



Regulations on Diversion in the Settlement of Children in Conflict with the Law: A Comparative Analysis of Positive Law and Islamic Criminal Law

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ABSTRACT

Children who commit crimes must have their rights protected to ensure their survival and well-being. This study aims to apply diversion regulations in resolving cases of children in conflict with the law at the Women and Children's Services Unit of the Criminal Investigation Department in the Labuhanbatu Police Department to ensure the provision of restorative justice. This empirical legal study collected data through interviews with the Labuhanbatu Police Department. Findings indicate that diversion regulations are detailed in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. According to Islamic criminal law, if a child commits a crime, the punishment should be educational and involve al-shulhu (reconciliation). While diversion is carried out with a restorative justice approach, many juvenile offenses are not entirely diverted and are often processed further in the legal system. The practice of reconciliation for juvenile crimes in Labuhanbatu involves the upah-upah ceremony, which aligns with the concept of al-shulhu. Factors that prevent juvenile offenses from being resolved through diversion include cases of theft, embezzlement, and assault. This study recommends that diversion be mandatory for juvenile offenders at the stages of investigation, prosecution, and trial to resolve juvenile criminal cases.

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1. Introduction

Legal protection of children is an important issue that receives special attention in various countries, including Indonesia¹. According to data from the Directorate General Correctional Ministry of Law and Human Rights, the level of crime committed by children in the 2020-2023 period has increased. In 2023, there will be 1,467 children in custody and undergoing the judicial process. Apart from that, 526 children are prisoners and are serving sentences.²

This increase shows that despite efforts and regulations to protect children through the juvenile criminal justice system, challenges remain. Approximately a decade ago, the Indonesian government passed the Law on the Juvenile Criminal Justice System, which allows for the resolution of children's cases through an extrajudicial process known as diversion vide Article 1 paragraph 7 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System. This diversion aims to provide better justice for children involved in criminal acts.

Diversion is an implementation of the principles of restorative justice, which emphasizes the recovery of victims and the reintegration of perpetrators into society. This principle aims to prevent children from negative stigma and the negative impact of a lengthy judicial process. In the juvenile criminal justice system, it is not only the imposition of criminal sanctions that is the focus but also the best interests of children, including their survival, growth, and development.³

From an Islamic legal perspective, there is no normative argument regarding criminal sanctions, especially prison sentences, for children who have not reached puberty. Criminal sanctions for children in Islam are punishments in the form of ta'dib (education), which are regulated by the waliyul amri (leader).⁴ Handling children in Islamic criminal law places a high priority on approaches to *restorative justice*, which is known as *Al-Shulh*

¹ Mahendra Ridwanul Ghoni and Pujiyono Pujiyono, "Perlindungan Hukum Terhadap Anak Yang Berhadapan Dengan Hukum Melalui Implementasi Diversi Di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 2, no. 3 (2020): 331–42, <https://doi.org/10.14710/jphi.v2i3.331-342>.

² Yohanes Advent Krisdamarjati, "Meningkatnya Kasus Anak Berkonflik Hukum, Alarm Bagi Masyarakat Dan Negara," *Kompas.id*, 2023, <https://www.kompas.id/baca/riset/2023/08/28/meningkatnya-kasus-anak-berkonflik-hukum-alarm-bagi-masyarakat-dan-negara>.

³ Shinta Rukmi Budiastuti, and Wibowo Murti Samadi, "Penerapan Penjatuhan Sanksi Diversi Sebagai Alternatif Sanksi Pidana Penjara Untuk Anak Pelaku Tindak Pidana." *Research Fair Unisri* 5, no. 1 (2021), 81-91.

⁴ Rudi Hartono, "Implementasi Kompilasi Diversi Dalam Peradilan Pidana Anak di Indonesia Perspektif Hukum Islam." *Sakena: Jurnal Hukum Keluarga* 7, no. 2 (2022), 145-155.

or peace. *Al-Shulhis* is one method of resolving criminal cases in Islam that is oriented towards peace and education.⁵

Harmony between the concept of diversion in Indonesian positive law and the concept of *al-shulh* in Islamic law shows that both are oriented towards *the victim-oriented*. Diversion is regulated in Law No. 11 of 2012, Article 9 paragraph 2, which states that diversion agreements must obtain the consent of the victim and/or their family as well as the willingness of the child and family, except for minor crimes or crimes without victims or the value of the victim's losses is not more than the local provincial minimum wage.⁶

Implementation of diversion as regulated in legislation is essential and needs to be paid attention to.⁷ However, diversion has not been carried out optimally, as was found at the Labuhanbatu Police. Pursuing diversion for children as perpetrators of criminal acts has not been fully implemented following Article 7 of Law No. 11 of 2012. Therefore, it is interesting to conduct research at the Labuhanbatu Police and solve problems in implementing diversion arrangements for child criminal cases in the Criminal Investigation Unit of the Women and Children Services Unit at the Labuhanbatu Police.

So far, research related to the implementation of diversion has been discussed in previous research. Previous research mainly discussed diversion regulations in child protection aspects as in Rodliyah's study,⁸ Ahmad Muchlis,⁹ Mahendra Ridwanul Ghoni and Pujiyono.¹⁰ Meanwhile, Budi Sastra Panjaitan is more focused on victim-based restorative justice studies.¹¹ It's just that research related to diversion regulations in terms

⁵ Israr Hirdayadi, and Hera Susanti, "Diversi dalam sistem peradilan pidana anak di Indonesia dan tinjauannya menurut hukum islam." *Legitimasi: Jurnal Hukum Pidana dan Politik Hukum* 6, no. 2 (2018), 177-196.

⁶ Edy Heriwiyanto, Joice Soraya, and Deni Setya Bagus Yuherawan, "The Urgency of Using Police Diversion in Minor Crimes at the Investigation Stage in the Perspective of Restoration Justice." *International Journal of Multicultural and Multireligious Understanding* 8, no. 4 (2021), 476-487.

⁷ Faidatul Hikmah, and Andri Yanto, "Reformulation of Criminal Procedural Law Policies by Strengthening Diversion in Juvenile Criminal Cases in Indonesia." *Jurnal Peradaban Hukum* 1, no. 1 (2023), 45-60.

⁸ Rodliyah Rodliyah, "Diversi Sebagai Salah Satu Bentuk Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum (ABH)." *Jurnal IUS Kajian Hukum dan Keadilan* 7, no. 1 (2019), 182-194.

⁹ Ahmad Muchlis, "Penegakan Prinsip Kepentingan Terbaik Anak Pada Penerapan Diversi Dalam Sistem Peradilan Pidana Anak." *Jurnal Hukum Progresif* 12, no. 1 (2024), 66-77.

¹⁰ Ghoni, Mahendra Ridwanul, and Pujiyono Pujiyono. "Perlindungan hukum terhadap anak yang berhadapan dengan hukum melalui implementasi diversi di indonesia." *Jurnal Pembangunan Hukum Indonesia* 2, no. 3 (2020), 331-342.

¹¹ Budi Sastra Panjaitan, "Restorative Justice Sebagai Penyelesaian Perkara Pidana Berbasis Korban." *Doktrina: Journal of Law* 5, no. 1 (2022), 157-169.

of children in conflict with the law in the study of positive criminal law and Islamic criminal law is still very rarely conducted. Therefore, this research is here to fill this gap, considering that it is essential to study diversion in positive law and Islam to find similarities and differences based on the implementation of diversion at the Labuhanbatu Police.

Based on this introduction, this article thoroughly examines the urgency of regulating diversion in resolving the juvenile criminal justice system. This research aims to determine the form of diversion regulation in child criminal cases based on Law Number 11 of 2012 and Islamic criminal law. Next, to find out about the implementation of diversion in child criminal cases at the Criminal Investigation, Unit Women and Children Services Unit Labuhanbatu Police Unit. It is impossible to determine the factors influencing a criminal act resolved in Diversion at the Criminal Investigation Unit of the Women and Children Services Unit of the Labuhan Batu Police.

2. Legal Material and Methods

This study is an empirical (field) descriptive research aimed at examining how the law functions in society, focusing on the implementation and obstacles of the diversion process in the Women and Children's Services Unit of the Criminal Investigation Department at Labuhanbatu Police Department. Labuhanbatu Police Department was chosen as the research location due to the high number of juvenile cases and the suboptimal diversion efforts in the area. Data were collected through direct observation and interviews with relevant parties, particularly investigators of juvenile crimes. To ensure the validity and reliability of the data, triangulation was performed by comparing data from various sources such as official documents, interviews, and field observations. Data analysis employed thematic analysis, where each interview was recorded and transcribed, and the main themes were identified. This study references Law No. 11 of 2012 concerning the Juvenile Criminal Justice System as it provides the legal framework for the diversion process in Indonesia.

3. Results and Discussion

3.1 Forms of Diversion Regulations for Child Criminal Cases Based on Law No. 11 of 2012 and Islamic Criminal Law

Children as perpetrators of criminal acts are essentially a continuation of the nation's development relay whose behavior deviates from legal and social norms.

However, the government must not ignore them because the written constitution of the Indonesian nation places the responsibility on the state and government to ensure that children can live, grow, and develop, and have the right to protection from violence and discrimination as stated in Article 28B paragraph 2 of the 1945 Constitution. The government demonstrated this commitment by signing the Convention on the Rights of the Child, which requires the Indonesian government to provide extraordinary protection for children as perpetrators of criminal acts.

As previously mentioned, to maintain the dignity of children, the juvenile criminal justice system allows the resolution of criminal acts committed by children through non-judicial channels while adhering to the principles of restorative justice. This conception was then formalized in Article 1 paragraph 7, which defines diversion as the transfer of resolving children's cases outside the criminal justice process. This means that the Juvenile Justice System Law, as further confirmed in Article 7 paragraph 1, places an obligation on law enforcement officials at the levels of investigation, prosecution, and examination of children's cases in court to carry out diversion (seek to resolve cases outside of the criminal justice process), unless otherwise provided by law.¹² The concept of restorative justice, which was applied as a diversion, was adopted from "The Beijing Rules."¹³ This concept also marks a new chapter in the renewal of the model for resolving criminal cases committed by children in Indonesia.

With the adoption of principles of *restorative justice* into the juvenile criminal justice system, it is hoped that there will be a paradigm shift in resolving juvenile criminal cases, which no longer only emphasizes the form of "punishment" against the perpetrator. However, it is more about victims' recovery. This means that resolving criminal cases places more emphasis on the victim while adhering to the principle of fair resolution, involving various parties (perpetrator, victim, family of the perpetrator/victim's family, and related parties) to jointly seek a fair solution by emphasizing the restoration of their rights.

¹² Republic of Indonesia, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 1

¹³ Prilly Krenti Schalwyk, Rony Lembong, and Daniel Aling, "Keadilan Restoratif Dalam Sistem Peradilan Pidana Anak Di Indonesia Menurut Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak." *Lex Administratum* 10, no. 3 (2022).

Victim's rights: In this case, the losses experienced by the victim can be recovered immediately by the perpetrator directly, not by the state.¹⁴

The diversion provisions in the juvenile criminal justice system law are regulated in a separate chapter, namely in Chapter II (Articles 6 to Article 14).¹⁵ Meanwhile, related guidelines, procedures, and coordination for implementing diversion will be further regulated through Government Regulations vide Article 15.

The purpose of diversion as regulated in the Juvenile Justice System Law states that diversion aims to achieve peace between the perpetrator and the victim, resolve children's cases outside the judicial process, prevent children from being deprived of liberty, encourage the community to participate and increase accountability for children.¹⁶ In the form of diversion deliberation, if the agreement reached is not fully implemented by the parties based on the report from the community counselor at the correctional center, then the judge will continue examining the case by the juvenile criminal justice procedural law. The judge is also obliged to consider the implementation of part of a diversion agreement when handing down his decision.

In the perspective of Islamic criminal law, punishment emphasizes the principle that every sentence imposed is not only retributive (repaying a crime) but also preventive (preventing future crimes) and rehabilitative (improving the behavior of the convict).¹⁷ Therefore, in Islam, if a child commits a crime (not yet reaching puberty), then full legal responsibility falls on the parent or guardian, parents have responsibility for their child's actions.¹⁸ Because son considered does not yet have the total capacity to understand the consequences of his actions. The diyat payments made by children as perpetrators of crimes are borne by the parents. The Shafi'i school of thought has two views regarding diyat payments. First, they agree with the opinion of Imam Malik, Imam Abu Hanifah, and

¹⁴ Nurjaini Nurjaini, "Perlindungan Hukum Terhadap Anak Korban Tindak Pidana Pelecehan Seksual." *Al-Adalah: Jurnal Hukum dan Politik Islam* 8, no. 2 (2023), 162-173.

¹⁵ Rudy Bangun, Kristiawanto Kristiawanto, and Diah Sulastris Dewi, "Penerapan Diversi Sebagai Perlindungan Hukum Terhadap Anak Pelaku Tindak Pidana Pencurian Dalam Sistem Peradilan Pidana Anak." *Dikmas: Jurnal Pendidikan Masyarakat dan Pengabdian* 2, no. 2 (2022), 391-402.

¹⁶ Republik Indonesia, Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak, Pasal 6.

¹⁷ Vivi Ariyanti, "Konsep Perlindungan Korban dalam Sistem Peradilan Pidana Nasional dan Sistem Hukum Pidana Islam." *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 1 (2019), 33-48.

¹⁸ Muhamad Ali Muhsim, Erfaniah Zuhriah, and Ali Hamdan, "Penerapan Dwangsom pada Putusan Hak Asuh Anak Perspektif Teori Keadilan Aristoteles." *Al-Adalah: Jurnal Hukum dan Politik Islam* 7, no. 2 (2022), 124-150.

Ahmad bin Hanbal that the diyat can be taken from the baitul mal if the perpetrator cannot pay. Second, in cases of deliberate action by minors or crazy people, their actions are still considered ordinary deliberate actions. Even though they cannot be sentenced to qisas, their deliberate actions are treated the same as people who have reached puberty and are of sound mind. Therefore, they are obliged to pay diyat from their asset.

Peace is made to the victim to prevent the child from being punished. This is in line with the concept *al-shulh* in Islamic criminal law. *Al-shulh*, according to the book of justice expressed by Wahbah Zuhaili, is an effort to achieve reconciliation so that there will be no quarrels and disputes in the future, as the words of Allah swt in QS. An-Nisa verse 128 means "peace is better (for them)", and in QS, al-Hujurat verse 10 means "indeed the believers are brothers, therefore reconcile your two brothers (who are in dispute) and fear God so that you may be blessed".¹⁹ Surat al-Hujurat verse 10 explains about the brotherhood of believers. They are all brothers like a brotherly relationship between lineages, because they adhere to the same elements of faith and will remain in heaven later.

Diversion is the transfer of the resolution of children's cases from the criminal justice process to a process outside of criminal justice with the aim of achieving peace between the victim and the child, resolving children's cases outside the court process, preventing children from being deprived of liberty, encouraging community participation, and instilling a sense of responsibility in children.²⁰ In line with Islamic law, the concept of *al-shulh* aims to minimize or even eliminate conflict in society. In the case of children in conflict with the law, the law stipulates that the imposition of criminal sanctions actively involves the perpetrator, victim, community and law enforcement, with the victim playing a role in all stages of the process and the community acting as a mediator.²¹

However, there are differences in the application of these two concepts. Law The Juvenile Criminal Justice System emphasizes that diversion is mandatory for crimes punishable by imprisonment for less than 7 years and do not constitute a repetition of the

¹⁹ Ministry of Religion of the Republic of Indonesia, Al-Qur'an and its translation.

²⁰ Dwi Rachma Ningtias, Said Sampara, and Hardianto Djanggih, "Diversi Sebagai Bentuk Penyelesaian Perkara Pidana Anak." *Journal of Lex Generalis (JLG)* 1, no. 5 (2020), 633-651.

²¹ Israr Hirdyadi, and Hera Susanti, "Diversi dalam sistem peradilan pidana anak di Indonesia dan tinjauannya menurut hukum islam." *Legitimasi: Jurnal Hukum Pidana dan Politik Hukum* 6, no. 2 (2018), 193.

crime.²² This means that diversion is not mandatory if the threat of a sentence is more than 7 years or is a repetition of a crime because it is considered a serious crime or indicates a failure of the rehabilitation process.²³ Thus, diversion was applied more to minor crimes and for the first time, emphasized the importance of rehabilitation and responsibility for children, while still considering justice and the protection of society.

3.2 Implementation of Diversion in Child Criminal Cases at the Criminal Investigation Unit of the Women and Children Services Division at Labuhanbatu Police Department

Normatively, as confirmed in the Juvenile Criminal Justice System Law (Article 7, paragraph 2), it is emphasized that not all juvenile criminal cases can be subjected to diversion efforts. The facts show that there are also criminal acts committed by children that carry a sentence of more than seven years (falling into the category of serious crimes)²⁴ and/or constitute a repetition of a criminal act.^{25,26} Therefore, in the implementation of diversion, it must be emphasized that even though there are cases of criminal acts involving children that carry a sentence of less than seven years, if these acts are a form of repetition of criminal offenses, whether of the same type or not, diversion cannot be carried out in these children's cases. However, suppose the juvenile criminal case meets the provisions of Article 7, paragraph 2, meaning it is not a repetition of a criminal offense and carries a sentence of less than seven years. In that case, law enforcement officials must conduct diversion efforts through a restorative justice approach. The regulation of diversion and restorative justice into legal norms aims to prevent children from encountering the justice system and stigma and to support their return to everyday social life.²⁷ The concept of restorative justice through diversion involves efforts by both the victim and the perpetrator to achieve peace through deliberation. This includes the

²² Article 7, Paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

²³ R. Wiyono, *Sistem Peradilan Pidana Anak di Indonesia* (Sinar Grafika, 2022), 57.

²⁴ Melisa Halimatus Sa'diyah, "Penegakan Hukum Terhadap Anak Sebagai Pelaku Tindak Pidana Percobaan Perkosaan," *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 2, no. 2 (2021): 78–91, <https://doi.org/10.18196/ijclc.v2i2.12318>.

²⁵ Hasan Asngari, "Pengulangan Tindak Pidana Anak Yang Sebelumnya Pernah Dilakukan Diversi Di Balai Pemasyarakatan Surakarta Tahun 2014-2018," *Dinamika Hukum* 10, no. 3 (2019): 75–92.

²⁶ Andani Maya Sari and Budi Setiyanto, "Penerapan Sanksi Pidana Terhadap Anak Sebagai Pelaku Tindak Pidana Pencurian Dengan Pemberatan," *Jurnal Hukum Pidana Dan Penanggulangan Kejahatan* 4, no. 3 (2015): 267–73, <https://jurnal.uns.ac.id/recidive/article/viewFile/40740/26850>.

²⁷ Vivi Arfiani Siregar, "Perspektif Restorative Justice Dalam Perlindungan Anak Sebagai Sistem Peradilan Pidana Di Indonesia," *Jurnal Hukum Das Sollen* 4, no. 1 (2020).

involvement of the perpetrator and victim, their parents, law enforcement, community leaders, and officers such as Bhabinsa and Bhabinkamtibmas.²⁸

Regarding the implementation of diversion at the Labuhanbatu Police, research results show that the implementation of diversion tends to be carried out more in the Women and Children Protection Unit and the Criminal Investigation Unit.²⁹ According to Wardah Hasibuan, the procedure for implementing diversion at the Labuhanbatu Police is by presenting the reported party and the reporter as well as the parents of the reporter and the reported party, community counselors and related parties such as child researchers from prisons and LPPA (Institute for the Protection of Women and Children).³⁰ Based on research conducted, it shows that during 2022-2023 in the jurisdiction of the Labuhanbatu Police there were 13 cases of criminal acts of theft, 7 cases of abuse and 2 instances of embezzlement where the perpetrators were children. For more details, see the table below.

Table 1. Data on criminal acts committed specifically by children in 2022-2023 in the criminal investigation unit of the women's and children's service unit at the Labuhanbatu Police

Years	Theft			Persecution			Embezzlement		
	Case	Diversion	P-21	Case	Diversion	P-21	Case	Diversion	P-21
2022	8	4	4	3	2	1	-	-	-
2023	5	3	2	4	3	1	2	0	2

Source: Primary data, 2023 (Edited).

Based on Table 1, it is shown that theft, abuse, and embezzlement are three types of criminal acts committed by children in the Criminal Investigation Unit of the Women and Children Services Unit at the Labuhanbatu Police Department. In 2022, there were 8 criminal theft cases; 4 cases were resolved through diversion, and 4 instances continued to the P-21 stage. There were 3 cases of criminal abuse; 2 were determined through diversion, and 1 continued to the P-21 stage. No cases of embezzlement were found in 2022.

In 2023 there were 5 theft cases; 3 were resolved through diversion, and 2 instances continued to the P-21 stage. There were 4 cases of abuse; 3 cases were resolved through diversion, and 1 case continued to the P-21 stage. Table 1 also shows that in 2023 there

²⁸ Darmawati Darma Kiki, et al. "Assessing the New Model Fulfilling the Right to Education for Correctional Students." *Al-Adalah: Jurnal Hukum dan Politik Islam* 8, no. 1 (2023), 1-14.

²⁹ Yasir Ritonga, Criminal Investigation Unit, Women and Children Services Division, Labuhanbatu Police, Interview 2023.

³⁰ Wardah Hasibuan, Criminal Investigation Unit, Women and Children Services Division, Labuhanbatu Police, Interview 2023.

were 2 cases of embezzlement. None of these embezzlement cases were resolved through diversion; both continued to the P-21 stage.

On the other hand, it was also discovered that efforts to implement diversion for children as perpetrators of criminal acts had not been thoroughly carried out following Article 7 Law No. 11 of 2012. The Labuhanbatu Police, in seeking diversion for children as perpetrators must first obtain permission from the leadership of the Labuhanbatu Police and receive approval from the victim. Suppose permission from the leadership is not obtained to divert a child as a perpetrator of a criminal act. In that case, the diversion fails, and the child will still be processed to the next stage, P-21, at the Prosecutor's Office and then undergo a trial process. From this case, there is a temporary statement that the leadership of the Labuhanbatu Police, namely the Labuhanbatu Police Chief, has other considerations regarding providing diversion efforts to children as perpetrators of criminal acts. The comparison of diversion rules for children who commit criminal acts according to the perspective of positive criminal law and Islamic criminal law is presented in the following table.

Table 2. Comparison of Diversion for Children Who Commit Crimes According to Positive Criminal Law and Islamic Criminal Law

In terms of	Positive Criminal Law	Islamic Criminal Law
Theoretical study (Draft)	Different It is regulated in Law Number 11 of 2012 Article 1 paragraph 7 that diversion is the process of transitioning the resolution of children's cases from the judicial process to outside the judicial process. Diversion is carried out using an approach to <i>restorative justice</i> .	al-shulhu is found in the book <i>Fiqh Islam Wa Adilatuhu</i> by Wabbah Zuhaily, which explains that al-shulhu is an effort to reconcile two disputing parties to end a quarrel and disagreement
Application	That in the positive law of diversion can be proven to be applied at the Labuhanbatu Police in resolving children's cases in criminal cases that are resolved by diversion.	"In Islamic criminal law, al-shulhu has been culturally embedded. In Labuhanbatu, family-based resolution is carried out through the <i>upah-upah</i> ceremony for reconciliation and <i>tanda ingot-ingot</i> , which is closer to a cultural approach. However, when examined within Islamic criminal law, this is the essence of al-Shulhu, which means making peace through familial reconciliation."
Case Results	In Law Number 11 of 2012 (Juvenile Criminal Justice System Law), Article 7, paragraph 2, diversion is carried out if it meets the following criteria: • The threat of punishment is less than 7 years • It is not a repeat offense (recidivist).	In the concept of al-shulhu, there are no limitations on making peace to resolve a dispute as long as both parties agree to reconcile.

Source: Primary data, 2023 (Edited).

3.3 Factors That Prevent a Crime Committed by a Child From Being Resolved Through Diversion: A Study at the Criminal Investigation Unit of the Women and Children Services Division of the Labuhanbatu Police

Labuhanbatu Police seeks to implement diversion for children who commit criminal acts to achieve justice and fulfill children's rights. Implementation of diversion is carried out through deliberation to reach specific agreements. This deliberation must be based on a shared understanding of the best decision to be taken.³¹ According to Wardah Hasibuan, sometimes the most significant difficulty in reaching an agreement is related to the perpetrator's compensation. This crucial problem often arises because the victim asks for large amounts of compensation while the perpetrator, who comes from a humble family, is unable to fulfill this request. As a result, the victims rejected the compromise offer and insisted on continuing the case to the trial stage if compensation was not paid according to their request.³²

According to Yasir Ritonga, disagreement between the two parties is another factor that causes failure in the diversion process. Implementation of diversion requires consent from the perpetrator and victim. However, victims often refuse diversion in practice, regardless of the reasons. Victims believe that a fair punishment can only be achieved through a trial process, which is expected to provide a deterrent effect. Apart from that, the perpetrator's family tends not to be involved in resolving the case because they feel that the child's behavior has disturbed the community and family. Therefore, they prefer that their children be detained.³³

For further clarity, the following is a review of the factors that cause a criminal act committed by a child to not be subject to diversion based on the type of criminal act committed, namely:

3.3.1 Theft

The crime of theft is regulated in Article 362 of the Criminal Code. It is stated that anyone who takes something, which wholly or partly belongs to another person, to possess

³¹ Erni Dwita Silambi, et al. "Rekonstruksi Penegakan Hukum Tindak Pidana Politik Uang dalam Pemilihan Umum." *Al-Adalah: Jurnal Hukum dan Politik Islam* 8, no. 1 (2023), 66-79.

³² Wardah Hasibuan, Criminal Investigation Unit, Women and Children Services Division, Labuhanbatu Police, Interview 2023.

³³ Yasir Ritonga, Criminal Investigation Unit, Women and Children Services Division, Labuhanbatu Police, Interview 2023

it unlawfully is threatened with theft, with a maximum imprisonment of 5 years or a maximum fine of nine hundred thousand rupiah.³⁴ From the sound of this article, diversion can be attempted because it meets the requirements as regulated in Article 7 paragraph 2 of Law Number 11 of 2012, namely that diversion can only be carried out with the provision of a sentence of less than 7 years, and is not repeated (recidivist). The assessment model for developing recidivist prisoners is created according to the type of crime committed, and indicators for assessment achievement are determined.³⁵ Based on previous data, between 2022-2023, there were 13 cases of criminal acts of theft, but only 7 cases were successfully resolved through diversion, while the other 6 cases were continued to the P21 stage. One of the main factors that causes the crime of theft by children to not be subject to diversion is that the value of the loss caused by the perpetrator exceeds their ability to pay compensation. As a result, the victim's family did not give consent for diversion, so the case of theft by the child could not be resolved through diversion and caused unrest in the community.

Therefore, the child as the perpetrator of the crime continues to be processed to the P-21 stage and the court stage. Diversion efforts continue at the next level, namely at the P-21 (prosecutor) stage and the court process stage. If diversion fails, the child, as the perpetrator of the crime, will receive a decision with the threat of punishment according to the Criminal Code. For example, theft carries a maximum prison sentence of 5 years, but for children, the punishment is only half of the penalty stated in the Criminal Code.

3.3.2 Persecution

Article 351 of the Criminal Code stipulates that abuse is punishable by a maximum prison sentence of 2 years and 8 months or a maximum fine of four thousand five hundred rupiah. Based on this article, diversion efforts for children in conflict with the law in cases of abuse at the Labuhanbatu Police, Criminal Investigation Unit, Women and Children Services Division have fulfilled the requirements stipulated in Law No. 11 of 2012, Article 7, paragraph (2) concerning the Juvenile Criminal Justice System, which specifies that diversion can only be carried out for criminal acts that carry a sentence of less than 7 years and are not repeated offenses.

³⁴ Republic of Indonesia, Criminal Code, Article 362.

³⁵ Darmawati Darmawati, "Pembaharuan Model Penilaian Pembinaan Narapidana Residivis Berbasis Teknologi." *Al-Adalah: Jurnal Hukum dan Politik Islam* 7, no. 1 (2022), 75-92.

However, based on the data previously presented, between 2022 and 2023, there were 7 criminal acts of abuse committed by children, but 2 cases continued to the next stage (P-21). The factors that prevent diversion efforts for a criminal act of abuse committed by a child include the child having committed a crime more than once and the victim's family objecting to the diversion. Consequently, the child continues to be processed to the P-21 and court stages. Diversion efforts will continue at the next level, namely at the P-21 (prosecutor) stage and during the court process. The child will receive a sentence if diversion fails according to the Criminal Code. For example, abuse carries a maximum prison sentence of 2 years and 8 months, but for children, the punishment is only half of the penalty stated in the Criminal Code.

3.3.3 Embezzlement

Article 372 of the Criminal Code states that anyone who intentionally and unlawfully possesses goods that wholly or partly belong to another person but which are under his control not because of a crime can be subject to a maximum prison sentence of 4 years or a maximum fine of nine hundred thousand rupiahs.³⁶ Based on this provision, the implementation of diversion for children involved in criminal acts of embezzlement at the Labuhanbatu Police, at the Criminal Investigation Unit of the Women and Children Services Unit, has fulfilled the requirements by Law no. 11 of 2012 Article 7 paragraph (2) concerning the Juvenile Criminal Justice System, which states that diversion can only be carried out if the sentence is less than 7 years. But the facts show that even though there are 2 cases of criminal acts of embezzlement committed by children, the reality shows that in these 2 cases, no diversion efforts can be made, and the files remain P21, meaning the case files are declared complete.

Even though, from a normative aspect, it is appropriate to carry out diversion, other factors cause diversion not to be carried out for criminal acts of embezzlement committed by children. Another factor in question is the value of the losses incurred. The perpetrator or the perpetrator's family cannot afford to compensate the child according to the value of the loss taken when the child commits a crime. The inability of the perpetrator or the perpetrator's family to cover the value of the losses caused is why the victim's family does not permit diversion to be carried out in cases of embezzlement committed by children.

³⁶ Republic of Indonesia, Criminal Code, Article 372.

Apart from that, the child, as the perpetrator of the embezzlement, had already committed the crime more than once, so the Labuhanbatu Police Head was not permitted to attempt diversion because his behavior disturbed the community.

So, the child's case file as a perpetrator of a criminal offense continues to the following process (P-21) and the trial stage. As stipulated in Article 7, paragraph 1, diversion efforts are still carried out at the next level, namely at the P-21 (Prosecutor's Office) and court process stages. If diversion fails at the investigation stage (police), prosecution stage (Attorney), and examination stage at trial (court), the judge will examine, try, and decide on the case. The judge will impose a sentence according to the Criminal Code if proven. For example, embezzlement carries a maximum prison sentence of 4 years, but for children, the punishment is only half of the penalty stated in the Criminal Code.

4. Conclusion

The study investigates the implementation of diversion regulations in resolving cases of children in conflict with the law at the Labuhanbatu Police, highlighting both positive law and Islamic criminal law perspectives. The findings indicate that although Law No. 11 of 2012 concerning the Juvenile Criminal Justice System provides a legal framework for diversion, its application has not been fully optimized. Diversion aims to offer restorative justice by resolving juvenile cases outside the judicial process, thereby preventing children from being subjected to the stigmas and negative impacts of the judicial system.

From an Islamic criminal law perspective, the concept of al-shulh, which focuses on reconciliation and educational punishment, aligns closely with the principles of restorative justice. The study reveals that at the Labuhanbatu Police, efforts to implement diversion are hindered by factors such as repeat offenses and the victim's family's objections, often due to the inability of the perpetrator's family to compensate for the damages caused.

The research suggests that for diversion to be more effective, law enforcement officials must ensure its application at every level of the criminal justice process. This includes the investigation, prosecution, and court stages, especially for crimes without severe penalties or involving repeated offenses. The study also emphasizes the need for the Labuhanbatu Police to enhance their efforts in applying diversion to provide better justice

for children, considering their developmental needs and the long-term impact of legal proceedings on their future.

In summary, the research underscores the importance of legal frameworks and cultural approaches in successfully implementing diversion for juvenile offenders. By integrating these approaches, achieving a more balanced and just resolution for children in conflict with the law is possible.

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