

ABSTRAK

Setelah diundangkannya Undang-undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak, keseluruhan penanganan anak yang berkonflik dengan hukum menjadi berbeda, salah satu adanya diversi. Pengaturan diversi di Indonesia berbeda dengan New Zealand. Dalam penelitian ini isu hukum yang diangkat, pertama tentang perbandingan peraturan diversi terhadap anak di Indonesia dengan New Zealand. Dan kedua mengenai rekomendasi yang dapat diberikan kepada Indonesia mengacu pengalaman terbaik dari New Zealand dalam hal mengatur diversi terhadap anak.

Penelitian ini merupakan jenis penelitian hukum normatif, yang menggunakan metode pendekatan legal komparatif, dengan sumber hukum yang terdiri dari primer, sekunder, dan tersier yang terkumpul melalui studi kepustakaan. Bahan hukum primer yang digunakan dalam penelitian ini antara lain: Undang-undang SPPA, *CYPF Act*, Konvensi Hak Anak, dan *The Beijing Rules*. Sedangkan bahan hukum sekunder yang digunakan ialah beberapa literatur yang terkait dengan perlindungan anak, hak-hak anak, sistem peradilan anak, keadilan restoratif, dan diversi. Dan bahan hukum tersier yang digunakan meliputi: kamus bahasa Inggris, ensiklopedia, dan juga media online. Seluruh data-data yang diperoleh selanjutnya dianalisis secara deskriptif analitis.

Berdasarkan hasil penelitian diperoleh hasil, meliputi: Pertama, pengaturan diversi di Indonesia dan New Zealand sama-sama didasarkan pada prinsip keadilan restoratif. Perbedaan pengaturan diversi di Indonesia dan New Zealand meliputi 4 (empat) hal, yakni: 1) Kompleksitas cara atau prosesnya, New Zealand lebih sederhana dengan alur yang jelas daripada Indonesia. 2) Keterlibatan orang tua, di New Zealand lebih melibatkan orang tua di setiap proses diversi daripada Indonesia. 3) Sanksi pidana untuk aparat penegak hukum tidak mengupayakan diversi terhadap perkara anak. Indonesia memberlakukan sanksi pidana di dalamnya sedangkan New Zealand tidak. 4) Terkait dengan bobot perkara, New Zealand memiliki bobot perkara yang jelas untuk mengupayakan diversi, sedangkan Indonesia tidak. Kedua, rekomendasi yang dapat diberikan kepada Indonesia dalam Undang-undang SPPA adalah perlukirannya meformulasikan kembali beberapa hal dalam Undang-undang SPPA, yakni terkait dengan penentuan kategori tindak pidana, pelibatan orang tua, dan penyederhanaan proses diversi yang ditempuh oleh anak.

Kata Kunci: Diversi, Sistem Peradilan Pidana Anak

ABSTRACT

Once the enactment of the rule of Law No. 11 of 2012 about juvenile Justice System, all the settlement of children in conflict with the law becomes different, for instance diversion. The rules of diversion for children in Indonesia are different from New Zealand. In this research, I raised two legal issues: first of the comparison of diversion for children in Indonesia and New Zealand. Second, the recommendation that can be given to Indonesia in response to the best experience of the New Zealand's best in term of regulating diversion of children.

This research is normative research, which was approached by legal comparative, by using several legal resources such as of consist of legal's materials : primary, secondary, and tertiary resources. All data collected by using library research, while primary resource was taken by being related regulations namely Juvenile Justice System Act in Indonesia and The Children, Young Persons, and Their Families Act of New Zealand, The Convention on the Rights of th Child, The Beijing Rules. Further more, secondary resource were attained from articles and books which is linked with the topic raised. All data obtained then analyzed descriptively and analytically.

According to the results obtained, some conclusions have been attained, that is: First, diversion regulation in Indonesia and New Zealand are the same, which one based on principles of restorative justice. While differences of diversion regulation in Indonesia and New Zealand can be concluded as follows: 1) The complexity means or the stages, New Zealand more simple with obvious path than Indonesia. 2) The involvement of parents in New Zealand is more regarded in every stages than that in Indonesia. 3) Criminal sanctions which is provided for laws enforcer that does not comply with diversion rules enforcement didn't seek diversion against children case. Indonesia in the case apply criminal sanctions while New Zealand does not. 4) Associated with weight case, New Zealand has obvious weight case to seek diversion while Indonesia does not. Secondly, recommendation can be given to Indonesian in Juvenile Justice System Act is the importmed of would need to reformulately Juvenile Justice System Act, consist of with determination category criminal offense, parent involvement and simplification of the process diversion for children.

Key words: Diversion, Juvenile Justice System