



Implementation of Diversion Policy for Children Who Commit Criminal Offenses: An Analysis of Effectiveness and Benefits for Children

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ABSTRAK

Proses hukum yang biasa diterapkan terhadap anak yang melakukan tindak pidana dapat berdampak negatif terhadap pertumbuhan dan perkembangan anak, terutama jika harus menjalani hukuman penjara. Oleh karena itu, sistem peradilan pidana anak harus mengutamakan prinsip keadilan restoratif, yaitu dengan melibatkan pelaku, korban, keluarga, dan pihak terkait lainnya untuk bersama-sama mencari penyelesaian yang adil dengan menitikberatkan pada pemulihan keadaan, bukan pembalasan. Penelitian ini bertujuan untuk mengkaji kebijakan hukum mengenai diversi bagi anak yang melakukan tindak pidana serta manfaatnya terhadap keadilan hukum bagi anak. Metode yang digunakan adalah yuridis normatif dengan pendekatan deskriptif-analitis berdasarkan peraturan perundang-undangan dan norma hukum. Hasil penelitian menunjukkan bahwa diversi merupakan bentuk perlindungan hukum yang penting karena mampu menjaga kondisi psikologis, sosial, dan mental anak, serta memungkinkan anak terhindar dari proses hukum formal dengan menjunjung tinggi keadilan restoratif. Dasar hukum diversi telah diatur dalam berbagai regulasi seperti undang-undang, SEMA, dan SKB. Diversi memberikan berbagai manfaat bagi anak, di antaranya menghindarkan anak dari proses peradilan formal dan penahanan, melindungi kondisi psikologis dan sosialnya, serta mencegah terulangnya tindak pidana di masa depan.

ABSTRACT

The ordinary legal process for children who commit crimes has some negative impacts on the child's growth and development, especially if the child has to serve a prison sentence. Therefore, the juvenile criminal justice process must prioritize the principle of restorative justice, namely by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state, and not retribution. This research aims to examine the legal policy of diversion for children who commit criminal acts and to examine in depth the benefits of diversion to legal justice for children. The type of research used is normative juridical with a descriptive-analytical approach, discussing existing legal symptoms and problems and testing them based on laws regulations, and legal norms. The results of this study show that diversion is a form of legal protection that protects the psychological, social, and mental condition of children because, through diversion, children who commit crimes can avoid the legal process by upholding restorative justice. The legal basis for diversion is regulated starting from the law, Sema, and SKB. The benefits of diversion to legal justice and benefits for children include: children do not have to comply with formal legal procedures and are not detained/imprisoned, protect children's psychological and social conditions, and anticipate the recurrence of criminal acts by children in the future.

1. INTRODUCTION

Children are the next generation who will hold the baton of this nation's leadership in the future. Therefore, every child must receive affection, attention, and comprehensive protection both from their family and by the state. Child protection means ensuring that children grow up in a safe, healthy environment, and supporting their optimal development both physically, mentally, and socially ([Wahyudi & Kushartono, 2020](#)).

The development period of children towards adolescence is vulnerable in psychological conditions because they do not have enough knowledge to distinguish between right and

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wrong actions, therefore being a child is very vulnerable to committing unlawful acts. Crimes committed by children are not fully charged by adults, because children who commit crimes are not purely as perpetrators, but also as victims. Children should not be faced with the judicial system, there must be a more humane legal approach for the best interests of children ([Bambang Satriya, 2011](#)).

The *Convention on the Rights of the Child* which was ratified by the Indonesian government through Presidential Decree No. 36 of 1990, then also outlined in Law No. 4 of 1979 concerning Child Welfare and Law No. 23 of 2002 as amended into Law No. 35 of 2014 concerning Child Protection, accommodates the general principles of child protection based on non-discrimination, best interests, survival and growth and child participation ([DS.Dewi, 2011](#)).

The family, society, and the state are obliged to provide comprehensive protection for children so that they do not become victims or perpetrators of crime. But in fact, there are still many children in Indonesia who fall into the valley of crime. Many children who are facing the law (ABH) end up in prison ([Inderasari, 2022](#)). Based on data from the Directorate General of Corrections of the Ministry of Law and Human Rights in 2023, there are 1,993 ABHs consisting of 1,467 children who are prisoners and are still undergoing judicial proceedings, and as many as 526 ABH are serving sentences as prisoners. The types of crimes that are often committed are theft, persecution, drugs, to serious cases such as murder and sexual harassment.

The ordinary legal process against a child who commits a crime has several negative impacts on the child's growth and development, especially if the child has to serve a prison sentence. For this reason, Law Number: 11 of 2012 concerning the Juvenile Criminal Justice System, regulates Diversion as a form of protection for children. Diversion is the transfer of the settlement of children's cases from the criminal justice process to the non-criminal process ([Syahadat et al., 2024](#)). Article 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that ABH receives special treatment, including being treated humanely by paying attention to needs according to their age, being separated from adults, not being arrested, detained, or imprisoned, except as a last resort and in the shortest time, obtaining a personal life and education ([Irawati, 2021](#)).

In order to realize the protection of children, ABH cases must be heard in the juvenile criminal court in the general judicial environment. The judicial process of children's cases since they are arrested, detained, and tried must be carried out by special officials who understand children's problems. However, before entering the judicial process, law enforcers, families, and the community are obliged to seek a settlement process outside the court channel (Diversion) based on the restorative justice approach, which is the settlement of criminal cases that emphasizes the restoration of the situation as it was before by involving the perpetrator, victim, and family of both parties ([Muhammad Rosikhu, 2023](#)).

Diversion is very important for ABH to avoid negative effects in the juvenile justice process due to stigma that hurts the child's psychological development and future ([Anik Iftitah, 2023](#)). Through diversion, it can also educate children to be more responsible for the actions they do. For victims of child crimes, diversion also has a positive impact in accordance with the principles of restorative justice such as protecting the rights of victims, restoring social relations, and resolving conflicts peacefully between the two parties (win-win solutions) ([Krisnalita, 2019](#)).

2. RESEARCH METHOD

The method used in this study is normative juridical or research analyzing written law, jurisprudence, and norms living in society. The descriptive-analytical approach aims to retrieve systematic, factual, and accurate data about a problem based on applicable laws and

legal norms. The data collection technique is carried out through literature research, which is to obtain data by examining literature materials or secondary data which includes primary legal materials, secondary legal materials which can be in the form of laws and regulations, books and works, or other scientific journals or university legal materials in the form of dictionaries, articles, and newspapers ([Triono Eddy, Agustina, 2025](#)).

3. RESULT AND DISCUSSION

Legal Policy on Diversion for Children Who Commit Crimes

The phenomenon of ABH is increasingly occurring, both children as perpetrators and victims of crime. This problem shows that protection efforts for children are still maximum. Based on data from the National Police of the Republic of Indonesia, in the January-February 2025 period, there were 437 ABH reported cases of theft, and abuse of 460 children and as many as 349 children involved in drug cases. The rise of children who commit criminal acts must be addressed immediately considering that children are the next generation of the nation in the future, so they need guidance and protection to maintain physical, mental, and social growth and development in complete harmony and balance ([Supramono, 2017](#)).

Article 64 of Law Number 35 of 2014 concerning Child Protection states that special protection for children who conflict with the law is carried out through:

- a. Humane treatment by taking into account the needs according to their age;
- b. Separation from adults;
- c. Effective provision of legal and other assistance;
- d. Implementation of recreational activities;
- e. Freedom from torture, punishment, or other cruel, inhuman and degrading treatment;
- f. Avoidance of the imposition of the death penalty and/or life sentence;
- g. Avoidance of arrest, detention, or imprisonment, except as a last resort and in the shortest possible time;
- h. Providing justice before the Children's Court that is objective, impartial, and in a hearing closed to the public;
- i. Avoidance of publication of his identity;
- j. Providing assistance to Parents/Guardians and persons trusted by the Child;
- k. Providing social and personal life advocacy;
- l. Providing accessibility, especially for Children with Disabilities;
- m. Provision of education;
- n. Provision of health services and;
- o. The granting of other rights is in accordance with the provisions of laws and regulations.

Setya Wahyudi stated that the juvenile criminal justice system is a system of enforcement of juvenile criminal law that is carried out in an integrated manner by four sub-systems of power, namely investigation, prosecution, justice, and execution/execution of crimes, based on the child material criminal law which must emphasize aspects of child protection and welfare ([Faqurais, 2021](#)). Here are some regulations that regulate diversion, including:

1) Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

Article 5 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, states that Diversion must be sought at the investigation and trial stages. This means that law enforcement officials (police, prosecutors, and judges) must try to resolve the child's case peacefully out of court before proceeding with formal legal proceedings. The requirements for ABH that can be completed through the diversion mechanism are based on the provisions of Article 7 of Law Number: 11 of 2012 concerning the Juvenile Criminal Justice System, including:

- a. Threatened with imprisonment for seven years and
- b. It does not constitute a repetition of a criminal act.

Diversion is carried out through deliberation that provides space for children to be heard, parents/guardians to convey things related to children's actions, as well as victims and related parties to provide responses. If the diversion agreement is reached and implemented, the child's case will not be continued to the court. However, if it fails, the formal legal process will continue to run by considering the results of the diversion that has been carried out. The diversion facilitator can involve the community or other parties to support the solution ([Denadin et al., 2021](#)).

Meanwhile, based on the provisions of Article 9 Paragraph (2) of Law Number: 11 of 2012, it is stated that the diversion agreement must obtain the consent of the victim and/or the family of the victim's child and the willingness of the child and his family, except for:

- a. criminal acts in the form of violations;
 - b. minor offenses;
 - c. a non-violent crime; or
 - d. the value of the victim's losses is no more than the value of the local provincial minimum wage.
- 2) Supreme Court Regulation (Perma) Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System

The purpose of Perma Number 4 of 2014 is to accommodate judges in the general court who examine and handle children's cases and as an extension of Law Number 11 of 2012. In the implementation of diversion in court, the judge issued a deliberation day to conduct diversion, and asked the public prosecutor to present the child and his parents or guardians, the victim and his family, social workers, supervisors and community representatives, and other related parties ([Simanjuntak, 2021](#)).

Article 2

Diversion is applied to children who are 12 (twelve) years old but not yet 18 (eighteen) years old or have reached the age of 12 (twelve) years even though they have been married but are not yet 18 (eighteen) years old, who are suspected of committing a criminal act.

Article 3

The juvenile judge is obliged to seek diversion if the child is charged with committing a criminal act that is threatened with imprisonment of less than seven years and is also charged with a criminal act that is threatened with a prison sentence of seven years or more in the form of a subsidiary, alternative, cumulative or combination indictment (combined).

Article 7 paragraph (2)

Requiring judges to consider the implementation of diversion agreements in passing judgments on child criminal cases.

This Perma affirms the provisions of Article 7 of Law Number: 11 of 2012 concerning the Juvenile Criminal Justice System, which only regulates the requirements for diversion for criminal acts with a threat of less than seven years and does not constitute a repetition of the criminal act. This Perma also regulates the stages of diversion deliberation which requires facilitators to be able to provide opportunities to:

- a. Children to be heard about the charges;
- b. Parents/guardians to convey matters related to the child's actions and the expected form of settlement;
- c. Victim/victim's child/parent/guardian to provide feedback and the expected form of settlement.

In the diversion deliberation, if the diversion agreement is not fully implemented by the parties based on the report from the Community Supervisor of the Correctional Center, then the Judge continues to examine the case in accordance with the Juvenile Criminal Justice Procedural Law. The judge in imposing his decision is obliged to consider the

implementation of part of the diversion agreement ([Wicaksono, 2015](#)). Article 7 Paragraphs 1 and 2 states that if the diversion agreement is not fully implemented by the parties based on the results of the report from the correctional center community supervisor, the Judge continues the examination in accordance with the procedural law of juvenile justice. In imposing a decision, the Judge is obliged to consider the implementation of the diversion agreement as stated in paragraph (1).

- 3) Joint Decree (SKB) of the Chairman of the Supreme Court, the Attorney General, the Chief of the National Police, the Minister of Law and Human Rights, the Minister of Social Affairs, the Minister of Women's Empowerment and Child Protection in Dealing with Children in Conflict with the Law

This regulation does not specifically regulate diversion, but a restorative approach by each agency to make this joint decision is the main hope in dealing with children who conflict with the law. Judges, prosecutors, police, and social institutions are mandated to implement restorative justice when dealing with children's problems as stipulated in Articles 6, 7, 8, and 9. Article 13 letter (a) states that the Investigator makes efforts to handle children's cases that conflict with the law with a restorative justice approach for the best interests of the child must involve the Correctional Center, the victim's parents/or family, and the perpetrator of the crime as well as local community leaders ([Suharto, 2015](#)).

Children who are confronted by the law, both as victims and perpetrators, must have their rights protected and must not be discriminated against. Children who commit criminal acts or commit acts that are declared prohibited for children need to be handled carefully through the juvenile criminal justice system. The form of justice is where the implementation of rights and obligations is balanced, the implementation of rights and obligations for children who commit criminal acts needs to receive assistance and protection so that it is balanced and humane. It should be noted that children must be needed with their situation, condition, mental, physical, social circumstances, and abilities at a certain age ([Rampengan, 2024](#)).

The Impact of Diversion on Legal Justice and Benefits for Children

Article 20 of Law Number 35 of 2014 concerning Child Protection states that the state, society, and families are obliged and responsible for the implementation of child protection ([Rodliyah, 2019](#)). Children who undergo legal proceedings as usual (ranging from the level of investigators, prosecution, and trials, to prison sentences), will have a bad impact on the child from various aspects. The law enforcement process that takes a long time, stigmatization because children commit crimes, to the freedom of children who are "deprived" because they have to serve prison sentences, have negative impacts, including:

- a. Psychological Impact
 - 1) Children experience mental and emotional distress during the long law enforcement process, including investigations, prosecutions, trials, and even detention periods. This can lead to feelings of anxiety, anxiety, fear, and depression;
 - 2) Legal processes and detention can lead to psychological disorders such as decreased self-concept, depression, and even school refusal;
 - 3) Children who conflict with the law usually have deep inner conflicts, expressed through aggressive, impulsive, and primitive behavior. This inner conflict can worsen due to negative stigma and pressure during the legal process;
 - 4) The coaching period in a special children's institution resulted in feelings of sadness, fear, and worry about the future, as well as a sense of isolation because of the lack of communication with family and friends;
 - 5) These psychological impacts have the potential to hinder children's recovery and social reintegration, and even increase the risk of recidivism (recurrence of criminal acts) ([Fardian, 2002](#)).

b. Social Impact

- 1) ABH experienced negative stigma from the community and ostracized the child. This condition can hinder children's opportunities to go to school, work, and socialize normally;
- 2) Social isolation and lack of support from family and the surrounding environment worsen children's psychosocial conditions, causing children to feel marginalized and difficult to readapt to society;
- 3) A frightening and lengthy legal process can make children allergic to laws and social institutions, reducing their trust in the justice system and social norms.
- 4) Children who do not receive appropriate treatment and assistance are at risk of experiencing violence, lack of basic needs, and the potential to become repeat offenders (criminals) ([Uty et al., 2024](#)).

The juvenile justice system should ideally prioritize diversion (rehabilitation and reintegration), not just punishment to minimize adverse impacts and provide recovery opportunities for children. The use of alternative sanctions such as coaching, community service, and supervision is more recommended than harsh prison sentences. In addition, the separation of children from adult offenders in legal proceedings and detention is important to protect children's rights and prevent further negative impacts ([Susanti, 2017](#)).

Diversion is a form of legal protection that protects the psychological, social, and mental condition of children because, through diversion, children who commit crimes can avoid legal proceedings. The benefits of implementing diversion for children who conflict with the law include:

- 1) Through diversion, ABH does not have to undergo a formal legal process, so that it can avoid being stigmatized (labeled) as a criminal. Thus, it has protected children's rights with a persuasive approach, as well as preventing children from the adverse effects of the formal justice process that can hinder the psychological and social development of children.
- 2) Avoid children from prison sentences that can have negative impacts such as loss of educational opportunities, social stigmatization, and psychological trauma. Diversion seeks alternative solutions that are more constructive without having to go through a formal judicial process;
- 3) Achieving peace between the victim and the perpetrator's child through deliberation and mediation involving all relevant parties, to create a just and restorative settlement;
- 4) Reduce the burden on the formal justice system, because the settlement of children's cases is carried out outside the judicial process so that judicial resources can be focused on other more serious cases;
- 5) Instilling a sense of responsibility in children for their actions, while providing opportunities to correct mistakes and learn from these experiences;
- 6) Anticipating or resolving criminal acts committed by children ([Gultom & Sumayyah, 2014](#)).

That the implementation of diversion to ABH, provides certainty and legal protection, as well as the future of children. However, there are several obstacles to the implementation of diversion for ABH, especially at the investigation stage such as:

- 1) Limited human resources and lack of understanding of law enforcement;
- 2) The lack of public understanding and insight into Diversion as an effort to protect children's future;
- 3) ABH's parents or family do not care about the actions that their child has taken;
- 4) The high ego of the victim who wants ABH to be detained and face a formal legal process;
- 5) There has not been maximum cooperation and coordination with other related agencies (Ndruru, 2022).

In addition, when the diversion process has been carried out, many do not succeed in reaching an agreement, which is usually caused by:

- 1) Dissatisfaction of one of the parties with the matter that is temporarily ongoing;
- 2) The parties to the diversion are considered not to need to be present so that the diversion process becomes absurd or vague;
- 3) Nominal claims for compensation by those that cannot be covered by ABH.

Overcoming obstacles in the implementation of the diversion, and ensuring the fulfillment of rights and justice for victims and perpetrators of crime, the efforts that must be made include:

1. Socialization for the importance of Diversion

Lack of understanding of the community, families, and law enforcement officials regarding the concept and benefits of diversion. Therefore, it is necessary to carry out wider socialization so that all parties understand the importance of diversion as an effort to protect and rehabilitate children, not just an ordinary legal process.

2. Strengthening the capacity of law enforcement

Investigators, public prosecutors, and judges need to have adequate competence in carrying out diversion, including the ability to facilitate deliberation between victims and perpetrators, as well as understand the principles of restorative justice. Training and capacity building of law enforcement officers is essential so that they can carry out their roles properly and are sensitive to the best interests of children.

3. Professional mentoring and psychological therapy

Victims' children and perpetrators who have experienced trauma need to receive psychological therapy and assistance from professionals such as psychologists and social workers to support the recovery and social reintegration process.

4. Supervision and evaluation of the implementation of diversion

Supervision of the implementation of diversion and follow-up of diversion agreements need to be carried out to ensure that children comply with the agreement and get optimal protection. Periodic evaluations are also important to identify obstacles and make thorough improvements ([Thoriq, 2024](#)).

4. CONCLUSION

Diversion is a form of legal protection that protects the psychological, social, and mental condition of children because, through diversion, children who commit crimes can avoid the legal process by upholding the principle of restorative justice. The legal basis for diversion of ABH is regulated in Law Number: 11 of 2012 concerning the Juvenile Criminal Justice System, Supreme Court Regulation (Perma) Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System, as well as the Decree of the Chairman of the Supreme Court, the Attorney General, the Chief of the National Police, the Minister of Law and Human Rights, the Minister of Social Affairs, the Minister of Women's Empowerment and Child Protection in Handling ABH.

The implementation of diversion against ABH has a positive impact on children's future, including ABH not having to undergo formal legal proceedings and be detained, to prevent the stigma of criminals, prevent ABH from losing opportunities to obtain education and socialize because children do not have to serve prison sentences, protect children's psychological and social conditions, give children the opportunity to be responsible for mistakes made, and anticipating the recurrence of criminal acts by children

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