

The Effectiveness of the Implementation of Diversion by the Public Prosecutor in Child Cases

Ilham Abbas¹, Askari Razak¹ & Syakaria²

*Correspondent Author, Email: ilham.abbas@umi.ac.id

¹Faculty of Law, Indonesian Muslim University, Indonesia

²Master of Law Student, Indonesian Muslim University, Indonesia

ABSTRACT

The study aims to analyze the effectiveness of the implementation of diversion by the public prosecutor in child cases at the Mamuju District Attorney, and 2). To find out and analyze the factors that influence the implementation of diversion by the public prosecutor in child cases at the Mamuju District Attorney. This type of research is empirical juridical. Research results in the authors find that: 1). The effectiveness of the implementation of diversion by the public prosecutor against child cases at the Mamuju State Prosecutor's Office, is not running effectively due to a lack of professionalism by the Public Prosecutor (Child Prosecutor) who has experience in handling child cases at the Mamuju State Attorney's Office so that the Public Prosecutor has difficulty considering rights in the process diversion at the Mamuju District Attorney level. 2). Factors that influence the implementation of diversion by the public prosecutor in child cases at the Mamuju District Attorney are; substance, structure, and legal culture. Of these three factors, the most influential is the legal structure itself.

Keywords: *Diversion; Prosecutor, Son*

ABSTRAK

Tujuan penelitian menganalisis efektivitas pelaksanaan diversifikasi oleh jaksa penuntut umum terhadap perkara anak di Kejaksaan Negeri Mamuju, dan 2). Untuk mengetahui dan menganalisis faktor yang mempengaruhi pelaksanaan diversifikasi oleh jaksa penuntut umum terhadap perkara anak di Kejaksaan Negeri Mamuju. Tipe penelitian ini adalah yuridis empiris. Hasil Penelitian penulis mendapatkan bahwa: 1). Efektivitas pelaksanaan diversifikasi oleh jaksa penuntut umum terhadap perkara anak di Kejaksaan Negeri Mamuju, kurang berjalan secara efektif dikarenakan kurangnya profesionalisme oleh Jaksa Penuntut Umum (Jaksa Anak) yang memiliki pengalaman dalam penanganan perkara anak di Kejaksaan Negeri Mamuju sehingga Jaksa Penuntut Umum kesulitan mempertimbangkan hak dalam proses diversifikasi di tingkat Kejaksaan Negeri Mamuju. 2). Faktor yang mempengaruhi pelaksanaan diversifikasi oleh jaksa penuntut umum terhadap perkara anak di Kejaksaan Negeri Mamuju yaitu; substansi, struktur, dan budaya hukum. Pada ketiga faktor tersebut yang paling berpengaruh ada pada struktur hukum itu sendiri.

Kata Kunci: *Diversifikasi; Jaksa, Anak*

PRELIMINARY

Children in everyday life are certainly not able to protect themselves which in the end causes harm to them both mentally, physically and socially. Children need to get the protection of rights from the misapplication of laws and regulations that apply to them, which cause mental, physical and social harm. In this case, the protection of children's rights is called the protection of legal rights (legal protection). Juvenile court proceedings for investigators, public prosecutors, and court judges must be carried out by officials who understand and who are specially educated to know the problem of juvenile delinquency and must pay attention to the principles of protecting the rights of children who uphold the dignity of the child without neglecting its implementation. justice. Law enforcers must be wise and have a broad view of the weaknesses and strengths in society (Shulcha & Gani, 2017).

Handling child crime by applying restorative justice can be done by way of diversion or in this case diversion efforts. Restorative Justice is a process in which interested parties meet directly to resolve issues resulting from violations for the sake of the future (Martha, 2018). Diversion is a transfer of settlement of child cases from the criminal justice process to processes outside of criminal justice. Juvenile criminal cases were initially investigated by the police, at this level, it is hoped that the police can carry out the concept of diversion in handling cases involving children as perpetrators (Triwati¹ & Kridasaksana, 2021). If the police cannot carry out or apply the concept of diversion, the prosecutor and judges are expected to be able to carry out the concept of diversion, as one of the implementations of the best interest principle for children who conflict with the law. (Priamsari², 2018).

The diversion process is carried out to avoid negative effects on him in the criminal justice system. The implementation of diversion by law enforcement officials is based on the authority of law enforcement officials which is called discretion (discretion) (Setiawan³, 2017). Relationship with discretionary power in criminal cases, discretion is linked to the authority of the police alone, similar to that of a prosecutor,

¹ Triwati, A., & Kridasaksana, D. (2021). Pijakan Perlunya Diversi Bagi Anak Dalam Pengulangan Tindak Pidana. *Jurnal USM Law Review*, 4(2), 828-843

² Priamsari, R. P. A. (2018). Mencari hukum yang berkeadilan bagi anak melalui diversi. *Law Reform*.

³ Setiawan, D. A. (2017). Efektivitas Penerapan Diversi Terhadap Penanganan Anak Yang Berhadapan Dengan Hukum Dalam Peradilan Pidana Anak Sesuai Undang-Undang Republik Indonesia Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak. *DIH Jurnal Ilmu Hukum*.

known as the right to denominate or transfer cases, which is commonly known as an opportunity. This is what then causes the prosecutor in dealing with his case to be able to use the discretionary authority he has whether a case is forwarded for prosecution or not (Astari⁴, 2016). The Attorney General's Office is pivotal and acts as a filter between the investigative and examination processes at trial and the executor of court decisions. Prosecutor's office is the controller of the case process (the owner of the suit) because it is the prosecutor's office that can determine whether a case can be brought to court or not based on valid evidence according to criminal procedure law.

The prosecution authority is held by the public prosecutor as a monopoly, meaning that no other body may exercise this authority. This is what is then referred to as the owner of the suit in the hands of the public prosecutor or prosecutor (Sitinjak⁵, 2018). The prosecution based on the principles of legality and opportunity (legality and the opportunity principle) is that the public prosecutor is obliged to prosecute a crime, meaning that the prosecutor must continue to prosecute a case with sufficient evidence, whereas according to the principle of opportunity, the prosecutor has the authority to prosecute and not demand a case in court, either conditionally or unconditionally. The public prosecutor cannot charge someone with committing a crime if, in his opinion, it will harm the public interest, so it is in the public interest that someone who commits a crime is not prosecuted. (Saputra⁶, et.al, 2918). According to the provisions of the law, public prosecutors who are given authority or exercise discretion prosecute criminal cases in court. The authority to set aside cases that rest with the Attorney General is regulated in Law Number 15 of 1961 concerning the Principles of the Prosecutor's Office of the Republic of Indonesia, then included in Article 35 letter c of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, which states that the Attorney General has the duties and authority to set aside matters in the public interest. Explanation of article 35 letter c of Law Number 16 of 2004 explains that principle opportunity can only be carried out by the Attorney General after taking into account suggestions and opinions from state power agencies that have a relationship with the problem.

⁴ Astari, P. (2016). Landasan filosofis tindakan diskresi kepolisian terhadap anak yang berhadapan dengan hukum. *Arena Hukum*

⁵ Sitinjak, I. Y. (2018). Peran Kejaksaan Dan Peran Jaksa Penuntut Umum Dalam Penegakan Hukum. *Jurnal Ilmiah Maksitek*, 3(3), 97-103.

⁶ Saputra, F., Kalo, S., Mulyadi, M., & Hamdan, M. (2014). Analisis Yuridis Penerbitan Surat Perintah Penghentian Penuntutan oleh Kejaksaan Dikaitkan dengan Asas Oportunitas dan Undang-undang No 16 Tahun 2004 Tentang Kejaksaan RI. *USU Law Journal*.

Basic opportunity which is the basis of the Public Prosecutor in resolving the problems of children in conflict with the law the Public Prosecutor can apply the principle opportunity against the case of mischievous children where all of that becomes a problem so that the Prosecutor does not have the basis and maximum in carrying out his duties as a case handler (the owner of the suit) in handling the problems of children in conflict with the law (Faith, 2018). As an example of a case that occurred in the jurisdiction of the Mamuju State Prosecutor's Office in which attempts were made to resolve the case outside the court by applying diversion as was carried out by the Public Prosecutor at the Mamuju District Attorney's Office against suspects SA aged 17 years and N who was 14 years old who committed the crime of theft at the Syahid Al-Hidayah Islamic boarding school where the perpetrators managed to secure three units of mobile phones and cash in the amount of Rp. 1,600,000 million in the wardrobe of one of the Syahid Al-Hidayah Islamic boarding school students.

The two perpetrators were charged with Article 362 Paragraph 2 of the Criminal Code in conjunction with Article 1 point 3 of Law Number 11 of 2012 concerning the Juvenile Justice System. When the investigation results file from the Police was submitted to the Mamuju State Prosecutor's Office by the Public Prosecutor specifically for children, Diversion was carried out and it was not successful because one of the suspects, SA aged 17, had committed the same act and had been diverted by the Mamuju City Police so that the Prosecutor the Public Prosecutor submitted the file to the Mamuju District Court. Based on the foregoing, the application of diversion by the Public Prosecutor at the Mamuju District Attorney which was the first attempt made in terms of handling children in conflict with the law as stated in Article 6 of the Law on the Juvenile Criminal Justice System, however, there are provisions governing that children who commit repeated crimes (recidivist) cannot be tried for diversion.

The diversion referred to here is the repetition of a crime in this provision is a : committed by a child, both similar and dissimilar crimes, including crimes that are resolved through diversion. The implementation of diversion prioritizes the protection and rights of the child and the implementation of diversion must be following the mechanisms stipulated in the law on the juvenile justice system and the Attorney General's Regulation Number: PER-006/A/JA/04/2015 concerning Guidelines for Implementation of Diversion at the Level Prosecution. Even though diversion is the best solution for children in conflict with the law, there are still weaknesses that must be perfected, besides weaknesses, there are also strengths, therefore the implementation of diversion from time to time needs to be evaluated to perfect it.

RESEARCH METHODS

This type of research is qualified as an empirical legal research type, namely legal research that uses secondary data as initial data, which is then followed by primary data in the form of data obtained from interviews related to the subject matter in this study. In this case, the author will analyze and review the provisions concerning the effectiveness of the implementation of diversion by the public prosecutor in child cases. This research was conducted in the Legal Area of West Sulawesi Province, precisely at the Mamuju District Attorney which is related to this research. The reason for choosing this location is because the jurisdiction of the Mamuju State Attorney's Office found many child cases and in the implementation of their handling there were still a few child public prosecutors within the Mamuju State Attorney's Office.

FINDING & DISCUSSION

The Effectiveness of the Implementation of Diversion by the Public Prosecutor Against Child Cases at the Mamuju District Attorney

According to the principle of opportunity, the prosecutor has the authority to prosecute and not demand a case to court, either conditionally or unconditionally (The public prosecutor may decide conditionally or unconditionally to make prosecution to a court or not). So in this case, the Public Prosecutor is not obliged to sue someone for committing a crime if, in his opinion, it will harm the public interest. So it is in the public interest that someone who commits a crime should not be prosecuted. With the principle of opportunity which is implicitly contained in the authority and position of the Public Prosecutor, the authority to prosecute cases of criminal acts and violations does not reduce the authority to act because of his position, if it is deemed necessary to do something contrary to the nature of the duties of the Public Prosecutor, he should not hold a prosecution, namely; If it is estimated that the prosecution will bring more losses than benefits for the public, community, state and government interests. This is the basic starting point as well as the reason why the Attorney General as the Supreme Public Prosecutor in the Indonesian legal state is given the authority not to prosecute a case to the Court based on the public interest. By looking at the reasons for the waiver of the case, can it be done against a naughty child? By examining the reasons for the exclusion of cases, especially for the public interest, it is possible to set aside child cases because it is in the public interest, society or personal interests. If the community believes that it does not need to be resolved formally through court proceedings and court examinations, it can have a bad effect

on child perpetrators, and the case is considered a minor case and the victim has forgiven or received compensation, then it is only natural that the child case is stopped in the public interest.

According to the researcher, even though this is possible, it is difficult to implement because it is the authority of the Attorney General and not the Prosecutor who handles the child's case while handling children being prosecuted must be done quickly and as soon as possible, while in practice, the regional prosecutors want to set aside cases in the public interest. must take the bureaucratic route within the multilevel Prosecutor's office and take time, for example, if the child prosecutor is assigned to the Mamuju State Prosecutor's Office, the child prosecutor must go through a tiered bureaucratic route through Kasi Pidum at the Mamuju Prosecutor's Office. sent to the Jampidum Attorney General's Office and forwarded to the Attorney General by going through this process will certainly take time and money so according to researchers this is very difficult and ineffective to do considering how many cases of naughty children are in in Indonesia must take a similar path.

Based on the description above, the policy of prosecuting children in the Criminal Procedure Code, Law Number 3 of 1997 concerning Juvenile Courts and Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, there are no provisions governing the authority of the Prosecutor to diversify in child cases naughty. Where the Prosecutor has the authority to stop the prosecution, limited to the reasons if there is insufficient evidence or the event is not a crime or the case is stopped because the case is closed by law and based on case waiver (opportunity principle). So that the a, then of the concept of diversion is not included in the child prosecution policy. Thus it can be stated that there is no opportunity for the public prosecutor or child prosecutor to apply the concept of diversion. Moving on from this thought, before the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the application of the concept of diversion to children in conflict or dealing with the law at the prosecution level has been regulated into various provisions.

However, these provisions cannot confirm or accommodate the meaning of the concept of the diversion itself. The improvement of the implementation of the diversion concept itself has been accommodated by the law on the criminal justice system. In the juvenile justice system, it is the entire process of child cases dealing with the law, starting from the investigation stage to the mentoring stage after receiving a court decision. The use of the word "child" in the juvenile justice system shows the limitations of the cases handled, namely children's cases. The juvenile criminal justice system is a special justice system that handles juvenile criminal cases where the law enforcement officers are also special law enforcement

officers who are different from adult cases, namely; Criminal cases are handled by child investigators, child public prosecutors, child judges, and child social workers. At the investigative level, the police are obliged to seek diversion against children who are in conflict with the law or in conflict with the law. This is in line with what was found by Mr. Rigan Hadi Nagara, as Head of the Criminal Investigation Unit at the Mamuju City Police, stating that; The Police in handling cases of children who are in conflict with the law or in conflict with the law are guided by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, so in handling these cases we refer to the rules contained in these provisions. Furthermore, Mr. Junaid as the Head of the Women and Children Service Unit (PPA), stated that; In handling cases of children who are in conflict with the law or in conflict with the law, there are those who are obliged to seek diversion and there are those who are not obligated but may seek diversion.

The categories of child cases that must be sought for diversion are cases of children in the category of minor crimes such as cases of theft according to Article 362 of the Criminal Code, maltreatment according to Article 351 of the Criminal Code, and other minor crimes which according to the rules carry a sentence of no more than 7 years. As for those that are not obligatory (may be done, may not be done) diversion, namely cases of children who are recidivists or are repeat offenders, serious crimes such as murder, as well as crimes whose punishment is more than 7 years. The diversion process established in accordance with the law on the juvenile justice system is required to be carried out at the level of investigation, prosecution and examination of cases in district courts. In this regard, the Mamuju District Attorney through the Public Prosecutor, is the most important part of the process of resolving child cases which still pays attention to aspects of the child's interests.

Based on the results of research in the field in the jurisdiction of the Mamuju State Attorney's Office, researchers found that the results of the implementation of diversion at the level of prosecution of children in conflict with the law or in conflict with the law, carried out by the Public Prosecutor at the Mamuju District Attorney's Office showed an increase in the failure of implementing this diversion. following data.

Table 1. Data on the Recapitulation of Child Case Handling at the Prosecution Level in the Legal Area of the Mamuju District Attorney in the Last 3 Years

No	Year	Things Done In Version		Amount
		Success in Diversion	Failed at Diversion	
1	2019	0	24	24
2	2020	1	11	12
3	2021	6	8	14

Data Source: *Results of Processed Primary Data for 2022*

Based on the data above, it illustrates that in the past three years the number of implementations of diversion of child cases at the prosecution stage in the jurisdiction of the Mamuju State Prosecutor's Office, namely; In 2019 24 child cases were entered, of which this year there were no successful diversions at the prosecution stage. In 2020 12 child cases were entered, of which 1 child case was successful in diversion, then there were only 11 cases of children who were unsuccessful in the diversion at the prosecution stage, and in 2021 as many as 14 child cases were entered, of which 6 child cases were successful in diversion, then 8 child cases were unsuccessful in the diversion at the prosecution stage. In general, children conflict with the law or conflict with the law, as described in table I, the Public Prosecutor who handles these cases has attempted a diversion process but the Public Prosecutor has his judgment based on what is contained in various laws and regulations.

Regarding these data, it is explained that in general the provision of diversion efforts for children dealing with the law or in conflict with the law has been carried out following the provisions of the applicable laws and regulations. However, the intensity of child cases coming from year to year has increased and in terms of implementing the diversion process at the prosecution stage the level of success has increased. This shows that the diversion process was not successful. Of course, it is very much influenced by the crime committed by the child, as mandated in article 42 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, article 7 PERMA Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System, as well as article 5 Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, which generally states that; The threat of punishment that exceeds the penalty limit on the requirements for carrying out diversion by the Public Prosecutor cannot be attempted for diversion. Mrs Anri Yuliana as the Public Prosecutor stated that; The purpose of implementing diversion for children dealing with the law or in conflict with the law is as an

effort by law enforcement officials (public prosecutors) to resolve child cases outside the judicial process so that it can be carried out safely from the laws of the juvenile justice system.

However, the provisions of the law on the juvenile justice system also contain provisions that require the implementation of the diversion itself, such as; Punished for imprisonment under seven years and not repeating the crime. Furthermore, it also applies to children who are charged with committing crimes punishable by imprisonment under 7 (seven) years and also charged with crimes punishable by imprisonment for 7 (seven) years or more. the form of the indictment of subsidiarity, alternative, cumulative or combination (combined). This is in line with the description of the table I related to the level of unsuccessful implementation of the diversion process at the prosecution stage which has increased because the child as the perpetrator of the crime for his actions is threatened with a sentence that exceeds the requirements of the diversion effort so that the Public Prosecutor who handles the case immediately submits the file to the court. Seeing the policy of prosecuting children in the Criminal Procedure Code, as well as Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, there are no provisions governing provisions regarding the Prosecutor's authority to divert cases of delinquent children. Where the Prosecutor has the authority to stop the prosecution, limited to the reasons if there is not enough evidence or the event is not a crime or the case is stopped because the case is closed by law and based on case waiver (opportunity principle).

The prosecutor is a functional position that is given the authority to carry out prosecutions to settle criminal cases, whether the perpetrators in the case are adults or are still children. Regarding the handling of cases where the perpetrators are still children, the prosecution (prosecution) is also different from that of adults, the appointment of a public prosecutor cannot be arbitrary. The application of the concept of diversion by the Public Prosecutor against children dealing with the law or in conflict with the law has been expressly stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. As referred to in Article 41 paragraph (1), states; Prosecution of child cases is carried out by the Public Prosecutor who is determined based on a Decision of the Attorney General or other officials appointed by the Attorney General. Thus the Law on the Juvenile Criminal Justice System contains the conditions for being appointed as a Public Prosecutor in the criminal justice system as referred to in Article 41 paragraph (2), which states; The requirements for being appointed as a Public Prosecutor as referred to in paragraph (1) include:

1. Has experience as a Public Prosecutor;
2. Having interest, attention, dedication and understanding of children's problems, and;
3. Has attended technical training on juvenile justice.

The Public Prosecutor (Child Prosecutor), has been given the authority to carry out the diversion regulated in the law of the juvenile justice system which states that; The Public Prosecutor is obliged to seek diversion no later than 7 (seven) days after receiving the case dossier from the investigator. The authority of the Public Prosecutor in carrying out diversion is also regulated in Article 32 paragraph (1) of Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Who Are Not Yet 12 (twelve) years old, which reads; Within 7x24 hours (seven times twenty-four) hours from the handover of responsibility for the child and evidence, the Public Prosecutor offers the child and parents/guardians to resolve the case through diversion. Children's case files that fail to reach a diversion agreement at the investigation stage must still be sought for diversion by the child's public prosecutor.

This means that the Public Prosecutor must seek diversion within a maximum period of 7 (seven) days after receiving the case file from the investigator and the diversion process is carried out no later than 30 (thirty) days after the start of the diversion. At the prosecution level, the Public Prosecutor (Child Prosecutor) must submit the results of the diversion to the Head of the District Court, who will then issue a stipulation and based on this stipulation, the public prosecutor will issue a stipulation to terminate the prosecution. The stage of diversion deliberation at the prosecution stage was opened by the Public Prosecutor (Child Prosecutor), as the diversion facilitator by introducing the parties present, conveying the aims and objectives of the diversion deliberation, as well as the rules for diversion deliberation to be agreed upon by the parties. The Public Prosecutor as the diversion facilitator explained his duties as a facilitator and explained the summary of the charges. Community Counselors provide information about the behaviour and social conditions of children and provide suggestions for obtaining solutions.

The Child Prosecutor as a diversion facilitator must provide opportunities especially for the Child Offender to be heard about the charges, then the parents/guardians convey matters related to the child's actions and the expected form of resolution, the victim/child victim, their parents/guardians then provide feedback and expected form of solution. The Public Prosecutor (Child Prosecutor) in carrying out diversion must consider, among other things, the category of crime, the age of the child, social research results, and support from the family and

community environment, as stated in Article 6 paragraph (2) of Government Regulation Number 65 of 2015 concerning Implementation Guidelines Diversion and Handling of Children under 12 (twelve) years old. In the case of deliberations on diversion at the prosecution stage, reaching an agreement, the Diversion Agreement Letter is signed by the Child and/or parents/guardians, the victim, the Child Victim and/or the parent/guardian, the Public Prosecutor, Community Advisors, and Professional Social Workers.

The entire process of implementing diversion is recorded in the minutes of the diversion. The direct supervisor of the Public Prosecutor supervises the implementation of the diversion agreement. The direct supervisor in question is the Head of the General Crimes Section who is subordinate to the Head of the Mamuju District Attorney. Supervision of the implementation of the diversion agreement is carried out within the timeframe agreed upon in the diversion agreement. Diversion at the prosecution stage, if needed Professional Social Workers can carry out social rehabilitation and reintegration of Child Victims in collaboration with related institutions. Furthermore, if the diversion deliberation process does not reach an agreement, the Public Prosecutor (Child Prosecutor) makes a report and minutes of the diversion process, followed by the actions of the Public Prosecutor to transfer the case to court. Weaknesses in the implementation of diversion by the current Public Prosecutor, the position of the Public Prosecutor himself is only as a diversion facilitator at the Mamuju District Attorney which requires a deeper understanding of the concepts of restorative justice. An understanding of restorative justice is a new part of the criminal law system in Indonesia, where this understanding is based on punishment related to retributive and restitutive justice. Thus the researcher agrees with this that; A Public Prosecutor (Child Prosecutor) in carrying out diversion against children who conflict with the law or conflict with the law, must have special abilities and skills in handling child cases, such as in the examination of children the treatment cannot be equated with adults, it is necessary to approach -a certain approach so that the child being examined can be free from fear and a sense of security.

The understanding of the prosecutor's apparatus regarding the law on the juvenile justice system is not yet sufficient. This can be seen for several reasons, such as understanding of the meaning of children, some still understand that children are aged 18 (eighteen) years and under, even understanding that children are aged 16 (sixteen) years and under. Based on the above, the researcher describes based on the results of studies and observations conducted in the field, the responses of various respondents regarding the effectiveness of the implementation of diversion at the prosecution level for those who are in conflict with the law

or conflict with the law at the Mamuju District Attorney can be described through the following table.

Table 2. Respondents' Responses Regarding the Effectiveness of Diversion Implementation by the Public Prosecutor Against Child Cases at the Mamuju District Attorney's Office in 2022

No	Description	Frequency (Number of Respondents)	Presents (%)
1.	Effective	4	26.66
2.	Less effective	8	53.34
3.	Ineffective	3	20.00
	TOTAL	15	100.00

Data Source: Results of Processed Primary Data for 2022

Based on the data in the table above, it can be explained that the respondents' answers regarding the effectiveness of the implementation of diversion by the public prosecutor against child cases at the Mamuju District Prosecutor's Office, which stated that it had been running effectively as much as 26.66%, and stated that it was not running effectively as much as 53.34%, and those who stated that it did not run optimally by 20.00%. The tendency of these data indicates that the implementation of diversion by the public prosecutor in child cases at the Mamuju State Prosecutor's Office, which is generally rated at 53.34% of respondents, is not running effectively because the implementation of diversion by the Public Prosecutor (Child Prosecutor) is faced with the fact that it is still found some good problems from professionalism, namely; the lack of a Public Prosecutor (Child Prosecutor) who has experience in handling child cases, so that the Public Prosecutor (Child Prosecutor) has difficulty considering the rights of children as perpetrators of criminal acts, as well as the threat of punishment imposed by the Public Prosecutor (Child Prosecutor) exceeds the requirements diversion efforts. Of course, the Public Prosecutor in applying the threat of punishment to a child is based on the child's actions.

In line with this, what was stated by Gernando Halomoan Damanik, the Public Prosecutor at the Mamuju District Attorney stated that; In applying the concept of diversion to children who conflict with the law or conflict with the law, we as public prosecutors have never participated in education and training related to solving child cases specifically. However, the training that followed included material about children dealing with the law. Meanwhile, the handling of child cases is not always appointed to the Prosecutor who is determined by the Attorney General's Decree, but every Prosecutor who is considered capable of resolving the case. Based on the above, the researcher can conclude that;

The effectiveness of the application of the concept of diversion to child cases at the Mamuju District Attorney, apart from the provisions that support the implementation of the diversion itself, can also be influenced by the professionalism and quality of understanding of the Public Prosecutor himself as a Juvenile Prosecutor in resolving child cases. Of course, this can be overcome if the Mamuju District Attorney has conducted education specifically related to the handling of child cases by appointing the Public Prosecutor to conduct the training or training. So that the handling of child cases by prioritizing the application of the concept of diversion can run effectively.

Factors Affecting the Effectiveness of the Implementation of Diversion by the Public Prosecutor Against Child Cases at the Mamuju District Attorney's Office

1. Legal Substance

The legal substance in this discussion is Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Juvenile court system legislation is a special law (*lex specialist*), while the Criminal Procedure Code and the Criminal Code are general law (*general law*). As a special law, the Juvenile Court Act in it has specifically regulated procedural law from the level of investigation to how to proceed before the court. In addition, the law on the juvenile justice system also specifically regulates material criminal provisions. The Prosecutor's Office as a sub-system of the criminal justice system in handling cases of children who conflict with the law or conflict law has so far tried to prioritize the interests and welfare of children, including by issuing supporting internal regulations from the provisions of the juvenile justice system law as well as guidelines and procedures. method of prosecuting cases committed by children. The insistence on trust from the provisions of the juvenile justice system the Attorney General of the Republic of Indonesia has responded by issuing several applicable provisions such as the Regulation of the Attorney General of the Republic of Indonesia Number: Per-006-/A/J.A/04/2015 concerning Guidelines for the Implementation of Diversion at the Prosecution Level, as an effort to realize the most basic substance in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is the regulation of diversion and restorative justice which aims to avoid and distance children from the judicial process so that children as perpetrators of criminal acts are free from stigmatization and it is hoped that children can return to justice. reasonable social environment. Then the Attorney General reissued the Republic of Indonesia Attorney Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, which in this provision contains the authority of the Public Prosecutor

to stop prosecution based on restorative justice as a breakthrough in solving criminal acts. Restorative justice is an approach to resolving criminal acts that are currently being voiced again in various countries. Through a restorative justice approach, victims and perpetrators of criminal acts are expected to achieve peace by prioritizing a justice-in-win solution and emphasising that the victim's losses are replaced and the victim forgives the perpetrators of the crime.

Related to the description above, the researcher argues that; Diversion, which is a form of authority granted by the Attorney General through the Public Prosecutor (Child Prosecutor) related to the implementation of the principle opportunity in the case of prosecuting children who are in conflict with the law or conflict with the law through the application of the concept of diversion, it is used to set aside cases that have clear evidence for serving the interests of the state or for the public interest (deposit). In the public interest when it comes to prosecuting children in conflict with the law, as an effort to maintain their dignity, children are entitled to special protection, especially legal protection in the juvenile justice system. Based on the above, the researcher describes based on the results of studies (observations) and research conducted in the field, regarding the responses of various respondents to the influence of a legal substance on the implementation of diversion by public prosecutors against children's cases at the Mamuju District Attorney, it can be described through the following table.

Table 3 Respondents' Responses Regarding the Effect of Legal Substance on the Effectiveness of the Implementation of Diversion by the Public Prosecutor Against Child Cases at the Mamuju District Attorney's Office in 2022

No	Description	Frequency (Number of Respondents)	Presents (%)
1.	Influential	7	46.68
2.	Less Influence	4	26.66
3.	No effect	4	26.66
	TOTAL	15	100.00

Data Source: *Results of Processed Primary Data for 2022*

The data shows that the factor of legal substance is one of the factors influencing the implementation of diversion by the public prosecutor in child cases at the Mamuju District Attorney's Office. In the diversion process at the prosecution level carried out by the Public Prosecutor against children who conflict with the law or conflict with the law, the Public Prosecutor considers various things, namely; The future of the child which has been

mandated in the juvenile justice system law and other statutory provisions; The mitigating and aggravating reasons for a child who commits a crime; and the role of children as perpetrators of criminal acts.

2. Legal Structure

The law enforcement apparatus at this stage is the Public Prosecutor (Child Prosecutor) who has been appointed by the Head of the Mamuju District Attorney through an appointment letter as the Child Prosecutor who handles child cases. However, in practice, according to the observations of researchers, the Public Prosecutor is not optimal in carrying out his duties, some things cause the Public Prosecutor to not be optimal, namely; Talking about the quality of law enforcement, especially in the realm of prosecution, it seems that there are weaknesses that are quite influential in the success of applying diversion to children who are in conflict with the law or conflict with the law. In the explanation regarding the failure to implement diversion at the prosecution level, in the public prosecutor's factor itself namely;

- a. Lack of understanding by the public prosecutor in handling child cases because the concept of the diversion itself is still considered a new thing for the public prosecutor;
- b. There is a lack of public prosecutors who have special specifications in handling child cases, which in handling child cases requires expertise from Public Prosecutors (Child Prosecutors) who can understand and understand the values in applying the concept of diversion which is oriented towards a restorative justice approach.
- c. There are still Public Prosecutors who have been given a task letter in the settlement of children's cases still deal with other matters other than the child's case, resulting in the diversion process not proceeding as it should due to the large number of matters being dealt with other than the child's case.

Based on the above, the researcher describes based on the results of studies (observations) and research conducted in the field, regarding the responses of various respondents to the influence of the legal structure on the implementation of diversion by public prosecutors against child cases at the Mamuju District Attorney, it can be described through the following table.

Table 4 Respondents' Responses Regarding the Influence of the Legal Structure on the Effectiveness of Diversion Implementation by the Public Prosecutor Against Juvenile Cases at the Mamuju District Attorney's Office in 2022

No	Description	Frequency (Number of Respondents)	Presents (%)
1.	Influential	6	40.00
2.	Less Influence	4	26.66
3.	No effect	5	33.34
	TOTAL	15	100.00

Data Source: *Results of Processed Primary Data for 2022*

The data shows that the legal structure factor is one of the factors influencing the implementation of diversion by the public prosecutor in child cases at the Mamuju District Attorney's Office. This can show that in the application of diversion against children who conflict with the law or conflict with the law, apart from being the authority of the public prosecutor, they must also pay attention to the quality and professionalism of the Public Prosecutor (Child Prosecutor) who becomes the public prosecutor in handling child cases, namely; At a minimum, he has handled child cases and in terms of handling child cases, the Public Prosecutor must continue to prioritize children's rights which have been mandated in the laws of the juvenile justice system.

3. Legal Culture

Diversion by the public prosecutor in child cases at the prosecution level, is not only carried out following the substance of the law and the applicable legal structure but must pay attention to the legal culture of the community and the values and expectations of the community towards the applicable legal system, in this case regarding the values -the values that exist in restorative justice as the basic values contained in the implementation of diversion by the Public Prosecutor against child cases at the prosecution level as well as a form of law enforcement to the community. Of course, this does not mean that every community or legal handling process in a community and/or legal culture share the same thoughts, because there are many sub-cultures in society. However, the sub-culture that is important to note is the legal culture of law enforcement, judiciary bodies, prosecutors, and legal advisors who work within the legal system itself, because they are the ones who will be dealing with handling child cases.

The legal culture factor here is related to legal awareness, namely the legal awareness of the defendant to admit and regret his actions. During the examination before the trial, sometimes children who conflict with the law or conflict with the law give convoluted

statements, making it difficult for the Public Prosecutor to prove the charges. This situation affects the process of carrying out diversion to child cases at the prosecution level. In line with this, in the view of Ms Kartina as the Public Prosecutor at the Mamuju District Attorney stated that; In the practice of applying diversion to children who conflict with the law or conflict with the law, we as the Public Prosecutors are still faced with a situation where the child, when questioned often, states convoluted facts because the child's readiness when asked for information is disturbed by a sense of anxiety even though the Prosecutor The general public has carried out procedural examinations as stipulated in the law on the juvenile justice system.

Furthermore, other obstacles are in the community itself, both from the families of the victims and the families of the perpetrators, who have not yet disseminated public knowledge about the concept of diversion, so the Public Prosecutor at the Mamuju State Prosecutor's Office must first provide understanding before carrying out the diversion process. [1] In line with this, according to the narrative of one of the victims' families, namely Mr Muh. Syahrul stated; As part of the victim's family, I do not know the intent and purpose of holding this deliberation (diversion). We only hope that the perpetrators are given the appropriate punishment according to what the perpetrators did. [2] Thus the inhibiting factor for the diversion process comes from the community itself. The community here is positioned as a party to the perpetrator's family who does not understand the implementation of diversion so in general it can lead to negative stigmas on children as perpetrators of crimes and can also discourage the victim's family from fulfilling the diversion agreement. In addition to the above, researchers also found; The level of public trust in law enforcement officials, in this case, the Public Prosecutor (Child Prosecutor) diversifies children who are in conflict with the law or conflict with the law. This is due to the lack of socialization of laws and regulations so the understanding and implementation of the resolution of children who commit criminal acts in the community, people's views vary and tend to use different perceptions. Based on the above, the researcher describes based on the results of studies (observations) and research conducted in the field, regarding the responses of various respondents to the influence of legal culture in the implementation of diversion by public prosecutors against child cases at the Mamuju District Attorney, it can be described through the following table.

Table 4 Respondents' Responses Regarding the Influence of Legal Culture on the Effectiveness of Diversion Implementation by Public Prosecutors in Juvenile Cases at the Mamuju District Attorney's Office in 2022

No	Description	Frequency (Number of Respondents)	Presents (%)
1.	Influential	9	60.00
2.	Less Influence	3	20.00
3.	No effect	3	20.00
	TOTAL	15	100.00

Data Source: Results of Processed Primary Data for 2022

The data shows that the legal culture factor is one of the factors influencing the implementation of diversion by the public prosecutor in child cases at the Mamuju District Attorney's Office. This can show that in applying diversion to child cases, in addition to the Public Prosecutor (Child Prosecutor) who has been given authority by law, he must also get support from the surrounding community to optimize the performance of the Public Prosecutor. Based on this, the factors that influence the implementation of diversion by the Public Prosecutor against child cases in the jurisdiction of the Mamuju District Attorney are; substance, structure, and legal culture. The three factors that have the most influence on the implementation of diversion by the Public Prosecutor are in the legal structure itself, in which the Public Prosecutor has been given a mandate by the law on the juvenile justice system to be obliged to seek settlement of child cases in the diversion at the level of prosecution. However, at the Mamuju District Attorney's Office, there is still a minimum number of Public Prosecutors (Child Prosecutors) who have specific specifications in handling child cases, which requires expertise in handling child cases and being able to understand and understand the values in applying the concept of diversion oriented towards a restorative justice approach.

CONCLUSION

1. The effectiveness of the implementation of diversion by the public prosecutor against child cases at the Mamuju State Prosecutor's Office is not running effectively due to a lack of professionalism by the Public Prosecutor (Child Prosecutor) who has experience in handling child cases at the Mamuju State Attorney's Office so that the Public Prosecutor has difficulty considering rights in the process diversion at the Mamuju District Attorney level.

2. Factors that influence the effectiveness of the implementation of diversion by the public prosecutor in child cases at the Mamuju District Attorney, namely; substance, structure, and legal culture. Of these three factors, the most influential is the legal structure itself, where the Mamuju State Attorney still lacks a Public Prosecutor (Child Prosecutor) who has specific specifications for handling child cases. Regarding the handling of child cases, expertise is needed and one can understand the values of applying the concept of diversion which is oriented towards a restorative justice approach.

SUGGESTION

1. The Mamuju State Prosecutor's Office should provide training for the diversion of children who are in conflict with the law or conflict with the law by appointing several public prosecutors who are eligible to be included in training in handling child cases. The realization of this training is an effort by the Mamuju State Prosecutor's Office to improve the quality and professionalism of the Public Prosecutor in understanding and exploring the laws of the juvenile justice system so that the implementation of diversion can run effectively.
2. It is hoped that the government through the Mamuju District Attorney will conduct outreach to the local community to provide a common perception to the public regarding the importance of applying diversion to be carried out at every level of the procedural law of the juvenile justice system. So that the Public Prosecutor in carrying out diversion to children who are in conflict with the law or in conflict with the law can reach an agreement on the results of the diversion.

REFERENCES/BIBLIOGRAPHY

- Astari, P. (2016). Landasan filosofis tindakan diskresi kepolisian terhadap anak yang berhadapan dengan hukum. *Arena Hukum*.
- Iman, C. H. (2018). Kebijakan Hukum Pidana Perlindungan Anak dalam Pembaruan Sistem Peradilan Pidana Anak di Indonesia. *Jurnal Hukum dan Peradilan*,
- Mareta, J., & Kav, J. H. R. R. S. (2018). Penerapan Restorative Justice Melalui Pemenuhan Restitusi Pada Korban Tindak Pidana Anak. *Jurnal Lex et Societatis*.
- Priamsari, R. P. A. (2018). Mencari hukum yang berkeadilan bagi anak melalui diversi. *LAW REFORM*.
- Saputra, F., Kalo, S., Mulyadi, M., & Hamdan, M. (2014). Analisis Yuridis Penerbitan Surat Perintah Penghentian Penuntutan oleh Kejaksaan Dikaitkan dengan Asas Oportunitas dan Undang-undang No 16 Tahun 2004 Tentang Kejaksaan RI. *USU Law Journal*.

- Setiawan, D. A. (2017). Efektivitas Penerapan Diversi Terhadap Penanganan Anak Yang Berhadapan Dengan Hukum Dalam Peradilan Pidana Anak Sesuai Undang-Undang Republik Indonesia Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak. *DIH Jurnal Ilmu Hukum*.
- Sitinjak, I. Y. (2018). Peran Kejaksaan Dan Peran Jaksa Penuntut Umum Dalam Penegakan Hukum. *Jurnal Ilmiah Maksitek*.
- Triwati, A., & Kridasaksana, D. (2021). Pijakan Perlunya Diversi Bagi Anak Dalam Pengulangan Tindak Pidana. *Jurnal USM Law Review*.