Banda Ace. April 4 , 2018.
- [7]. Apriyanti, *Implementasi Diversi Terhadap Anak Yang Berhadapan Dengan Hukum*. [interv.] Hakim Anak Pengadilan Negeri Banda Aceh. April 2, 2018.
- [8]. Rachman, Indriani, *Implementasi Diversi Terhadap Anak Yang Berhadapan Dengan Hukum*. [interv.] Jaksa Kejaksaan Negeri Banda Aceh. April 4, 2018.
- [9]. Susanta, Roni. *Implementasi Diversi Terhadap Anak Yang Berhadapan Dengan Hukum*. [interv.] Hakim Anak Pengadilan Negeri Banda Aceh. April 2, 2018.