



# Application of Diversion to Children in Conflict with the Law as an Effort to Protect Children's Rights in Realizing Restorative Justice

Safira Prima Indira<sup>1</sup>, Syofiaty Lubis<sup>2</sup>

<sup>1,2</sup> Prodi Hukum, Fakultas Syariah dan Hukum, Universitas Islam Negeri Sumatera Utara, Medan

**Abstract:** This research aims to find out how the legal regulations regarding the implementation of diversion for children who are in conflict with the law are and to find out how diversion is implemented as an effort to protect children's rights in realizing restorative justice. The results of this research show that based on article 7 paragraph (2) of Law no. 11 of 2012 concerning the criminal justice system states that the right to diversion for children in conflict with the law can only apply to children who are 12 (twelve) years old and for crimes with a prison sentence of less than 7 years and not for repeat crimes. In terms of implementation, diversion is carried out through deliberations between the victim's family and the perpetrator's family, led by a diversion facilitator from a District Court judge who listens to claims for losses submitted by the victim's family. Furthermore, based on article 55 paragraph (1) government regulation no. 65 of 2015 concerning guidelines for implementing diversion states that if diversion deliberations reach an agreement then children in conflict with the law can be free from criminal punishment, however, in accordance with article 53 paragraph (2) Perma No. 4 of 2014 concerning Guidelines for implementing diversion states that if deliberations do not reach an agreement then the criminal case will be resolved through a juvenile criminal justice mechanism at court level.

**Keywords:** Diversion, Children in conflict with the law, Restorative justice

## 1. Introduction

Every child should be able to grow normally and naturally according to their age, but in reality there are children who commit bad acts that can harm themselves and others. Even today, children not only commit mischief in the form of crimes, but their actions also lead to criminal acts (Muizzuddin, Muhammad, Azizah, Julianoro, & Mahendra, 2022), (Parapat, 2020). Children who commit criminal acts in the context of positive law must still be held accountable for their actions before the law, considering that after they are still in the category of children, the legal process against children will still be enforced. Law enforcement against children is regulated through Law no. 11 of 2012 concerning the juvenile criminal justice system (Muhammad, 2023), (Laurensius Arliman, n.d.).

According to Article 1 paragraph (1), it is stated that the Juvenile Criminal Justice System is the entire process of resolving cases of children in conflict with the law, from the investigation stage to the guidance stage after serving the sentence (Setyorini, Sumiati, & Utomo, 2020), (Mulyadi & SH, 2023). The provisions of this Law define children into three perspectives, namely, children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts. Children in conflict with the law are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime (Asmadi, 2020), (Novitasari & Rochaeti, 2021). Meanwhile, children who are victims of criminal acts are children who are not yet 18 (eighteen) years old who experience physical, mental suffering and/or economic loss caused by criminal acts, and children who are witnesses to criminal acts are children who are not yet 18 (eighteen) years old who can provide information for the purposes of investigation, prosecution and examination at a court

### Correspondence:

Name: Safira Prima Indira

Email: [Safiraprimaindira21@gmail.com](mailto:Safiraprimaindira21@gmail.com)

Received: Jul 15, 2024;

Revised: Jul 26 2024;

Accepted: Aug 12, 2024;

Published : Aug 30, 2024;



**Copyright:** © 2024 by the authors. Submitted for possible open access publication under the terms and conditions of the Creative Commons

Attribution-NonCommercial 4.0 International License (CC BY-NC 4.0) license (<https://creativecommons.org/licenses/by-nc/4.0/>).

hearing regarding a criminal case that he personally heard, saw and/or experienced (Saitya, 2019), (Putri, 2019).

As a guarantee for the continuity and growth and development of children, through this law every child who is in conflict with the law is obliged to obtain the right to diversion as stated in article (7) paragraph (1) that at the level of investigation, prosecution and case examination, the child is district courts are required to pursue diversion (R Wiyono, 2022), (Fardian & Santoso, 2020).

Diversion according to article (1) paragraph (7) of Law no. 11 of 2012 concerning the juvenile criminal justice system is the transfer of the resolution of juvenile cases from the criminal justice process to a process outside criminal justice (Ariani, Yuliantini, & Mangku, 2019). With the aim of achieving peace between victims and children, resolving children's cases outside the judicial process, preventing children from being deprived of their liberty, encouraging society to participate and instilling a sense of responsibility in children. The main principle of implementing the diversion concept is persuasive action or a non-penal approach and giving someone the opportunity to correct their mistakes (Sugita, 2022), (NURJAMAL, n.d.).

The implementation of diversion is a mechanism for resolving criminal cases committed by children or can be said to be children in conflict with the law, through a peace mechanism between the two parties, where later in every process of investigation to prosecution, children in conflict with the law have the right to have their criminal cases resolved. through diversion which focuses on aspects of both parties, especially the victim, as an effort to realize restorative justice (Muladi & Anwar, 2023), (Nisa & Jaya, 2020).

According to the terminology, restorative justice is defined as resolving criminal cases outside of court with a focus on finding peace between the perpetrator and the victim. Something that differentiates the concept of restorative justice from other concepts is that crime is seen as part of a social action that violates the rights of an individual or group, which is considered a criminal violation (Maulana & Agusta, 2021), (Bakti & Watkat, 2023). The concept of restorative justice places higher family values and always involves the victim and the perpetrator. restorative justice emphasizes the need for social justice in society in a simple way, rather than perpetrators handing over their cases to formal justice and victims not necessarily getting a sense of justice in this matter. This is an important point in restorative justice (UTOMO, 2023), (Budi, 2023).

However, the implementation of diversion for children in conflict with the law is in fact far from the expectations that exist in accordance with the constitutional mandate, because of the large number of criminal cases committed by children, only a small number of cases can be resolved through diversion efforts, this is in accordance with data on the implementation of diversion in District Courts Medan and Langsa District Court (Ghoni, 2023), (Sudijanto, 2023).

Through this data, it can be concluded that the number of criminal cases committed by children or the general term is children in conflict with the law in the Medan District Court and Langsa District Court has increased every year, but the number of diversions carried out in these cases is only small, so that from the large number of cases involving children conflict with the law, the rest must be taken through the juvenile court route until the judge's decision. so it can be concluded that the implementation of diversion by the Medan District Court and Langsa District Court Judges has not run optimally because the deliberations carried out did not result in a good agreement between the perpetrator and the victim, so that many children's cases were in conflict with the law which had to be continued through the courts, so that their rights The rights of children in conflict with the law to obtain restorative justice cannot be fulfilled.

Therefore, this is what is of interest to researchers to further study the implementation of diversion which is reviewed based on its regulatory aspects and implementation in an effort to realize restorative justice, in this case the researcher further explains it in a journal with the title "Implementation of diversion for children in conflict with the law as an effort to protect children's rights in realizing restorative justice."

## 2. Materials and Methods

The research used in writing this scientific work is normative juridical research. Normative jurisprudential research is a type of scientific research which in analyzing the problem is carried out by means of legal scientific research in the form of public research or legal research which originates from legal research where legal research is conceptualized as a third party written in research rules of invitation.

The data collection technique used in this research is Library Research (Library Research), namely by collecting data and information in the form of literature, scientific essays, invitations and other written materials related to this research, namely by searching, learning, , and also record and implement matters related to this research object.

## 3. Results and Discussion

### 3.1 Legal Regulations Regarding the Implementation of Diversion for Children in Conflict with the Law

#### a. Legal Basis for Implementing Diversion

The implementation of diversion was created with the aim of avoiding negative effects on children's lives and development due to their involvement in criminal acts. Diversion is the right of every child who is in conflict with the law to get a transition in resolving the case from the court route to the deliberation route which focuses on aspects of peace or deliberation between the two parties, namely the victim and the perpetrator.

In general, diversion is the transfer of the resolution of children's criminal cases from the criminal justice process to an extrajudicial process through a deliberation system involving children and parents/guardians, victims and/or parents/guardians, community counselors, and professional social workers based on a restorative justice approach. This means that the resolution of criminal cases involves the perpetrator, victim and other related parties jointly seeking a fair resolution by emphasizing the recovery and future of the child. The implementation of diversion for children in conflict with the law is strengthened by applicable laws and regulations, including: (a) Law no. 11 of 2012 concerning the juvenile justice system, (b) Government Regulation no. 65 of 2015 concerning guidelines for implementing diversion and handling children under 12 (twelve) years of age, (c) Perma No. 4 of 2014 concerning Guidelines for implementing diversion in the juvenile criminal justice system.

#### b. Diversion implementation mechanism

The application of diversion to children in conflict is carried out through several stages, as the researchers describe as follows:

##### 1) Inspection of Case Files

The first step in implementing diversion in cases involving children in conflict with the law is examining the child's case file which has been submitted by the public prosecutor to the court.

The implementation of diversion is an obligation that must be carried out in cases of children or in other words children who are in conflict with the law, both at the level of investigation, prosecution and examination in court, taking into account the applicable terms and conditions as explained in Law no. 11 of 2012 concerning the juvenile justice system as follows: (a) Article 7 paragraph (1) which states that at the level of investigation, prosecution and examination of children's cases in district courts, diversion must be attempted. (b) Article 7 paragraph (2) states that children in conflict with the law, hereinafter referred to as children, are children aged 12 (twelve) years who are suspected of committing a crime. (b) Article 7 paragraph (3) states that the requirement for diversion is a criminal act that is punishable by imprisonment for less than 7 years and is not a repetition of a criminal act.

## 2) Appointment of Diversion Facilitator Judge

When the process of a child crime case is delegated by the public prosecutor to the court, the judge in this case makes efforts to realize the implementation of diversion in the case. In the process of cases that have entered the court, efforts are also made to carry out diversion for children in conflict with the law in a schedule that is in accordance with PP No. 65 of 2014 concerning guidelines for implementing diversion as follows: (a) Article 49 states that the Chief Justice shall appoint a Judge to handle children's cases within a maximum period of 3 (three) days from the date the case is received from the Public Prosecutor. (b) Article 50 states that in the event that the Judge seeks Diversion, within a maximum period of 7 (seven) days from the date the Chairman of the District Court determines the Judge as intended in Article 49, the Judge shall offer the offer to the Child and/or parent/Guardian, as well as the victim or Child Victims and/or parents/guardians to resolve the case through Diversion. (c) Article 50 paragraph (2) states that in the event that the parties as referred to in paragraph (1) agree to carry out Diversion, the Judge determines the start date for Diversion deliberations. (d) Article 50 paragraph (3) states that if the parties do not agree to carry out diversion, the judge will continue the case to the trial stage.

The Diversion Process is carried out within a maximum period of 30 (thirty) days from the start date of Diversion, and the Diversion Process is carried out through Diversion deliberations, the implementation of diversion involves several parties including the judge as the diversion facilitator, the child/parent, the victim or their parents, community counselor from the local Bapas and professional social worker.

### c. Implementation of Diversion Deliberations

In its implementation, diversion focuses on deliberation or peace, because the legal requirements for diversion depend on agreement on the deliberations carried out, as stated in article 8 paragraph (1) of the Law on the juvenile justice system which states that the diversion process is carried out through deliberation involving children and their parents/guardians, victims and/or their parents/guardians, community counselors, and professional social workers based on a restorative justice approach.

In this case, the researcher summarizes the rules for implementing diversion deliberations based on the provisions of Perma No. 4 of 2014 concerning Guidelines for implementing diversion in the juvenile criminal justice system as follows: (a) The diversion deliberation is opened and closed to the public by the facilitator, then the diversion facilitator conveys to the child/parent his or her willingness to hold the deliberation. (b) Based on the diversion facilitator's statement, the child/parent agrees or does not agree to the deliberation. (c) Next, the diversion facilitator reads the main material of the indictment. Then the diversion facilitator gives the child/parent/guardian/legal advisor the opportunity to provide an opinion on the main material of the indictment that has been read. (d) Next, the diversion facilitator orders the child/parent/guardian to explain the actions the child has committed and the reasons. (e) Based on this explanation, the diversion facilitator gives the victim/parent/guardian the opportunity to provide a response (conclude an agreement). (f) Based on this agreement, the diversion facilitator then concludes the memorandum of agreement in the Minutes of the Diversion Deliberation to be read at the decision hearing in court.

However, if an agreement is not reached during the diversion deliberation process, the judge also makes a report and minutes of the diversion process and continues the case to the court stage. As stated in article 53 paragraph (2) Perma No. 4 of 2014 concerning Guidelines for implementing diversion which states that cases of children who do not reach an agreement in diversion deliberations as intended in paragraph (1) are continued to the trial stage.

### d. Diversion Deliberation Decision

In the diversion deliberation decision that has been carried out by the facilitating judge, two decisions will be obtained, namely that the diversion is granted and the child's

trial is continued or it can be called diversion failed/did not reach an agreement, this is as stated in Government Regulation no. 65 of 2015 concerning guidelines for implementing diversion as follows: (a) Article 55 paragraph (1) states that if the diversion deliberations reach an agreement, the judge shall submit the diversion agreement letter and diversion minutes to the head of the district court. (b) Article 55 paragraph (2) states that the chairman of the district court issues a diversion agreement and determines the status of evidence within a maximum period of 3 (three) days from the date the diversion agreement is signed. (c) The determination as referred to in paragraph (2) is submitted to the judge, public prosecutor and community counselor within a maximum period of 3 (three) days from the date of the determination.

### ***3.2 Implementation of Diversion as an Effort to Protect Children's Rights in Realizing Restorative Justice***

In principle, the implementation of diversion is prioritizing the Restorative Justice approach and the diversion process as an effort to resolve criminal acts committed by children, so that the application of Restorative Justice will offer answers to important issues in resolving criminal cases, namely; first, criticism of the criminal justice system which does not provide opportunities, especially for victims (criminal justice system that disempowers individuals), second, eliminating special conflicts between perpetrators, victims and society (taking away the conflict from them); third, the fact that children's rights to growth and development are a consideration that is used as a result of criminal acts must be overcome to achieve peace.

The main objectives of restorative justice are to reparate the victim's losses, the perpetrator's recognition of the losses resulting from the crime committed, conciliation or reconciliation between the victim, the perpetrator and the community, the reintegration of the perpetrator and through peaceful conflict resolution (peacefully resolved) community security can be managed. However, in practice, diversion is still not optimally implemented by law enforcement officials in Indonesia.

One of them is based on research conducted by Nia Khairunnisa with the title "diversion policy for children who are in conflict with the law in criminal acts of violence against people who cause injuries in the Medan District Court", it was concluded that the implementation of diversion in the Medan District Court still causes problems, including the lack of human resource skills. Law enforcers are pursuing diversion in cases involving minors, this is proven by the large number of juvenile criminal cases that have to be continued in court and the implementation of this diversion, there are still many people who do not know or there is still a lack of socialization from law enforcers. Apart from that, the difficult process of diversion deliberation between the victim and the perpetrator causes many cases where diversion efforts are carried out to not find a point of peace between the two parties.

Based on this statement, it can be concluded that the inhibiting factor in implementing diversion for children in conflict with the law is the difference in perception of the meaning of justice for the parties, both the victim who believes that the perpetrator should be imprisoned as a form of justice for the crime he committed against the victim, and the family's perception. perpetrators who hope for justice for their children's future that must be fought for.

Apart from that, the next obstacle is also the negotiation of compensation for the losses experienced by victims which is very tough, which causes many diversions to fail because they do not reach the compensation agreement expected by the victim's family.

## **4. Conclusion**

In the implementation of diversion, the emphasis is on deliberation or peace, because the legal requirements for diversion depend on agreement on the deliberations carried out, as stated in article 8 paragraph (1) which states that the diversion process is carried out through deliberation involving the child and his parents/guardians. victims and/or their parents/guardians, community counselors, and professional social workers based on a

restorative justice approach. However, if the child's case does not reach an agreement during the diversion deliberation, the case will proceed to the trial stage.

## References

- Ariani, N. M. I., Yuliantini, N. P. R., & Mangku, D. G. S. (2019). Implementasi Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak Terhadap Curanmor yang dilakukan Oleh Anak di Kabupaten Buleleng (Studi Kasus Perkara Nomor: B/346/2016/Reskrim). *Jurnal Komunitas Yustisia*, 2(2), 100–112.
- Asmadi, E. (2020). Perlindungan Hukum Bagi Anak Sebagai Saksi dalam Pemeriksaan Perkara Pidana. *Iuris Studia: Jurnal Kajian Hukum*, 1(2), 51–60.
- Bakti, Y. S., & Watkat, F. X. (2023). Perlindungan Hukum Terhadap Tindak Pidana Pencabulan Anak Dibawah Umur Dalam Upaya Restorative Justice. *Jurnal Hukum Ius Publicum*, 4(1), 34–50.
- Budi, A. (2023). PENEGAKAN HAK ASASI MANUSIA DALAM TINDAK PIDANA NARKOBA MENURUT PERPOL NOMOR 8 TAHUN 2021 TENTANG PENANGANAN TINDAK PIDANA BERDASARKAN KEADILAN RESTORATIVE. Undaris.
- Fardian, R. T., & Santoso, M. B. (2020). Pemenuhan Hak Anak Yang Berhadapan (Berkonflik) Dengan Hukum Di Lembaga Pembinaan Khusus Anak (LPKA) Kelas II Bandung. *Jurnal Kolaborasi Resolusi Konflik*, 2(1), 7.
- Ghoni, A. (2023). REKONSTRUKSI REGULASI PERLINDUNGAN ANAK YANG BERHADAPAN DENGAN HUKUM PASCA DIVERSI BERBASIS NILAI KEADILAN. UNIVERSITAS ISLAM SULTAN AGUNG.
- Laurensius Arliman, S. (n.d.). Problematika Dan Solusi Pemenuhan Perlindungan Hak Anak Sebagai Tersangka Tindak Pidana Di Satlantas Polresta Pariaman. *Justicia Islamica*, 13.
- Maulana, I., & Agusta, M. (2021). Konsep Dan Implementasi Restorative Justice Di Indonesia. *Datin Law Jurnal*, 2(11), 46–70.
- Muhammad, F. R. (2023). ANALISIS PUTUSAN HAKIM YANG MENJATUHKAN PIDANA PENJARA TERHADAP ANAK SEBAGAI PELAKU PENYALAHGUNAAN NARKOTIKA (Studi Putusan Nomor: 4/Pid. Sus-Anak/2021/PN. Tjk).
- Muizzuddin, A. H., Muhammad, N., Azizah, R., Juliantoro, A., & Mahendra, B. D. (2022). Implementasi Prinsip Kepentingan Terbaik Untuk Anak Dalam Sistem Peradilan Anak Melalui Pemidanaan Edukatif. *Jurnal Syariah Dan Hukum Islam*, 1(1), 1–39.
- Muladi, A., & Anwar, U. (2023). Optimalisasi Peran Pembimbing Kemasyarakatan Dalam Proses Diversi Pada Tingkat Penyidikan Kasus Anak Yang Berkonflik Dengan Hukum. *Jurnal Pendidikan Kewarganegaraan Undiksha*, 11(3), 118–126.
- Mulyadi, D. L., & SH, M. H. (2023). *Wajah sistem peradilan pidana anak Indonesia*. Penerbit Alumni.
- Nisa, C. U., & Jaya, N. S. P. (2020). Penerapan Bentuk Mediasi Penal Dengan Pendekatan Keadilan Restoratif Dalam Sistem Peradilan Pidana Anak. *Jurnal Komunikasi Hukum (JKH)*, 6(1), 253–265.
- Novitasari, N., & Rochaeti, N. (2021). Proses Penegakan Hukum Terhadap Tindak Pidana Penyalahgunaan Narkotika Yang Dilakukan Oleh Anak. *Jurnal Pembangunan Hukum Indonesia*, 3(1), 96–108.
- NURJAMAL, S. H. (n.d.). PENERAPAN DIVERSI DALAM PRAKTEK PENYELESAIAN PERKARA ANAK DI PENGADILAN NEGERI KEBUMEN DAN PENGADILAN NEGERI PURWOREJO.
- Parapat, A. (2020). *Bimbingan Konseling Untuk Anak Usia Dini: Upaya Menumbuhkan Perilaku Prosocial*. Edu Publisher.
- Putri, M. (2019). Pelaksanaan Restitusi Bagi Anak Yang Menjadi Korban Tindak Pidana Sebagai Bentuk Pembaruan Hukum Pidana Berdasarkan Peraturan Pemerintah Nomor 43 Tahun 2017. *Soumatara Law Review*, 2(1), 115–134.
- R Wiyono, S. H. (2022). *Sistem peradilan pidana anak di Indonesia*. Sinar Grafika.
- Saitya, I. B. S. (2019). Faktor-faktor penyebab tindak pidana kekerasan seksual terhadap anak. *Vyavahara Duta*, 14(1), 1–7.
- Setyorini, E. H., Sumiati, S., & Utomo, P. (2020). Konsep Keadilan Restoratif Bagi Anak Yang Berkonflik Dengan Hukum Dalam Sistem Peradilan Pidana Anak. *DiH: Jurnal Ilmu Hukum*, 16(2), 372667.
- Sudijanto, Y. P. (2023). REKONSTRUKSI REGULASI PENEGAKAN HUKUM TERHADAP TINDAK PIDANA YANG DILAKUKAN OLEH ANAK BERBASIS NILAI KEADILAN PANCASILA. Universitas Islam Sultan Agung.
- Sugita, I. M. (2022). Penerapan Diversi Dalam Sistem Peradilan Pidana Anak Dalam Mewujudkan Keadilan Restoratif (Restorative Justice) Ditinjau Dari Perspektif Sosiologi Hukum. *Satya Dharma: Jurnal Ilmu Hukum*, 5(2), 187–211.

UTOMO, D. S. (2023). REKONSTRUKSI REGULASI PENYELESAIAN TINDAK PIDANA MELALUI POLMAS OLEH BHABINKAMTIBMAS MEWUJUDKAN KEAMANAN DALAM NEGERI BERBASIS NILAI Keadilan RESTORATIF. Universitas Islam Sultan Agung.