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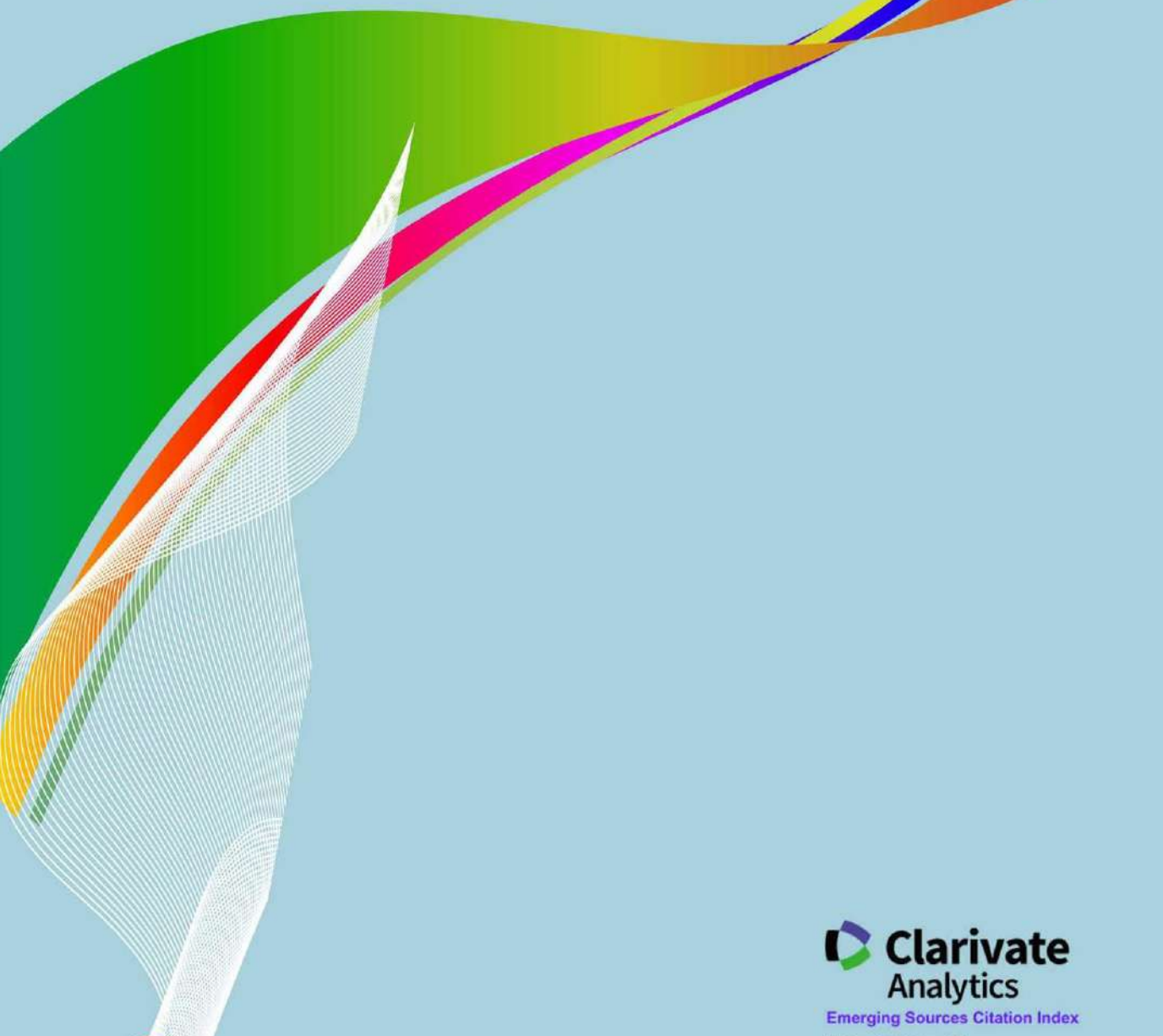
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**Implementation of Diversion on Examining the Process
of Children in Conflict with the Law**

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IMPLEMENTATION OF DIVERSION ON EXAMINING THE PROCESS OF CHILDREN IN CONFLICT WITH THE LAW

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Abstract

This research aimed to analyze the implementation of diversion in the investigation process, prosecution, and court examination of children in conflict with the law. Four police sectors (Biringkanaya police sector, Tamalanrea police sector, Tallo police sector, and Mariso police sector) have been chosen, including the state prosecutor's office and district court of Makassar cases in 2015. This research was carried out through document searches and interviews with investigators, public prosecutors, and judges. The result showed that the diversion had been applied to every step of the investigation, prosecution, and court examination, but the achievement and implementation could have been more optimal. Overall data from the four police sectors showed that during 2015 there were 74 (seventy-four) cases of children conflicting with the law, and 7 (seven) cases had succeeded in reaching a diversion agreement (9.46%). Public prosecutors had sought diversion at the level of examination at the prosecutor's office, but no agreement was reached. In the Makassar District Court in 2015, 223 (two hundred twenty-three) cases and 24 (twenty-four) went through the diversion agreement.

Keywords: *Diversion; Children; Children in Conflict with the Law; Examination Process.*



A. Introduction

Children are our next generation and are prepared to become future leaders to create a strong generation. Children's protection is part of human development efforts and national development. Ignoring the problems of children can be interpreted as contradicting national development. As a result, numerous efforts are required to prepare children as a formidable generation, including those who are in conflict with the law.

Previously, several terms were used to describe children who violated the law: the term "child criminal", which was enforced in the Circular Letter of the Attorney General of the Republic of Indonesia Number P.1/20 of 1951 (Setiady, 2010), while Law Number 3 of 1997 regarding Juvenile Justice used the term "naughty child" (Soetoedjo, 2006), and the term "juvenile delinquency", as used by Gultom (2010). With the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the term used for children who commit crimes is "a child in conflict with the law".

Some correlative factors that cause children to conflict with the law are the social environment, poverty, parental control, school dropouts, family conditions, and being a crime victim. Harkristuti in Criminal Law and Criminology Training (2014) showed that 33.90% of Indonesia's population is children under 18 (82 million out of 240 million). Six thousand two hundred seventy-three were in detention centers and prisons, not included in the police station.

Indonesia, under the Convention on the Rights of the Child held by the United Nations on August 10, 1990, has ratified it through President Decree No. 36 of 1990. Therefore, various regulatory provisions relating to the child must emphasize the child's rights, as stated in Law No. 11 of 2012, which concerns the "Criminal Justice System for Children". This law superseded Law No. 3 of 1997, which dealt with child courts. In consideration, the replaced law was no longer a match with the development and needs of the law because it had not comprehensively protected the children in conflict with the law. The philosophy of this constitution formation is a change from the "Lex Talionis" or "retributive" philosophy (retaliation) to "restorative justice" (recovery) (Zubaidah, 2013).

Restorative justice develops because of dissatisfaction with the criminal justice system, which does not involve the conflicting parties but only the state and the perpetrators of criminal acts. Restorative justice is a way to resolve criminal cases by involving the community, victims, and perpetrators of crime to achieve justice for all parties (Hasibuan, 2020). One form of restorative justice is the obligation of "diversion," as stipulated in the law of the criminal justice system for children. As stated in that law, Article 7 (1), diversion must be carried out at all stages of the investigation case, including the investigation, prosecution, and examination at the district court. According to Zulfa (2011), a diversion program is a program that refers certain criminal defendants before trial to a community program on the job training, education, and the like, which if completed may lead to the dismissal of the charges.

Sari and Swardhana (2021) say that diversion is the first step in making it okay for criminal cases to be settled outside of court. Adi (2014) explained that diversion is a mechanism that allows children to be transferred from the judicial process to the social service process because the involvement of children in the judicial process has undergone a process of stigmatization. A diversion is a type of restorative justice application in the juvenile justice system. It is in line with the principle of *ultimum remedium* in resolving cases of children in conflict with the law (Hartono, 2015).

Article 6 of the SPPA Law explains that diversion aims to: achieve peace; resolve the case outside the judicial process; prevent children from being deprived of liberty; encourage the community to participate; and instill a sense of responsibility in child offenders. Nashriana (2011) says that this is in line with Rule 1.1 and Rule 1.2 of PBB resolution number 45/113, which say that prison should only be used as a last resort, that a juvenile's freedom should only be taken away as a last resort, and that the shortest time needed should only be used in rare cases.

Makassar, the capital of South Sulawesi Province, is a metropolitan city with a relatively developed economy. There are various infrastructure



facilities for education, entertainment, etc. Moreover, Makassar is a destination city for study and work (especially for people from eastern Indonesia). One of the negative impacts of city urbanization is crime. In this city, several cases of crime involved children as suspects (children in conflict with the law). For children who conflict with the law, international instruments (such as United Nations Resolution Number 45/113 and the Beijing Rule), as well as the constitution in Indonesia (Law No. 11 of 2012 about the Criminal Justice System for Children), mandate diversion at the investigation or prosecution level and also at court hearings.

From the description above, diversion became a problem in law implementation. Has it been conducted at every stage of examining children who conflict with the law in Makassar City? This study aims to determine the implementation of diversion at each stage of examining children in conflict with the law in Makassar.

B. Method

This research was conducted in Makassar City with the following considerations: Makassar is an urban destination for people in eastern Indonesia who are not only looking for work but also have a negative impact, namely the occurrence of criminal acts involving children. Makassar, as the capital city of South Sulawesi province, is a legal area for the big city police, the State Prosecutor's Office, the state courts, as well as the existence of several child watchdog institutions.

This research's population is children in conflict with the law in the period 2014–2015, and as for what becomes samples, those are children who conflict with the law at the Tallo Sector Police, Biringkanaya Sector Police, Tamalanrea Sector Police, Marissa Sector Police, Makassar District Attorney, and Makassar District Court.

Primary data, namely data obtained from field research in the form of data on children who conflict with the law, were reported to Tallo Sector Police, Biringkanaya Sector Police, Tamalanrea Sector Police, Marisso Sector Police, Makassar District Attorney, and Makassar District Court.

Primary data, namely, data obtained from field research in the form of data on children who conflict with the law reported to Tallo Sector Police, Biringkanaya Sector Police, Tamalanrea Sector Police, Marisso Sector Police, Makassar District Attorney, and Makassar District Court, Interview Results with Investigations, Prosecutors, Judges, and Community Leaders

Secondary data from the study literature is also used as a theoretical basis for research. Also, data in the form of documentation in the form of diversion decisions have been obtained, both at the level of investigation, prosecution, and examination at the district court.

Examine and study various references in the form of books, articles about children in conflict with the law, reports on research results, and legal and scientific journals, as well as documents in the form of minutes of diversion agreements, diversion rejections, and court decisions on diversion.

Collect primary data from several sector police, namely Tallo Police, Biringkanaya Police, Tamalanrea Police, and Marisso Police. Then the child's data is in trouble with the law at the Makassar State Attorney's Office. Results of interviews with prosecutors and judges The research data is presented in tables and narrative form, and then a qualitative descriptive analysis is carried out.

C. Result and Discussion

Makassar is divided into 13 (thirteen) working areas of the Police Sector, District Prosecutor's Office, and the District Court. The research on diversity implementation was conducted in several police sectors, namely Mariso, Biringkanaya, and Tamalanrea. Also, at Makassar District Attorney and the District Court.

1. Diversion of Investigations

Diversion in the examination of investigations from research in the Mariso, Tallo, Tamalanrea, and Biringkanaya Sector Police can be seen in the following tables.



Table 1. Children's data conflicting with law in the mariso police sector

Year	No.	Police Report	Crime Scene	Case	Completion
2019	1	PR/07/I/2019/S. Mario 10-01-2019	Rajawali I	Motor vehicle theft	Diversion
	2	RP/08/I/2019/S. Mariso 11-01-22	Jl.Huri	Persecution	Diversion (withdraw the police report)
	3	RP/A/01/I/2019 /S.Mariso 20-01-2019	Jl. Metro Tanjung	LN	Diversion
	4	PR/18/I/2019/S. Mariso 27-01-2019	Jl. Baji Minasa II Dalam	Assaulting	Diversion
	5	RP/68/IV/2019/ S.Mariso 23-04-2019	Jl. Dahlia	"-"	Soa
	6	RP/80/V/2019/S. Mariso 14-05-2019	Jl. Baji Minasa	Thief	Soa
	7	RP/105/VI/2019/ S.Mariso 29-06-2019	Jl. Bunga Eja	Ballast theft	Soa
	8	RP/107/VII/2019/ S.Mariso 5-07-2019	Jl. A. Mappanyukki	Soa	Soa
	9	RP/131/VIII/2019/ S.Mariso 21-08-22	Jl. Baji Minasa II Dalam	Soa	Soa
	10	RP/184/XI/2019/ S.Mariso 20-11-2019	Jl. Rajawali	Normal Steal	Soa
	11	RP/192/XII2019/ S.Mariso 16-12-2019	Jl. Rajawali	Persecution	Diversion
	12	RP/202/2019/S. Mariso 27-12-2019	Jl. Cendrawasih	Persecution	Diversion (withdraw the police report)
2020	1	PR/B/06/I/2020/ S.Mariso 22-01-20	Jl. Rajawali	Persecution	Diversion
	2	PR/11/II/2020/S .Mariso 7-02-20	Jl. Cendrawasih	Steal	P-21
	3	PR/32/III/2020/ 29/03/20	-	Steal	P-21
	4	PR/53/V/2020/S. Mariso 31-05-20	Jl. Cendrawasih	Steal	Diversion
	5	PR/62/VI/20/S. Mariso 17-06-20	Jl.Nusa Indah	Steal	Diversion
	6	PR/74/VII/20/S. Mariso 30-07-20	Jl. Huri	Assaulting	P-21
	7	PR/97/XI/20/S. Mariso 1-11-20	Jl. Padjonga Dg.Ngalle	Steal	P-21
	8	PR/99/XI/20/S. Mariso 9-11-20	Jl. Rajawali	Steal	P-21
	9	PR/105/XI/20/S. Mariso 18-11-20	Jl. Huri	Steal	P-21



Year	No.	Police Report	Crime Scene	Case	Completion
2021	1	PR/05/II/2021/S. Mariso 12-02-21	Jl. Rajawali	Persecution	Diversion
	2	PR/23/IV/2021/S. Mariso 29-04-21	Jl. Haji Murni	Assaulting	Diversion
	3	PR/A/05/V/2021/S. Mariso 4-05-21	Jl. Cendrawasih	LN	P-21
	4	PR/29/V/2021/S. Mariso 15-05-21	-	Insult	Diversion
	5	PR/40/VI/2021/S. Mariso 10-06-21	Jl. Baji Minasa	Steal	P-21
	6	PR/52/VII/2021/S. Mariso 2-07-21	Jl. Rajawali	Steal	Diversion
	7	PR/80/VIII/2021/S. Mariso 4-08-21	Jl. Huri Lama	Steal	P-21
	8	PR/89/VIII/2021/S. Mariso 19-08-21	Jl. Belibis	Steal	P-21
	9	PR/B/100/IX/2021/S. Mariso 29-09-21	Jl. Rajawali	Steal	Diversion
	10	PR/A/11/XII/2021/S. Mariso 13-12-21	Jl. Ratulangi	LN	P-21
2022	1	RP/A/04/III/2022/S. Mariso 26-03-22	Jl. Cendrawasih	LN	Diversion
	2	PR/A/05/III/22/S. Mariso 30-03-22	Jl. Baji Dakka	LN	Diversion
	3	PR/126/VI/2022/S. Mariso 15-06-22	Jl. Merak	Steal	Diversion
	4	PR/A/10/VII/2022/S. Mariso 3-07-22	Jl. Hati Mulia	LN	P-21
	5	PR/A/13/VII/2022/S. Mariso 17-07-22	Jl. Hati Rela	LN	P-21
	6	RP/A/16/VII/2022/S. Mariso 20-07-22	Jl. Cendrawasih	LN	P-21
	7	RP/A/17/VII/2022/S. Mariso 20-07-22	Soa	LN	P-21
	8	RP/185/VIII/2022/S. Mariso 12-08-22	Jl. Metro Tanjung	Assaulting	Diversion
	9	RP/A/19/IX/2022/S. Mariso 24-09-22	Jl. Mappanyukki	LN	Diversion
	10	RP/A/27/XI/2022/S. Mariso 1-11-22	Jl. Cendrawasih	LN	Turn over to the police

Source: Mariso police sector, 2019-2022

From the data provided by Mariso Sector, in 2019, only six out of 12 cases met the diversion requirements. They reached a diversion agreement, while the rest went to the public prosecutor. In 2020, there were nine cases of



children in conflict with the law that met the requirements. However, only 2 cases reached a diversion agreement, while 7 continued the prosecutor's examination process (P21). 2021 shows there were 10 cases of children in conflict with the law, of which only 5 cases were successfully resolved through diversion and 5 cases continued to the prosecutor's examination process (P21). In 2022, there will be 10 cases of children in conflict with the law that meet the requirements for settlement through diversion. However, only 5 cases reached a diversion agreement, and the five continued with the prosecutor's examination (P21).

Table 2. Children's data conflicting with law in the tallo police sector

No.	Police Report	Suspect	Case	Completion
1.	PR/13/I/2015, 4 January 2015	Arafah Bin Nurdin, 15 y.o	Clause 362 KUHP	C.21
2.	PR/38/I/2015, 12 January 2015	Elyas, 17 y.o., Fathana, 15 y.o	Clause 362 KUHP	C.21
3.	PR/78/I/2015 24 January 2015	Muh.Yusril, 16 y.o	Clause 362 KUHP	C.21
4.	PR/82/I/2015 25 January 2015	Muh.Farhan, a 17 y.o	Clause 2 (1) UUDRT No.12 of 1951	C.21
5.	PR/96/I/2015 30 January 2015	Aswar Umar, 15 y.o, Fikram, 17 y.o, Marco, 15 y.o	Drugs	C.21
6.	PR/120/II/2015 6 February 2015	Muh. Nur Taufiq amir	Fraud and embezzlement	C.21
7.	PR/140/II/2015 15 February 2015	Adrian Oktafianto, 18 y.o	Clause 2(1) UUDRT No.12 of 1951	C.21
8.	PR/26/III/2015 16 March 2015	Asriani , 17 y.o	Beatings	-
9.	PR/105/VII/2015 31 Aug 2015	Hendriani, 17 y.o	Persecution, Clause 351	-
10.	PR/67/I/2015 21 January 2015	Nur alim Bin Ansar, 14 y.o	Clause 363 (1) 3e, 4e, 5e KUHP	Diversion
11.	PR/1075/XII/2015	Risal alias Cuccala, 17 y.o	Clause 170 (1)(2) 1 and or Clause 351 (1) KUHP	C.21

Source: Tallo Police Sector, 2015

In the Tallo police sector, from 2014 to 2015, there were 11 (thirteen) cases of children in conflict with the law involving 15 (fifteen) children. The investigation revealed that several cases fulfilled the requirements for



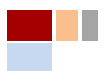
Diversification, but only 1 (one) was completed through the diversion agreement. The diversion agreement can be demonstrated with the following documents:

- a. Letter of the Chief of Tallo Sector Police Number: B/18/I/2015/Reskrim dated 18 January 2015, regarding the request to conduct social research for the Police Diversion on behalf of Nur Alim to BAPAS KLAS 1 MAKASSAR;
- b. News of Diversion Number 01/BAD/I/2015/Reskrim;
- c. Decree on Diversity Number 01/SKD/I/2015/Sek. Tallo stipulates that the suspect, Nur Alim, returned to his parents;
- d. Application for Determination of Diversion to the Makassar District Court Number Chairperson.B/01/I/2015/Criminal Code dated 29 January 2015;
- e. Community Research Results for Diversion Register Number: Lit. Polek Tallo/21/I/2015-01, Case/Article: Theft/363 paragraph (1) to 3e-4e-5e Criminal Code;
- f. Determination of the representative of the Makassar District Court's Representative Number 459/pen.Pid/2015/Makassar PN, which granted the investigator's request for Diversion;
- g. Letter of Granting termination of the investigation to the Head of Makassar District Prosecutor's Office Number. B/66/V/2015/Reskrim dated May 11, 2015.

Whereas 10 (ten) cases were delegated to the prosecutor's office (C.21).

Table 3. Children's data conflicting laws in the tamalanrea police sector

No.	Police Report	Suspect	Case	Completion
1.	Abd. Rifai Bin Abd. Rahman; Muh. Akbar Bin Herman	17 y.o, -, - 17 y.o	Clause 363 (1) 4e KUHP	C.21
2.	Muh. Hidayatullah, Rahim Abdullah, Khaerul Firmansyah	16 y.o, 16 y.o, 16 y.o	Clause 363 (1) ke-4e KUHP	C.21
3.	Alif Raynaldy	16 y.o	Clause 365 KUHP	C.21
4.	Andi Aksa alias Aksa	14 y.o	Clause 2 (1) UUDRT No.12 of 1951	C.21
5.	M. Faturrahman Afrisa Lembang	15 y.o	Clause 365 (1)(2) 2e KUHP	C.21
6.	Muh. Fikri Fauzi Rajahinggi; Muh. Alif Bin H.Muslimin	14 y.o - 15 y.o	Clause 365 (1) KUHP	C.21



No.	Police Report	Suspect	Case	Completion
7.	Muh. Akbar Bin Suardi	17 y.o	Clause 363 (1) Ke-5e KUHP	C.21
8.	Wingky Julian; Kristian Raynaldo	15 y.o - 15 y.o	Clause 80 (1) UU No.23 of 2012; Clause 351 KUHP	C.21
9.	Egy Septian alias Egy	17 y.o	Clause 365 KUHP	C.21
10.	Muh. Qolby Hidayat	15 y.o	Clause 363 (1) 5e KUHP	C.21
11.	Muhaimin Rahman	17 y.o	Clause 365 (1) KUHP	C.21

Source: Data of Tamalanrea police sector, 2015

According to the data, there were 11 cases in Tamalanrea Sector Police in 2016, involving 16 children. From the 11 cases, several cases fulfilled the requirements for diversification, but the diversion agreement still needs to be reached. So all 11 cases were transferred to the prosecutor’s office.

Table 4. Children’s data conflicting with law in biringkanaya police sector

No.	Police Report	Suspect	Case	Completion
1.	PR/711/VI/2015 12-6-2015	Andi Didik Alif Wana , 17 y.o	Clause 365 Subt Ps.363 KUHP	C.21
2.	PR/980/VIII/2015 6-8-2015	Musafir alias Ade Bin Risal, 16 y.o	Clause 363 (1) KUHP	C.21
3.	PR/1169/IX/2015 16-9-2015	Nurmahfud Arham, 15 y.o	Clause (2) UUDRT No.12 of 1951	C.21
4.	PR/1171/IX/2015 16-9-2015	Surahman Bin H. Abd. Rivai, 15 y.o	Clause 351 (1) KUHP	C.21
5.	PR/1223/IX/2015 26-9-2015	Dandi Bin Dg Ngambo, 17 y.o	Clause 2 UUDRT No.12 of 1951	C.21
6.	PR/1248/X/2015 2-10-2015	Rezky Yulianto Bin Anwar Wali, 17 y.o	Clause 363(1) 4 KUHP	C.21
7.	PR/1312/X/2015 17-10-2015	Ardiansyah Bin Andi	Clause 363(1) 3,4 KUHP	C.21
8.	PR/1230/X/2015 18-10-2015	Ansar Abdullah, 17 y.o	Clause 335 (1) KUHP	C.21
9.	PR/1322/X/2015 19-10-2015	Rahmat Arifin Bin Arifin	Clause 363 KUHP	C.21
10.	PR/1365/X/2015	Gilang Ramadhan, 16 y.o	Clause 363(1) ke-4 KUHP	C.21



No.	Police Report	Suspect	Case	Completion
11.	PR/1406/XI/2015 4-11-2015	Ita, 17 y.o	Clause 351(1) KUHP	C.21
12.	PR/1412/XI/2015 5-11-2015	Rudianto, 16 y.o	Clause 372 KUHP	C.21
13.	PR/1432/XI/2015 8-11-2015	Andi Arfandi; Anugrah; Juswandi; 15 y.o, 16 y.o	Clause 2 UUDRT No.12 of 1951	C.21
14.	PR/1488/XI/2015 19-11-2015	Naldi alias Dion, 17 y.o	Clause 363(1) 3,4,5	C.21
15.	PR/1573/XII/2015 8-12-2015	Saffiar , 18 y.o	Clause 362 KUHP	C.21
16.	PR/1574/XII/2015 8-12-2015	Mashuri, 15 y.o	Clause 2 UUDRT No.12 of 1951	C.21
17.	PR/1594/XII/2015 10-12-2015	Andre Supyan Yunus, Student	sda	C.21
18.	PR/1615/XII/2015 11-12-2015	Hurgan Alim; Rahmat Hidayat; 16 and 18 y.o	sda	C.21
19.	PR/1617/XII/2015 11-12-2015	Muh Ashar Fachri, 16 y.o	sda	C.21
20.	PR/1612/XII/2015 14-12-2015	Muh.Syahrul, alias Accul 16 y.o	112 (1) UU No.35 of 2009	C.21
21.	PR/1625/XII/2015 15-12-2015	Khairil Kanaya, 16 y.o	UUDRT No.12 of 1951 Clause 2	C.21
22.	PR/1663/XII/2015	Andi Bakri Palaguna, 16 y.o	sda	C.21
23.	PR/1664/XII/2015 21-12-2015	Agung Saputra, 15 y.o	sda	C.21
24.	PR/1670/XII/2015 22-12-2015	Nurashari, 15 y.o	sda	C.21

Source: Biringkanaya Police Office, 2015

Table 4 above shows that the number of cases of conflicting children with the law is 24 (twenty-four) cases involving 26 (twenty-six) children. A case that has fulfilled the requirements for Diversion has been attempted, but no agreement has been reached, as stated in the news to Refuse Diversion on 22 January 2015.

Overall data from the four district offices (Marisso, Tallo, Tamalanrea and Biringkanaya) showed that during 2015 there were 74 (seventy-four) cases of children conflicting with the law, and 7 cases had succeeded in reaching the Diversion agreement, or 9.46%.



2. Diversion of Examination in The State Court

Based on the provisions of Article 7 (1), it is stated that “at the level of investigation, prosecution, and examination of cases of children in the district court, diversion must be pursued”. The results of research in the Makassar District Attorney’s Office (20 July 2016) show the number of cases of conflicted children with legal conflicts during 2015 amounted to 241 (two hundred and forty-one) cases, consisting of:

- a. Cases of order and public order in 12 cases;
- b. People’s case, property 146 cases;
- c. General Crimes Outside the Criminal Code 83 cases, with a total of 241 cases.

From the cases above, according to Herawaty, Makassar Public Prosecutors' Intelligence (Interview 2007-2015), public prosecutors have sought Diversion at the level of examination at the prosecutor's office, but no agreement was reached on Diversion.

3. Diversion Examination in State Court

In 2015, 290 cases of children in conflict with the law were transferred to the Makassar District Court. While there were still 104 cases in arrears in 2014, the number of cases in 2015 was 394 (Makassar District Court Data, July 19, 2016). The number of cases resolved during 2015 was 223 (two hundred twenty-three), of which 24 went through the diversion agreement, or 9.29%. The Diversity Agreement, among others, is indicated by the following documents:

- a. News of Diversion Number: 178/Pid.sus-anak/2015/Mks DC, with defendant I, M. Husain alwi Syihab, defendant II M. Haiqal Wintara Syihab;
- b. Community Research Results for the district court Session Number Register: Lit/Polakek Panakukang/4/VIII/2015-18, case/Article: Theft/Article 363 paragraph (1) 4the Criminal Code;
- c. Diversion Facilitator's report letter dated 19 August 2015 to the Chairman of the Makassar district court;

- d. Letter of Determination of Judge and Registrar substitute Number: 178/Pid-Sus-Anak/2015/Mks. State Court concerning the cessation of case investigation Number: 178/Pid. Sus-Anak /2015/Mks. State Court;
- e. Determination of Number: 178/Pid.sus-Anak/2015/Mks. State Court. Chairman of the Makassar District Court on 19 August 2015;
- f. Evidence of a failed Diversion attempt, among others, can be shown with the following documents;
- g. Community Research for District Court Trial Register Number: Lit.Polek Marisso Makassar/01/VI/2015-03, Case/ Article: Theft/363 paragraph (1) to 3e, 4e Criminal Code;
- h. Minutes of Rejection of Diversion on 6 June 2015 signed by the perpetrators, the perpetrators' parents, victims, community guides, and mediators.

The results of interviews with investigators from the Mariso Sector Police, the factors that influence the failure to reach a diversion agreement include:

- a. There is no consent from the victim/victim's family. Some victims/families of victims want their children to be punished as recompense for their actions. Some victim families want a certain amount of compensation paid by children in conflict with the law;
- b. The economic situation of children conflicts with the law. The victim/ victim's family can agree to Diversion, provided that the child in conflict with the law pays a sum of money as compensation for the victim. The child cannot meet this amount due to the poor economic condition of the parents;
- c. Community culture relates to the values adopted by the community concerned, which does not want to forgive, be tolerant, or empathize with children who conflict with the law.

According to the author, other factors that affect the diversion agreement are the diversion conditions listed in Article 7 paragraph (2) of the SPPA Law, namely: criminal acts whose punishment does not exceed seven years; not a repetition of a criminal act; and the consent of the victim.



Referring to Satjipto Raharjo's opinion that the law should be for humans and not humans for the law, the terms of the sentence should not be limited to 7 years because, in reality, there are crimes committed by children for which the sentence is longer than seven years and can be resolved through diversion. The case of a child was processed at the Cirebon District Court in Case Number 11/Sp. Crimes for Children/2019/Cbn DC, although the decision was later annulled.

Therefore, Article 7 paragraph (2) is considered to hinder the achievement of a diversion agreement. Diversion should not be limited by the length of the criminal threat (Johari and Agus, 2021). However, it must be seen as a right and freedom for victims and perpetrators to accept or reject Diversion. The mandate of SPPA law to realize restorative justice for children in conflict with the law is to settle cases through Diversion for the sake of child recovery.

D. Conclusion

Diversion at the investigator inspection stage, public prosecutor, and court hearings have been carried out according to the provisions of Article 6, Article 7, and Article 8 of Law Number 11 of the year 2012 concerning the "Criminal Justice System for Children", but only 9.46% of the total number of cases of children conflicting with the law were found in the investigation, not achieved at the prosecutor's examination level, and reached 9.29% at the trial court.

For the optimal achievement of the diversion agreement at each stage of the examination, it is hoped that there will be an active role for law enforcers (investigators, public prosecutors, judges, and lawyers), social advisers, and community leaders. There is a need to socialize the conditions for achieving a diversion agreement.

The diversion agreement's success is determined by the agreement of the victims and their families. Therefore, it is hoped that there will be an awareness in the community that, in order to achieve restorative justice for children, it is necessary to develop a culture of forgiveness and love. The

role of parents is critical in supervising all of their children's activities and providing intensive coaching.

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