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Diversion as an Effort to Resolve Juvenile Criminal Acts Based on the Theory of Dignified Justice

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Abstract

This paper examines the concept of diversion within Indonesia's juvenile justice system, emphasizing its alignment with the Theory of Dignified Justice and the Pancasila legal system. Diversion, as defined in Law No. 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA), is the redirection of juvenile case resolutions from formal judicial processes to alternative mechanisms. While the statutory definition implies a process outside the judicial framework, this understanding raises questions about judicial oversight and its compatibility with the principle of the rule of law enshrined in Article 1, Paragraph (3) of the 1945 Constitution. Using a systemic approach, this study argues that judicial involvement is essential for maintaining legal certainty, justice, and dignity in the diversion process. Case studies, such as judicial determinations formalizing diversion agreements, demonstrate the necessity of integrating judicial oversight. This paper proposes legislative reforms, standardization of practices, and capacity-building initiatives to strengthen the implementation of diversion in Indonesia. These recommendations aim to align the concept of diversion with the broader objectives of restorative justice and the philosophical foundations of dignified justice.

1. Introduction

The term diversion etymologically parallels the English word "divert." While its lexical and etymological interpretations provide an initial understanding, these interpretations fail to fully

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capture the essence or ontology of diversion from a legal perspective. A gap exists between the common understanding of the term and its legal implications as articulated in statutory provisions. This discrepancy raises a fundamental legal issue: the ambiguity or lack of clarity in the concept of diversion, particularly when contrasting its general lexical meaning with its legal definition as stipulated in applicable laws and regulations.

In English, "divert" refers to the act of redirecting something from its usual or intended path to an alternative route (Wehmeier, 2007, p. 367). If this lexical meaning were directly applied to the concept of diversion in the context of juvenile justice, it might lead to misunderstandings or deviations from the principles enshrined in the legal framework. Such a misinterpretation could result in practices that stray from the core principles underlying laws, such as those established in child protection legislation. Consequently, the lack of clarity in defining diversion represents a critical legal issue that warrants further exploration. The problem of defining diversion is not merely semantic; it has practical implications for its implementation and alignment with the principles of justice. Misaligned interpretations risk undermining the objectives of laws designed to protect juveniles and promote restorative justice. Therefore, understanding the essence of diversion requires delving deeper into its legal meaning, beyond its lexical definition, to align its application with the broader goals of justice.

A Roman jurist, Cicero, drawing on Stoic philosophy, identified three main components of law within the natural law tradition, which I previously referred to as the "mind of God." According to Cicero, law is, among other things, the right reason in agreement with nature, universal in its application, unchanging, and eternal. It cannot be abolished, for it is authored, proclaimed, and enforced by God. This perspective underscores the divine origin and immutable nature of law, as outlined in Cicero's De Re Publica (3.22.33), cited in Wacks, R. (2006), *Philosophy of Law: A Very Short Introduction* (p. 3).

This paper aims to address the conceptual ambiguity surrounding diversion by examining its legal ontology, particularly through the lens of the Theory of Dignified Justice. This theoretical framework emphasizes justice that upholds the inherent dignity and worth of individuals, which is particularly significant when dealing with juvenile offenders. By exploring this perspective, the paper seeks to clarify the essence of diversion as a legal concept and provide a foundation for its effective implementation in accordance with the principles of justice.

2. Theoretical Framework

The Theory of Dignified Justice (*Teori Keadilan Bermartabat*), rooted in Indonesian Jurisprudence, represents a legal philosophy uniquely tied to the nation's cultural and philosophical foundations (Prasetyo, 2015, 2020). As an interchangeable framework with legal theory, this perspective seeks to navigate and provide justification for the legal meaning of key concepts, including diversion. Central to this theory is the understanding that law embodies the convergence of divine thought and human reasoning within society—a notion deeply embedded in Pancasila as the Volkgeist or the soul of the Indonesian people.

Pancasila, as the cornerstone of Indonesia's legal system, serves as the origin of all legal principles, norms, and concrete regulations within the Pancasila legal system (Pancasila Legal System). The principles and values derived from Pancasila aim toward a singular, inseparable objective: achieving justice, utility, and legal certainty while upholding the dignity of humanity. This purpose resonates with the philosophical essence of *nguwongke uwong*—"making human beings human." Such an approach not only integrates the moral and ethical dimensions of law but also emphasizes the centrality of human dignity in legal processes and outcomes (Prasetyo & Barkatullah, 2012, p. 2-3).s

As a legal philosophy, the Theory of Dignified Justice systematically approaches the law. This systemic nature implies a holistic integration of interrelated elements, governed by structured regulation, to fulfill a specific role or purpose. In the context of diversion, the ontology or essence of the concept must be understood not only through its lexical meaning but also through the definitions provided in relevant laws and regulations. However, these definitions must be examined systematically within the framework of the Pancasila legal system, which encompasses norms, principles, and values reflective of Indonesia's *Volkgeist*.

A core tenet of the Theory of Dignified Justice is its assertion that law, including the regulation and interpretation of diversion, can only be comprehended by deeply exploring the *Volkgeist* of a nation. This exploration manifests through the prevailing laws and regulations within a legal system. In the Indonesian context, the meaning of diversion must therefore be anchored in the laws enacted under the Pancasila legal system. This anchoring ensures that the interpretation and implementation of diversion are aligned with Indonesia's legal traditions and the broader philosophical objectives of justice, utility, and legal certainty.

By adopting this approach, the Theory of Dignified Justice positions the concept of diversion as more than a procedural mechanism. It becomes a manifestation of a legal philosophy that prioritizes human dignity, societal harmony, and the moral purpose of law. This framework underscores the necessity of viewing diversion as an integral part of Indonesia's legal system, intrinsically connected to the nation's cultural and philosophical identity, and guided by the overarching principles of Pancasila.

3. Legal Basis and Definition of Diversion in Indonesia

The concept of diversion in Indonesia is rooted in the legal framework designed to address juvenile justice, with its foundation established through both international conventions and domestic legislation. Diversion serves as an alternative to conventional judicial processes, aiming to prioritize restorative justice over punitive measures, particularly for children in conflict with the law. This approach reflects Indonesia's commitment to aligning its legal system with global standards while preserving its cultural values embodied in the Pancasila legal system.

The primary legal basis for diversion in Indonesia is found in Law No. 11 of 2012 on the Juvenile Criminal Justice System (UU *Sistem Peradilan Pidana Anak* or SPPA). This law explicitly mandates diversion as an effort to resolve juvenile criminal cases without resorting to formal judicial proceedings. Article 7 of the SPPA stipulates that diversion must be pursued in cases where the maximum punishment is under seven years and the offense is not a repeat crime. This provision underscores the importance of resolving cases in a manner that minimizes stigmatization and promotes the reintegration of juveniles into society.

In addition to domestic laws, Indonesia's commitment to diversion is also informed by international conventions, particularly the United Nations Convention on the Rights of the Child (CRC), which Indonesia ratified through Presidential Decree No. 36 of 1990. The CRC emphasizes the best interests of the child and the use of alternative measures that prioritize rehabilitation and reintegration. Diversion embodies these principles by offering solutions that focus on accountability, victim-offender reconciliation, and community participation, rather than punitive sanctions.

The definition of diversion in Indonesian law extends beyond its lexical interpretation, as it incorporates philosophical and legal dimensions unique to the Pancasila legal system. Diversion is not merely a procedural alternative; it reflects the spirit of justice, utility, and legal certainty inherent in the Indonesian legal system. It aims to humanize the legal process, ensuring that children in conflict with the law are treated with dignity and respect. By addressing the root causes of juvenile offenses and fostering reconciliation, diversion aligns with the broader objectives of restorative justice.

4. Diversion in the Context of the Dignified Justice Theory

The regulation of diversion in Indonesia is primarily grounded in Law No. 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA). As a manifestation of the Volkgeist or the soul of the Indonesian nation, the UU SPPA introduces the concept of diversion and defines its legal meaning for the first time. According to Article 1, Paragraph (7) of the UU SPPA, diversion is the "redirection of the resolution of juvenile cases from the criminal justice process to a process outside the criminal justice system." While this definition aligns with the lexical meaning of "divert" in English, it requires further elaboration to fully integrate the broader legal and philosophical dimensions, especially within the framework of the Theory of Dignified Justice.

Under formal logic, the definition of diversion in Article 1, Paragraph (7) implies a shift from resolving juvenile cases through the criminal justice system to alternative mechanisms outside of it. This understanding suggests that diversion, as a legal process, excludes the involvement of judges in the resolution of juvenile cases. However, this interpretation is at odds with the holistic approach advocated by the Theory of Dignified Justice, which views legal concepts as interconnected components within the broader Pancasila legal system. Diversion, therefore, should not be understood in isolation but as part of a system where judges retain a significant role, even in cases resolved outside the formal criminal justice process.

From the systemic perspective of the Theory of Dignified Justice, judges play an indispensable role in ensuring that diversion aligns with the rule of law, as stipulated in Article 1, Paragraph (3) of the 1945 Constitution (UUD NRI 1945). This involvement is crucial to guarantee that the diversion process adheres to legal principles and respects human dignity. Without judicial oversight, the diversion process risks violating the rule of law and deviating from the foundational principles of justice. The absence of judicial participation would render the diversion process incomplete and undermine its dignity, as it would fail to balance justice, utility, and legal certainty.

In practice, the implementation of diversion within the Pancasila legal system consistently involves judicial participation. For instance, in cases resolved through diversion, judges are often required to formalize the outcomes by issuing judicial determinations. An example is the determination issued by the Chief Judge of the Tangerang District Court, recorded as No. 2/Pen.Div/2023/PN.Tng jo. No. 3/Pid.Sus-Anak/2023/PN.Tng, which acknowledges a report on the successful resolution of a juvenile case through diversion. Such determinations highlight that judges are involved at the final stages of diversion to ensure that the process is legally valid and aligned with broader principles of justice.

This practice underscores the inadequacy of interpreting the definition of diversion in Article 1, Paragraph (7) of the UU SPPA in isolation. While the provision suggests that diversion occurs outside the judicial process, the actual implementation involves judicial oversight, reflecting the interconnectedness of legal components within the Pancasila legal system. The Theory of Dignified Justice enriches this understanding by emphasizing that diversion, though conducted outside formal criminal proceedings, still requires judicial involvement to uphold its legal and philosophical integrity.

5. Legal and Procedural Challenges in Implementing Diversion

The implementation of diversion within the Indonesian legal framework faces several legal and procedural challenges that impede its effectiveness in addressing juvenile criminal cases. While Law No. 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA) provides a clear legal basis for diversion, ambiguities within its provisions, particularly in the definition outlined in Article 1,

Paragraph (7), create confusion in practice. This provision, which characterizes diversion as a process outside the criminal justice system, raises questions about the role of judicial oversight, leading to inconsistent interpretations and applications.

One of the significant challenges lies in the apparent contradiction between the theoretical framework of the Theory of Dignified Justice and the operational definition of diversion in the UU SPPA. According to the Theory of Dignified Justice, all components within the legal system must function cohesively, emphasizing the importance of judicial involvement even in processes designed to occur outside formal court proceedings. However, the definition in the UU SPPA suggests that diversion excludes judicial participation, potentially leading to practices that lack the oversight necessary to ensure legal certainty and justice. This ambiguity risks undermining the integrity of the diversion process and the principles of restorative justice it seeks to uphold.

Furthermore, procedural inconsistencies in implementing diversion across different jurisdictions exacerbate the issue. Variations in how law enforcement officers, prosecutors, and judges interpret and apply diversion result in unequal treatment of juveniles, depending on the region or the individuals involved. For instance, while some courts ensure that judges provide oversight or formalize diversion agreements, others may bypass judicial involvement entirely, contrary to the systemic approach advocated by the Theory of Dignified Justice. Such inconsistencies undermine public confidence in the juvenile justice system and its ability to deliver equitable outcomes.

Resource constraints and a lack of awareness among key stakeholders also pose significant hurdles. Effective diversion requires adequately trained personnel, such as police officers, prosecutors, and mediators, who understand the principles of restorative justice and the Pancasila legal system. In many cases, stakeholders lack the necessary training to implement diversion effectively, leading to procedural errors or inadequate resolutions. Additionally, limited infrastructure and support systems, such as counseling services or community-based rehabilitation programs, restrict the ability of diversion to achieve its intended goals of rehabilitation and reintegration.

Addressing these challenges requires a concerted effort to align the legal framework and its practical application with the principles of the Theory of Dignified Justice. Clarifying the definition of diversion within the UU SPPA to explicitly mandate judicial oversight at critical stages would resolve ambiguities and ensure consistency across jurisdictions. Simultaneously, capacity-building programs for stakeholders and the development of supportive infrastructure, such as restorative justice centers, would enhance the effectiveness of diversion. By addressing these challenges, Indonesia can ensure that its diversion system not only adheres to legal principles but also fulfills its philosophical commitment to justice, utility, and the dignity of every individual.

5. Policy Recommendations for Strengthening Diversion

To ensure the effective implementation of diversion in Indonesia, it is essential to address both the legal ambiguities and procedural challenges identified within the framework of Law No. 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA). A comprehensive approach that combines legislative reform, capacity-building, and infrastructure development is necessary to align diversion practices with the principles of the Theory of Dignified Justice. These policy recommendations aim to enhance legal certainty, justice, and utility while preserving the dignity of juveniles in conflict with the law.

Legislative Clarification and Integration of Judicial Oversight

The first step in strengthening diversion is to amend the legal provisions within the UU SPPA, particularly the definition in Article 1, Paragraph (7). The revised definition should explicitly recognize the role of judicial oversight in ensuring that diversion agreements comply with the principles of justice and the rule of law, as mandated by Article 1, Paragraph (3) of the 1945 Constitution (UUD NRI 1945). This clarification will eliminate ambiguities regarding the exclusion of judges from the diversion process and provide a uniform standard for all stakeholders involved.

Standardization of Diversion Practices Across Jurisdictions

Establishing national guidelines or standard operating procedures (SOPs) for diversion can address inconsistencies in implementation across regions. These guidelines should outline the roles and responsibilities of law enforcement officers, prosecutors, mediators, and judges in facilitating diversion while ensuring compliance with restorative justice principles. A standardized approach will promote equal treatment of juveniles regardless of their geographical or socio-economic background.

Capacity-Building and Training Programs for Stakeholders

Investing in capacity-building initiatives is critical for equipping stakeholders with the skills and knowledge required to implement diversion effectively. Training programs should focus on restorative justice principles, mediation techniques, and the cultural and legal values embedded in the Pancasila legal system. Judges, prosecutors, and law enforcement officers, in particular, must be trained to appreciate the philosophical and legal underpinnings of diversion, ensuring its implementation aligns with the Theory of Dignified Justice.

Development of Restorative Justice Infrastructure

The success of diversion relies heavily on the availability of supportive infrastructure. Establishing restorative justice centers at the regional level can provide the necessary resources for effective implementation, such as trained mediators, counseling services, and community-based rehabilitation programs. These centers can serve as hubs for facilitating dialogue, reconciliation, and rehabilitation, ensuring that diversion achieves its intended objectives.

Public Awareness and Community Engagement

Raising public awareness about the concept of diversion and its benefits is essential for fostering societal acceptance and participation. Community engagement programs can educate the public about the restorative justice approach, emphasizing its role in promoting social harmony and reducing juvenile recidivism. Collaborative efforts with civil society organizations and local leaders can further enhance the impact of these initiatives.

By implementing the policy recommendations above, Indonesia can strengthen its diversion system, ensuring it is both philosophically sound and practically effective. Aligning the legal and procedural aspects of diversion with the Theory of Dignified Justice will uphold the nation's commitment to justice, utility, and human dignity while fostering a juvenile justice system that reflects the core values of the Pancasila legal system.

6. Conclusion

The concept of diversion should not be limited to its definition as stipulated in the statutory framework governing the juvenile criminal justice system. If the understanding of diversion is confined solely to its legislative definition, which excludes judicial involvement, the implementation of diversion could potentially conflict with the principle of the rule of law as enshrined in Article 1, Paragraph (3) of the 1945 Constitution (UUD NRI 1945). This principle mandates that the resolution of criminal cases must involve independent judges and an impartial judiciary. Therefore, the interpretation of diversion requires a broader perspective based on the Theory of Dignified Justice, which emphasizes a systemic approach to the legal process.

By adopting a systemic approach rooted in the Theory of Dignified Justice, diversion as a mechanism for resolving juvenile criminal cases must necessarily involve judicial participation. This ensures that the process not only aligns with the principles of justice and legal certainty but also upholds the dignity of the individuals involved. Judicial oversight, particularly through the formal determination by the district court's chief judge, reinforces the diversion's integrity and fairness. This systemic understanding integrates the various components of the legal framework, ensuring that diversion operates harmoniously within the Pancasila legal system while fulfilling its ultimate goal of humanizing the legal process and delivering justice that is both restorative and dignified.

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