

ABSTRAK

ANALISIS DIVERSI TERHADAP TINDAK PIDANA KEKERASAN SEKSUAL YANG DILAKUKAN OLEH ANAK DIHUBUNGKAN DENGAN PASAL 7 UNDANG – UNDANG NOMOR 11 TAHUN 2012 TENTANG SISTEM PERADILAN PIDANA ANAK (Studi Kasus Putusan Perkara Nomor: 4/Pid.Sus-Anak/2022/PN Cms Jo. Nomor: 4/Pen.Div/2022/PN Cms)

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Latar belakang penelitian ini didasarkan pada perbedaan antara ketentuan normatif dalam Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak yang membatasi diversi hanya untuk tindak pidana dengan ancaman pidana di bawah 7 tahun, dengan praktik peradilan yang menunjukkan penerapan diversi pada perkara kekerasan seksual dengan ancaman pidana hingga 15 tahun. Kondisi ini menimbulkan pertanyaan mengenai penerapan konsep keadilan, khususnya asas keseimbangan, dalam sistem peradilan pidana anak ketika pelaku dan korban sama-sama berstatus anak.

Metode penelitian yang digunakan adalah yuridis normatif dengan dukungan data empiris, melalui pendekatan perundang-undangan, konseptual, dan kasus. Data diperoleh melalui studi kepustakaan sebagai data sekunder, yang didukung oleh wawancara mendalam dengan hakim yang menangani perkara objek penelitian sebagai data primer, kemudian dianalisis secara kualitatif untuk menilai kesesuaian antara norma hukum dan praktik peradilan.

Hasil penelitian menunjukkan bahwa hakim dalam perkara tersebut menggunakan pendekatan progresif dengan mengedepankan keadilan substantif dan kepentingan terbaik bagi anak, sehingga berani menyimpangi batasan normatif diversi. Namun, penerapan diversi tersebut belum sepenuhnya mencerminkan asas keseimbangan karena kurang memperhatikan kepentingan korban, terutama dalam aspek pemulihan psikologis dan pembinaan yang berkelanjutan bagi pelaku. Kesepakatan diversi yang hanya berupa pengembalian kepada orang tua dan kompensasi finansial dinilai belum optimal dalam mewujudkan keadilan yang proporsional. Kesimpulannya, penerapan diversi pada perkara dengan ancaman pidana tinggi dapat dibenarkan secara teoritis melalui pendekatan keadilan substantif dan hukum progresif, namun harus tetap memenuhi prinsip keseimbangan antara perlindungan pelaku dan korban. Disarankan agar ke depan, penerapan diversi tidak hanya berfokus pada kepentingan pelaku, tetapi juga memastikan pemulihan korban secara komprehensif serta disertai mekanisme pembinaan yang jelas bagi anak pelaku, sehingga tujuan keadilan restoratif dapat tercapai secara utuh.

Kata Kunci: Diversi; Asas Keseimbangan; Keadilan Restoratif.

ABSTRACT

DIVERSION ANALYSIS ON SEXUAL VIOLENCE CRIMES COMMITTED BY CHILDREN REVIEWED FROM ARTICLE 7 OF LAW NUMBER 11 OF 2012 CONCERNING THE JUVENILE CRIMINAL JUSTICE SYSTEM (Case Study of Court Decision Number: 4/Pid.Sus-Anak/2022/PN Cms Jo. Number: 4/Pen.Div/2022/PN Cms)

The background of this research is based on the discrepancy between the normative provisions of Law Number 11 of 2012 on the Juvenile Criminal Justice System, which limits diversion to criminal offenses punishable by less than 7 years of imprisonment, and judicial practice that demonstrates the application of diversion in sexual violence cases carrying penalties of up to 15 years. This condition raises questions regarding the application of justice, particularly the principle of balance, within the juvenile criminal justice system when both the offender and the victim are children.

The research method employed is normative juridical supported by empirical data, using statutory, conceptual, and case approaches. Data were collected through library research as secondary data, supported by an in-depth interview with the judge who handled the case under study as primary data, and were analyzed qualitatively to assess the conformity between legal norms and judicial practice.

The results of the study indicate that the judge in the case applied a progressive approach by prioritizing substantive justice and the best interests of the child, thereby daring to deviate from the normative limitations of diversion. However, the implementation of diversion has not fully reflected the principle of balance, as it insufficiently considers the victim's interests, particularly in terms of psychological recovery and sustained rehabilitation of the offender. The diversion agreement, which merely involved returning the child to their parents and providing financial compensation, is deemed not optimal in achieving proportional justice. In conclusion, the application of diversion in cases with severe criminal penalties can be theoretically justified through the lens of substantive justice and progressive law; however, it must still fulfill the principle of balance between the protection of the offender and the victim. It is recommended that future applications of diversion not only focus on the offender's interests but also ensure comprehensive victim recovery, accompanied by clear rehabilitation mechanisms for the child offender, so that the objectives of restorative justice can be fully achieved.

Keywords: *Diversion; Principle of Balance; Restorative Justice.*