

Diversion as an Instrument to Terminate Criminal Investigations Conducted by Children Through the Issuance of SP3 by Investigators

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Abstract

This research is the result of research on diversion as an instrument for stopping criminal investigations through the issuance of SP3 by investigators against Children in Conflict with the Law (AKH) at the investigation stage. This research was conducted using qualitative descriptive research methods and analytical descriptive methods, namely research methods by describing data collected through library research, where researchers studied and took data from various literatures in the form of books, official reports, scientific journals, articles, and news. The results of the study show, firstly, if the diversification is successful and the results of the diversion agreement are stated, based on the decision of the District Court, the Investigator in this case the South Jakarta Metro Police issues an Investigation Termination Order (SP3) after the diversion agreement is fully implemented. Second, Article 109 paragraph (2) of the Criminal Procedure Code has limitedly stated the reasons that can be used by investigators as the basis for stopping an investigation, namely: (i) there is not enough evidence; (ii) the incident turned out to be not a criminal act; or (iii) the investigation is terminated by law. As such, diversion has no relevance to the termination of the investigation or diversion cannot be used as a reason to stop the investigation. Because diversion with the termination of the investigation is a different matter, both in terms of the reasons that form the basis for its implementation and the process.

Keywords

diversion; investigation; SP3



I. Introduction

On July 30, 2019, the Government of the Republic of Indonesia (RI) and the Indonesian House of Representatives passed Law Number 11 of 2021 concerning the Juvenile Criminal Justice System (also known as SPPA Law). This law revoked and declared Law Number 3 of 1997 concerning Juvenile Court to be null and void, and it went into effect two (2) years after the date of promulgation. The SPPA Law is premised on stringent regulation of the approach to restorative justice and diversion initiatives. This aims to keep children out of the court system so as to prevent the stigmatization of Children in Conflict with the Law (refers to ABH), and it is hoped that children will be able to return to society in an acceptable manner. A definition of diversion is provided under the provisions of Article 1 point 7 of the Juvenile Criminal Justice System Law (SPPA Law). This definition describes the transfer of the

settlement of ABH cases from the criminal justice process to processes that are not part of the criminal justice system. In addition to the provisions of the SPPA Law, diversion is governed by Government Regulation No. 65 of 2015 on the Guidelines for the Implementation of Diversion and Handling of Children Under the Age of Twelve (PP Diversion), Republic of Indonesia Supreme Court Regulation No. 4 of 2014 on the Guidelines for the Implementation of Diversion in the Justice System for Juvenile Offenders (Perma Diversion), and RI Attorney General Regulation No. Per-006/JA/04/2015 concerning Guidelines for Implementation of Diversion at the Prosecution Level (Gultom, 2014).

Atmasasmita (1996) defines diversion as "an idea, a thought that views on the feasibility of the consideration of law enforcement officials in the juvenile criminal justice system," including "investigators, prosecutors, judges, and prison officers" to divert the criminal justice process to other forms of handling, such as the handing over of coaching to parents or guardians, or to social affairs departments or community institutions. Soetedjo (2012) argues that diversion is an important part of safeguarding children's human rights in accordance with the Convention on the Rights of the Child, making it more appropriate for ABH to prioritize educational aspects when resolving cases that were initially based on *ordeel de onderscheid*.

According to Article 7 of the SPPA Law, diversion must be used during the investigation, prosecution, and review of ABH cases in district courts, provided that the crime for which a sentence of imprisonment under 7 (seven) years is being threatened is not a repeat offense, whether they are of the same type or not, and does not include crimes that have been addressed through diversion. According to Marlina (2009), on the level of the investigation, the community is directly involved in the process of granting legal authority to the police as the first law enforcement agency. Diversion at the investigative level can be regarded as an endeavor to ensure that Children in Conflict with the Law (hence referred to as AKH) avoid early involvement with the criminal justice system. Therefore, it is believed that the potentially detrimental influence that is generated when children come into contact with law enforcement officers will be reduced. Article 29 of the SPPA Law stipulates that investigators must seek diversion no later than 7 (seven) days after the investigation has begun. No later than 30 (thirty) days following the beginning of the diversion, the diversion process is completed.

If an agreement can be reached through the diversion process, the investigator will submit the agreement and the minutes from the diversion to the chief judge of the local district court for a ruling. If the diversion attempt fails, however, the investigator must press on with the inquiry and hand the case over to the public prosecutor with the diversion report and the sociological study report attached. In order to switch from the General Criminal Justice System based on the Criminal Procedure Code (KUHP) to the Juvenile Criminal Justice System based on the SPPA Law, it is necessary for all parties involved in the investigation to reach an agreement during the diversion process, as stated in paragraph three of Article 29 of the SPPA Law. Article 11 of the SPPA Law states that the results of a diversion agreement can take the form of: (i) peace with or without compensation; (ii) handover to parents/guardians; (iii) participation in education or training at educational institutions or Social Welfare Organizing Institutions (LPKS) for a maximum of 3 (three) months; or (iv) community service. Furthermore, Article 12 of the SPPA Law regulates that the results of the diversion agreement as previously described are set forth in the form of a Diversion Agreement. The results of the Diversion Agreement are submitted by the direct supervisor of the official in charge at each level of examination, in this case the level of investigation, to the district court in accordance with its jurisdiction within a maximum period of 3 (three) days from the time an agreement is reached to obtain a stipulation. The

determination is made within 3 (three) days from the receipt of the diversion agreement and submitted to Community Advisors and investigators within 3 (three) days from the date of stipulation. After receiving the determination, the investigator issues an Investigation Termination Order (SP3) for the criminal case being investigated if the points of the diversion agreement have been fully implemented as mandated in Article 12 paragraph (5) of the SPPA Law jo. Article 24 PP Diversion. If in the SPPA Law the investigator issues SP3 after a determination has been made on the outcome of the diversion agreement, different provisions apply in the General Criminal Justice System based on the Criminal Procedure Code. In the Criminal Procedure Code, the termination of an investigation by an investigator is regulated in Article 109 paragraph (2) of the Criminal Procedure Code. The reasons for stopping the investigation include: (i) there is insufficient evidence; (ii) it turns out that the incident is not a criminal act; or (iii) the investigation is terminated by law.

In connection with this research, so that the information provided is up-to-date and reflects current practice in the investigation process related to the handling of cases of physical violence committed by AKH at the South Jakarta Metro Police Criminal Investigation Unit, the researcher describes the handling of cases that have been carried out in the last 3 (three) years, namely 2019, 2020 and 2021. During that time, the South Jakarta Metro Police Criminal Investigation Unit handled 46 (forty six) cases of physical violence, with 14 (fourteen) cases resolved through diversion. While the remaining 32 (thirty two) cases were resolved by the mechanism of the General Criminal Justice System, which was continued at the prosecution stage until examined before the court.

Table 1. AKH Case Resolution

No.	Year	Number of Cases	Diversion	P21
1	2019	24	12	12
2	2020	10	2	8
3	2021	12	-	12
	Amount	46	14	32

Source: South Jakarta Metro Police Satreskrim PPA Unit, 2022

Based on the background that has been described, the author takes the title "Diversion as an Instrument to Terminate Criminal Investigations Conducted by Children Through the Issuance of SP3 by Investigators".

II Review of Literature

2.1 Theoretical Framework

According to Soekanto (2005), the activities carried out by law enforcers to harmonize the relationship of values, rules and actions as a series of elaborations, with the aim of creating, maintaining and maintaining peace in society is a form of law enforcement efforts. Factors that influence the effectiveness of law enforcement include the following (Soekanto, 2005): (i) legal factors; (ii) factors of law enforcement officers; (iii) facilities and supporting facilities; (iv) community factors; and (v) cultural factors.

According to Eva Achjani Zulfa (2009), restorative justice is a concept for resolving criminal cases that arose in the 1960s and prioritizes the involvement of perpetrators, victims, and the general public. In spite of the fact that theoretical discussion is ongoing, this perspective is expanding and shaping the legal policy of many countries throughout the world.

Diversion is defined by Ridho Mubarak and Wessy Trisna (2012) as "the transfer of juvenile offenders from the formal procedure with or without conditions to the out-of-court process." Cases involving juveniles in dispute with the law may benefit from the diversion method. Children, along with their parents or guardians, the victims and/or their parents or guardians, community counselors, and professional social workers all participate in deliberations conducted in accordance with a restorative justice approach, which leads to the diversion process. Article 8 paragraph (1) of the SPPA Law governs this procedure.

R. Soesilo (1980) argues that the word investigation or in Indonesia refers to *penyidikan* comes from the word "*sidik*" which means "bright", therefore investigation means to make clear. Meanwhile, on the other hand, "*sidik*" also means "marks" (fingerprints), so to investigate means to look for traces of a crime. By finding the traces of the crime earlier, the crime will become clear. From the two meanings of the origin of the word, the investigation can be interpreted as an attempt to shed light on a crime. In Indonesia, another term that is often used is the term "*pengusutan*" or "*penyelidikan*". In Dutch, investigation refers to "*osporing*". In this case, investigating means knowing the criminal events that have occurred and who is the perpetrator of these criminal events. In relation to the main tasks and functions (*tupoksi*) of the National Police (Polri) in the context of law enforcement as a process of settling a criminal case, it is to carry out investigations and investigations in accordance with the Criminal Procedure Code and other laws and regulations. Criminal investigations are carried out after it is known from the results of the investigation that an event that occurred is a criminal act. The legal basis is the Criminal Procedure Code, especially in Article 102 paragraph (2) and (3), Article 106, Article 108, Article 109 paragraph (1), and Article 111. A criminal act can be known through reports, complaints, caught in the act, or known directly by Police officers. Reports or complaints submitted either in writing or orally are recorded in advance by the investigator/assistant investigator/investigator. In the event of being caught, any Police officer without an order may make an act of arrest, search, seizure and other acts according to the responsible law, as soon as possible at the Crime Scene (TKP) and then make a Police Report and or Minutes of Proceedings regarding the actions he took for further resolution.

2.2 Previous Research

In relation to current investigation, there were previous research that has been performed. Fikri Andika Putra's research in 2022 in the Study of Police Science at the Graduate Program at the University of Indonesia, with the title, "*Penerapan Diversi Dalam Penyidikan Tindak Pidana Kekerasan Fisik Yang Dilakukan Anak Di Bawah Umur (Studi Pada Satreskrim Polres Metro Jakarta Selatan)*" (Putra, 2022). This thesis is the result of research on the analysis of the application of diversion in the investigation stage of physical violence crimes carried out by Satreskrim (Criminal investigation) investigators at the South Jakarta Metro Police (Polres Metro Jaksel) against children in conflict with the law (AKH) at the investigation stage who have not provided maximum results in legally protect children. This research was carried out using a descriptive-qualitative method which was sourced from primary and secondary data with data collection methods carried out by interviewing primary informants, observation and document review. Meanwhile, current investigation more focus on issuing SP3 in the SPPA Law to stop criminal investigations through the diversion process and the impact if the implementation of diversion is declared complete by issuing SP3 as mandated in Article 24 PP Diversion. According to Pratiwi (2020) in social life, law and society are two interrelated things that can never be separated. Through instruments, unlawful behavior is prevented and repressive measures are pursued (Tumanggor, 2019). From the aforementioned provisions, it proves the existence of new developments regulated in this Law (Purba, 2019).

Muhammad Anthoni's research in 2019 at the Master of Law Study Program, Sriwijaya University, with the title, "*Reformulasi Pasal 109 KUHAP Tentang Penghentian Penyidikan Sebagai Bagian Dari Upaya Rekonstruksi Terhadap Hukum Pidana Indonesia*" (Anthoni et al., 2019). This study aims to explain and analyze the need for reformulation of Article 109 of the Criminal Procedure Code, especially at the level of investigation by the National Police considering the large number of cases that were not followed up to the prosecution level because the parties had made peace. This study uses a normative-empirical approach. The results of the research show that Article 109 paragraph (2) of the Criminal Procedure Code needs to be reformulated so that it can accommodate the termination of an investigation because the parties have made peace. For this purpose, it is suggested to the House of Representatives (DPR) and the Government to immediately revise the Criminal Procedure Code (KUHAP), especially the arrangements regarding the mechanism for terminating investigations which are part of the authority of Polri investigators. In essence, current research conducted by the author was a follow-up to the research results of the previous researchers. Hence, the focus of the study will be the issuance of SP3 under the SPPA Law if it is related to the provisions of Criminal Procedure Code Article 109.

2.3 Problems

The issues raised in this research are:

1. Is the issuance of SP3 as a decree on termination of investigations in the SPPA Law an instrument used by South Jakarta Metro Police investigators in terminating criminal investigations through the diversion process?
2. What is the impact that can occur if the implementation of diversion is declared complete with the issuance of SP3 as a decision letter to stop criminal investigations as mandated by Article 24 PP Diversion?

III. Research Method

In connection with research problems that discuss the issuance of SP3 as a decree of termination of investigation in the SPPA Law to be an instrument used by investigators in stopping the investigation of criminal acts through the diversion process and the impact caused by the issuance of SP3, in this study researchers used qualitative descriptive research methods as it aim to understand the meaning, behavior, purpose, and community expectations for the resolution of physical violence crimes through a restorative approach by the Police (in this case the South Jakarta Metro Police). This was in line with the opinion of Suprayogo and Tobroni (2001) who stated that qualitative research aims to understand the meaning symbolized in people's behavior according to the perspective of the community itself. Besides, this research also used analytical descriptive, namely the research method by describing data collected through library research, where researchers study and retrieve data from various literary literature in the form of books, official reports, scientific journals, articles, and news. By using this method, researchers could describe the data obtained for description and conduct data analysis to discuss answers to the formulation of the problems raised in the research.

IV. Discussion

4.1 SP3 As a Decree on Termination of Investigation Used by Investigators at the South Jakarta Metro Police in Termination of Criminal Investigations through the Diversion Process

Article 7 of the SPPA Law mandates that in instances involving children, diversion

must attempted during the investigation, prosecution, and examination phases in district courts. Diversion by law enforcement personnel for AKH, in this case the Indonesian National Police, begins at the level of investigation. While the SPPA Law does provide investigators some leeway in their pursuit of AKH criminals, in practice they must also refer to the rules of Law Number 2 of 2002 governing the Police. Diversion must be carried out through deliberations "involving the child and his parents/guardians, victims and/or their parents/guardians, Community Advisors, and Professional Social Workers based on the Restorative Justice approach," and may also "involve Social Welfare Workers, and/or the community," as stated in Article 8 of the SPPA Law. Article 29 of the SPPA Law mandates diversion during the investigation phase, with a deadline of 7 (seven) days from the start of the investigation. When a diversion is initiated, it must be completed within 30 days at the latest.

If a resolution can be reached through the diversion process, the investigator will submit the agreement and the minutes from the diversion to the chief judge of the local district court for a ruling. In the event that the diversion attempt is unsuccessful, the investigator must continue the inquiry and hand over the case to the public prosecutor with the diversion report and sociological study report attached. Article 29 paragraph (3) of the SPPA Law emphasizes that "reaching an agreement in the diversion process is a condition for transferring the investigation process which originally used the General Criminal Justice System based on the Criminal Procedure Code (KUHAP) to implementing the Juvenile Criminal Justice System according to the SPPA Law." In Article 11 of the SPPA Law, it is also stated that the results of a diversion agreement can take the form of: "(i) peace with or without compensation; (ii) handover to parents/guardians; (iii) participation in education or training at an educational institution or LPKS for a maximum of 3 (three) months; or (iv) community service." Article 12 of the SPPA Law stipulates that the results of the diversion agreement as previously described are set forth in the form of a Diversion Agreement. The results of the diversion agreement are conveyed by the direct supervisor of the responsible official at each level of examination, in this case the level of investigation, to the district court in accordance with its jurisdiction within a maximum period of 3 (three) days from the time an agreement is reached to obtain a stipulation. The determination is made within a maximum period of 3 (three) days from the receipt of the diversion agreement. The stipulation is submitted to the Community Advisor and Investigator within 3 (three) days from the stipulation. After receiving the stipulation, the investigator issues a stipulation of termination of the investigation. In the event that the diversion attempt fails, the Investigator must continue the investigation and transfer the case to the Public Prosecutor by attaching the minutes of the diversion and social research reports.

PP Diversion is structured as implementing regulations from the provisions of Article 15 and Article 21 paragraph (6) of the SPPA Law. In Chapter III regarding the procedures and coordination of the implementation of diversion in PP Diversion, especially during the investigation stage as stipulated by Article 12 to Article 30, it is stated that matters that form a series of diversion implementation processes must be completed no later than 30 (thirty) days from the date of from the diversion start date. The series of processes in essence are as follows:

- a. The investigator submits a letter of notification of the start of the diversion attempt in the investigation stage to the public prosecutor within a period of no later than 1 x 24 (one time twenty four) hours from the start of the diversion attempt.
- b. Simultaneously with this, the investigator also submitted a request to the Community Advisor (also known as PK) and Professional Social Worker (also known as PSP) to provide assistance and conduct community research, respectively, and make social reports for child victims/witnesses. Within a maximum of 3x24 hours the two officers

- (PK and PSP) must submit their results.
- Not later than 7x24 hours from the start of the investigation, the investigator notifies and offers AKH or his guardian, as well as the victim, to resolve the case through diversion. If it is agreed upon, the investigator will determine the start date of the diversion deliberations.
 - The investigator leads the course of the diversion deliberations acting as the facilitator and PK as the deputy facilitator. Present at the deliberations are AKH and/or their guardians, Victims and/or their guardians, and/or PSP, or even if it is deemed necessary to involve the community.
 - If a deliberative agreement is reached, then it is stated in a Diversion Agreement Letter signed by AKH and/or guardians, victims and/or guardians, investigators, PK, and PSP. The entire process of implementing diversion is recorded in the minutes of diversion.
 - Within a maximum period of 3 (three) days from the date of the diversion agreement, the Lead Investigator submits a Diversion Agreement Letter to the Head of the local District Court to obtain a stipulation.
 - The Head of the District Court (KPN) must issue a diversion agreement within 3 (three) days at the latest and submit it to the Investigator and PK within a maximum period of 3 (three) days.
 - After receiving the KPN stipulation, the investigator asked the parties to carry out the diversion agreement, which was supervised by PK, and involved PSP if rehabilitation and social reintegration of AKH were needed.
 - PK compiles a report on the implementation of the diversion agreement and submits it to the Lead Investigator.
 - The investigator then issues a decision to terminate the investigation to be sent to the Public Prosecutor accompanied by a report on the diversion process and minutes of examination..

In a simple chart, the process of diversion in the investigation stage can be described as follows:

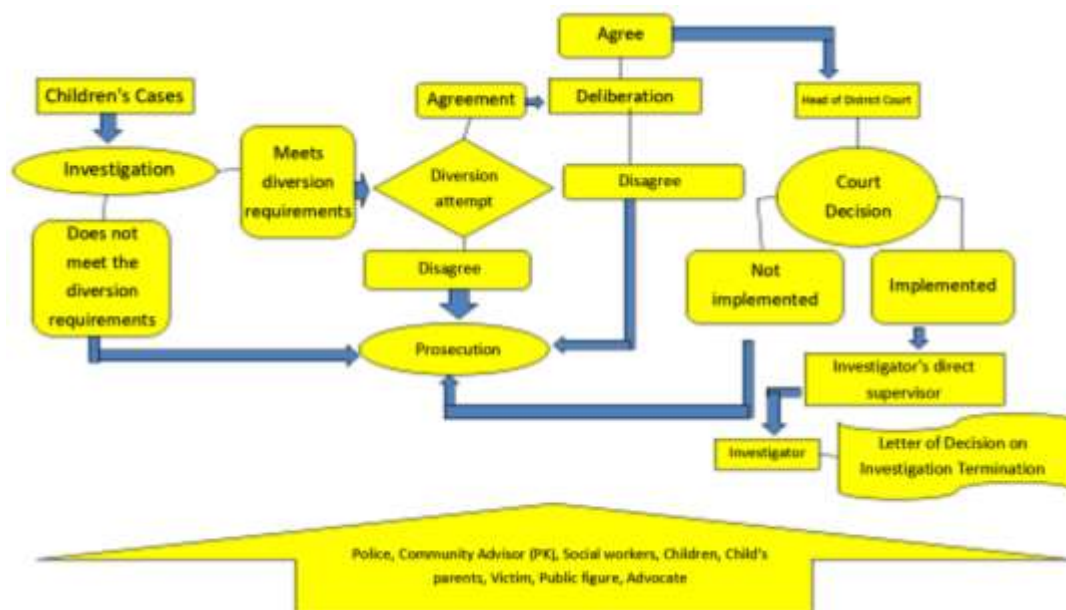


Figure 1. Diversion of the Investigation Stage
Source: Elis Widyaningsih, 2022

In line with the provisions of Article 29 of the SPPA Law, the South Jakarta Metro Police (Polres Metro Jaksel) also adopts diversion in conducting criminal investigations by prioritizing an agreement between the perpetrator and the victim as outlined in the Diversion Agreement known as the Diversion Agreement Letter. One example of a case handled by the South Jakarta Metro Police which was resolved by the diversion mechanism is the case of violence against children committed by Hasan Khoiri against Eka Putra Darmawan which occurred in 2020. Based on Police Report Number: 1036/VI/2020/Restro Jaksel, on June 10 2020 it was suspected that a crime of child protection (violence) and/or beatings had occurred as referred to in Article 76 C in conjunction with Article 80 RI Law No. 35 of 2014 on Amendments to RI Law No. 23 of 2002 concerning Child Protection Jo. Article 170 of the Criminal Code, which occurred on June 9 2020 at Jalan Manggarai Utara No. 1 RT 012 RW 001, Manggarai village, Tebet sub-district, South Jakarta, which was allegedly committed by Mr. Hasan Khoiri (AKH) against the victim on behalf of Eka Putra Darmawan (child who became a victim of a criminal act). A deliberation agreement in this case was obtained on March 30, 2021 at the South Jakarta Metro Police by acting as a mediator, namely Community Advisors at the South Jakarta Bapas together with South Jakarta Metro Police Satreskrim Investigators. During the deliberations, an agreement was obtained that AKH would be handed over to their parents, with provisions for 6 months from the time this agreement was reached, AKH is required to report periodically and is willing to be placed under the supervision and guidance of the South Jakarta Correctional Center Community Counselor. With the achievement of an agreement on this case diversion, the South Jakarta Metro Police Head issued a Diversion Decision Letter Number: SP/4/III/2021/Reskrim dated March 30, 2021, one of the points in the decision letter is a letter requesting a Diversion Determination to the Chairperson of the South Jakarta District Court. Upon the request for diversion to the Chairman of the South Jakarta District Court, the South Jakarta District Court issued Determination Number 04.Div.Pol/ Pid.Sus.Anak/2021/PN JktSel dated April 31, 2021, one of which was to order the Investigator to issue a Investigation Termination Order (SP3) after the diversion agreement was fully implemented.

The application of diversion in the investigation stage carried out by the South Jakarta Metro Police when viewed from the Law Enforcement Theory stated by Soekanto (2005) is an alignment with the provisions stipulated in the SPPA Law which requires diversion to be pursued at the level of investigation, prosecution and examination of child cases in court. So that with these provisions, it is known that diversion is not an alternative that can be implemented under certain conditions, but an effort that must be made in every handling of AKH. In addition, with the implementation of diversion efforts, it is hoped that it will prevent children from the formal justice system. Diversion is an effort to prevent children from becoming adult offenders. Diversion is not intended to ignore law and justice, but diversion is considered a new breakthrough to uphold justice in society (Listyarini, 2017).

4.2 Legal Consequences of Using SP3 as a Decision Letter for Termination of Investigation Used by Investigators in Termination of Investigation In View of Article 109 Paragraph (2) of the Criminal Procedure Code

Investigators are authorized by the Criminal Procedure Code to stop the investigation as stipulated in Article 109 paragraph (2) of the Criminal Procedure Code which reads: "...(2) In the event that the investigator stops the investigation because there is insufficient evidence or the event turns out to be not a crime or the investigation is stopped for the sake of law, the investigator shall notify the public prosecutor, the suspect or his family." According to M. Yahya Harahap (2009), the authority to stop ongoing investigations is given to investigators with the following ratios or reasons: (i) to uphold the principles of justice that is fast, precise and low cost, and at the same time to uphold certainty in people's lives. If the Investigator

concludes that based on the results of the investigation and investigation there is not enough evidence or reason to prosecute the suspect before the trial, what is the protracted handling and examining of the suspect for. It is better for investigators to officially declare the termination of the investigative examination, so that legal certainty can be immediately created for both the investigators themselves, especially for suspects and the public; (ii) so that the investigation avoids the possibility of demanding compensation, because if the case is continued, but it turns out that there is not enough evidence or reason to prosecute or convict, it automatically gives the right to the suspect/defendant to demand compensation based on Article 95 of the Criminal Procedure Code.

Article 109 paragraph (2) of the Criminal Procedure Code has stated in a limited manner the reasons investigators can use as a basis for terminating an investigation, which will be described as follows.

a. There is not Enough Evidence

The investigator has the authority to terminate the investigation if during the investigation process, the investigator does not obtain sufficient evidence to charge the suspect or the evidence obtained by the investigator is insufficient to prove the suspect's guilt if it is submitted to the trial stage. The category of an investigation that has sufficient evidence obtained by the investigator to prove the existence of a suspect's guilt if it is submitted to the trial stage is a minimum of two valid pieces of evidence. This was adopted from the provisions contained in Article 183 of the Criminal Procedure Code jo. Article 184 Criminal Procedure Code.

b. The Incident Turned out to be not a Crime

The investigator has the authority to stop the investigation if from the results of the investigation carried out, the investigator believes that what is alleged against the suspect is not a crime as contained in the Criminal Procedure Code or other provisions of laws and regulations that regulate criminal sanctions.

c. Investigation Halted by Law

The investigator has the authority to stop the investigation if a case is closed for the sake of law because the case cannot be prosecuted or subject to criminal sanctions. This refers to the provisions of Articles 76 to 85 of the Criminal Procedure Code which regulate "the abolition of the authority to prosecute and carry out the sentence", namely *nebis in idem*, the suspect dies, and expires. In the SPPA Law, if the diversion process succeeds in reaching an agreement, the investigator will submit the minutes of the diversion along with the agreement to the head of the local district court to make a decision. The determination is made within a maximum period of 3 (three) days from the receipt of the diversion agreement. The stipulation is submitted to the Community Advisor and Investigator within 3 (three) days from the stipulation. After receiving the stipulation, the investigator issues a stipulation of termination of the investigation. Interpreting this provision, investigators, in this case the South Jakarta Metro Police, issued an Investigation Termination Order (SP3) as a follow-up to the results of the diversion agreement which had been fully implemented. Referring to the provisions of Article 109 paragraph (2) of the Criminal Procedure Code, according to the researcher, diversion attempt is not a reason that can be categorized as a reason to stop the investigation. The investigator's interpretation by issuing an investigation termination stipulation in the form of an SP3 as a follow-up to the results of a diversion agreement that has been implemented entirely is wrong.

Article 1 point 7 of the SPPA Law provides a definition of diversion as a form of transferring the settlement of child cases from the criminal justice process to processes

outside the criminal justice. According to Marlina (2009), the concept of diversion is a concept to divert a case from a formal process to an informal process, which aims to provide protection for children in conflict with the law. The legal process against AKH through diversion by investigators is an alternative to settling cases through deliberations that promote restorative justice. Diversion has no relevance to stopping an investigation or diversion cannot be used as a reason to stop an investigation. Because diversion and stopping an investigation is a different thing, both in terms of the reasons that form the basis of its implementation and the process. Hence, according to the researcher there is a legal vacuum, namely formal law that provides a mechanism for resolving child cases through diversion. Because in fact, the implementation of the diversion agreement contained in the form of a Court Order is a form of "punishment" for AKH.

V. Conclusion

Referring to the discussion in the description above, the researcher can conclude as follows:

1. In practice, the South Jakarta Metro Police seeks to implement diversion as mandated by the SPPA Law which aims to provide protection for AKH. If the diversion process succeeds in reaching an agreement, the investigator, in this case the South Jakarta Metro Police, will submit the minutes of the diversion along with the agreement to the head of the local district court, in this case the head of the South Jakarta District Court, to make a decision. The determination is made within a maximum period of 3 (three) days from the receipt of the diversion agreement. The stipulation is submitted to the Community Advisor and Investigator within 3 (three) days from the stipulation. After receiving the stipulation, the investigator issues a stipulation of termination of the investigation. The investigator in this case, the South Jakarta Metro Police, issued a Investigation Termination Order (SP3) after the diversion agreement was fully implemented.
2. Article 109 paragraph (2) of the Criminal Procedure Code has stated in a limited manner the reasons investigators can use as a basis for terminating an investigation, namely: (i) there is insufficient evidence; (ii) it turns out that the incident is not a crime; or (iii) the investigation is terminated by law. The legal process against AKH through diversion by investigators is an alternative to settling cases through deliberations that promote restorative justice. Diversion has no relevance to stopping an investigation or diversion cannot be used as a reason to stop an investigation. Because diversion and stopping an investigation is a different thing, both in terms of the reasons that form the basis of its implementation and the process. There is a legal vacuum, namely formal law that provides a mechanism for resolving child cases through diversion. Because in fact, the implementation of the diversion agreement contained in the form of a Court Order is a form of "punishment" for the AKH.

Suggestion

Based on the description of the previous conclusions, the researcher proposes the following recommendations:

1. It is recommended that there be a formulation of arrangements for stopping the investigation in the event that a diversion agreement is reached so that there is harmony between the Criminal Procedure Code and the SPPA Law.
2. It is recommended that the police agency which plays the role of investigator issue a guideline for the implementation of diversion in the investigation stage of a crime involving AKH in the event that a diversion agreement is successfully reached.

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