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Viewing Ijtihad in the Implementation of Diversion as a Form of Settlement of Child Criminal Cases Through the Restorative Justice System by Investigators in Cases of Violence

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Abstract. *Children have the right to special protection, particularly legal protection within the judicial system. As a consequence of Indonesia's role as a state party to the Convention on the Rights of the Child, which regulates the principles of legal protection for children, it is obligated to provide special protection to children in conflict with the law. This study employed descriptive analytical legal research. Based on the existing study, it can be concluded that the investigation process for child criminal cases through diversion or the ijtihad method, as an effort to implement restorative justice, at the Semarang City Police Department is suboptimal. This is because 70 cases of violence perpetrated by children were resolved at the Semarang City District Court in 2024. Obstacles to the investigation process for child criminal cases through restorative justice at the Semarang City Police Department include limited public knowledge regarding resolving criminal cases through restorative justice; limited public awareness of reconciliation through restorative justice in cases of minor assault; and the lack of comprehensive and specific regulations regarding the resolution of hate speech through restorative justice within both central and regional government regulations.*

Keywords: *Children; Diversion; Ijtihad; Violence.*

1. Introduction

Children have the right to receive special protection, especially legal protection in the judicial system as a consequence of Indonesia as a state party to the Convention on the Rights of the Child which regulates the principles of legal protection for children, having an obligation to provide special protection for children who are in conflict with the law.

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Diversion in Article 1 number 7 of Law Number 11 of 2012 concerning the Juvenile Justice System is a process of resolving cases of children in conflict with the law, from the criminal justice process to a process outside the criminal justice system, with deliberations involving children, parents, and community counselors, to prevent children from being deprived of liberty, intended to keep children away from the criminal justice process. The Criminal Justice System in Indonesia is considered not to be on the side of child perpetrators of crimes or children in conflict with the law, the current criminal law products are considered to be rooted in the existing social structure of society in this case the criminal law products regarding children only regulate victims of criminal crimes. Meanwhile, perpetrators of crimes from among children have almost never received fair legal treatment and on average children who are caught in criminal cases are thrown into prison, even worse, many prisons mix adult inmates with child inmates.¹

During the investigation process, children in conflict with the law are forced to follow procedures commonly followed by adults. This situation places children under duress, forcing them to undergo the examination process that has become customary for police officers in conducting investigations and criminal cases.

The reason for imprisonment, judges more often use judicial policies and discretion, rather than sociological considerations, not only that, many judges ignore community research, even though there are quite a few social structures in Indonesia that experience social pathology and panels of judges ignore community research from BAPAS.²

Children who are still minors still have unstable natures and are easily uncontrolled by circumstances from within themselves and their surrounding environment. In fact, in society, children who are in conflict with the law still lack the ability to control themselves against the negative influence of their social environment outside the home, lack of supervision from both parents so that they are influenced by friends in the surrounding environment, in carrying out actions they are still classified as unstable.³ Distrust of prisons or ineffective child development, the author concludes that children who are in conflict with the law need to be diverted at all levels so that the child still has a long future and still needs guidance from both parents, if diversion is not carried out then many children will go to prison or development and many

¹Gatot Supramono, 2007, Juvenile Court Procedure, Jakarta: Djambatan, page 1.

²Solopos.com, 2016, Friday, May 20 2016, 05.00 WIB: 90% of children facing the law end up in prison, in <http://www.solopos.com/2016/05/20/90-anak-berhadapan-hukumberakhir-di-penjara-721069>

³M Ghufuran H. Kordi K, 2015, Disobedience to Children Reflections on Children's Rights & Protection, Yogyakarta: Pustaka Baru Press, p. 238.

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children's rights guaranteed by the law on child protection are not fulfilled, so that it will cause children to be psychologically disturbed and make children stupid and easily colonized by others and will have a big impact on the child's growth when they are adults, it could be that the child when they are adults becomes a recidivist.

Various existing explanations show that the law has contradicted its original purpose. In relation to legal objectives, Sri Endah stated that:⁴

If what national law aspires to is a Pancasila legal system, then it is appropriate to study and develop laws that contain Pancasila values, meaning laws that are oriented towards the value of the Almighty God, laws that are oriented towards the values of Just and Civilized Humanity, laws that are based on the value of Unity, and laws that are imbued with People's values Led by Wisdom in Deliberation/Representation and the value of Social Justice. For all Indonesian people.

In its concept, child protection not only includes the protection of their rights but also relates to the development of the younger generation, taking into account that children are not individualists because children are still very dependent on adults, especially adults they know, in addition to the fact that children are not yet able to support themselves. This situation clearly contradicts the goals of the rule of law in the concept of development law. Therefore, in its development, the law should be able to realize justice for children in order to support a child's life that is guaranteed, beneficial, and has legal certainty.⁵

The concept of a state of law (nomocracy) has guaranteed the principle of equal rights before the law (before the law), so the concept of development law which prioritizes openness (transparency) is commensurate with the offer of forming law as a consensus involving the public sphere, the concept of a state of law which prioritizes deliberative democracy.⁶

2. Research methods

The type of research used in this study is descriptive analytical legal research. Descriptive analytical legal research is a method that serves to describe or illustrate the object being studied

⁴Sri Endah Wahyuningsih, *Principles of Criminal Individualization in Islamic Law and Indonesian Legal Reform*, UNDIP, Semarang, 2013, p. 68.

⁵Nur Cahyanti, Budi Raharjo, and Sri Endah Wahyuningsih, *Sanctions Against Notaries Who Commit Criminal Acts According to Statutory Regulations in Indonesia*, *Jurnal Akta*, Vol 5 No 1 March 2018, p. 91.

⁶Sri Endah Wahyuningsih, *Criminal Law Enforcement Policy on Money Laundering Prevention in the Context of Criminal Law Reform in Indonesia*, *Journal of Legal Reform* Volume III No. 2 May - August 2016, p. 47.

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through collected data or samples as they are without conducting analysis or drawing general conclusions.⁷

3. Results and Discussion

3.1. The Investigation Process for Child Crime Cases Through Restorative Justice

The existence of diversion in handling child violence cases as an effort to realize restorative justice in reality has not been able to be optimally realized, especially in the Central Java Regional Police area. Based on the EMP Pusiknas Bareskrim Polri, the Central Java Regional Police took the most action against children in conflict with the law related to crimes and thuggery carrying sharp weapons. Throughout 2024, the Central Java Regional Police took action against 143 children related to these crimes. Most of them were children aged 12 to 17, amounting to 13 children. Meanwhile, another 13 children were under 11 years old. The Central Java Regional Police also became the regional unit with the most action related to brawls. Data from the DORS SOPS Polri application shows that since the beginning of the year, the Central Java Regional Police took action against 3 brawls. Meanwhile, in second place is the Jakarta Metropolitan Police, which took action against 117 children related to crimes and thuggery carrying sharp weapons, and took action against 2 brawl cases. The North Sumatra Regional Police took third place, prosecuting 116 children and one case of brawl. Of the 34 regional police units spread across Indonesia, six regional police did not report any action against children related to crimes and thuggery involving sharp weapons, namely the Aceh Regional Police, the Riau Islands Regional Police, the East Nusa Tenggara Regional Police, the North Kalimantan Regional Police, the Gorontalo Regional Police, and the North Maluku Regional Police. Meanwhile, for brawl cases, six regional police reported taking action against these disturbances. These are the Central Java Regional Police (3 cases), the Metro Jaya Regional Police (2 cases), the South Sulawesi Regional Police (2 cases), the Banten Regional Police (2 cases), the North Sumatra Regional Police (1 case), and the West Java Regional Police (1 case). Brawls are a form of crime and violence committed by groups. Carrying sharp weapons is also an illegal act that is prohibited by law. The Indonesian National Police continues to strive to prevent brawls between youths in their respective regions. Police patrol vulnerable areas to prevent security disturbances, especially brawls which are very disturbing to the community. Of all the existing cases, most are resolved in court.⁸

⁷Sugiono, Quantitative, Qualitative and R&D Research Methods, Alfabeta, Bandung, 2009, p. 29.

⁸National Police Education Center, "Number of Children Involved in Cases of Violence", https://pusiknas.polri.go.id/detail_artikel/antara_tawuran_dan_senjata_tajam#:~:text=Throughout%20the%20year%202024%2C%20Polda%20Jawa,most%20related%20to%20brawl%20actions., May 7, 2025.

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The number of cases filed at the Semarang City District Court related to cases of violence committed by children was 78 cases out of cases involving 117 suspects, of which 70 cases were brawls, while 8 cases were bullying with violence.⁹Based on existing data, particularly in Central Java, it is clear that diversion is rarely implemented in the legal process for children involved in violence cases. Criminal punishment on children can have significant psychological impacts, both short-term and long-term, including fear, loss of self-confidence, and even trauma. Lengthy legal processes and prison sentences can trigger behavioral problems, depression, and even the risk of suicide. Furthermore, punishment can damage family relationships, cause deprivation, and increase the risk of social stigma. AKP Wigiyadi stated that the impact of criminal punishment on children can include:¹⁰

a. Fear and Loss of Self-Confidence:

Children who are in conflict with the law, or who experience punishment, may feel afraid of law enforcement officials, legal institutions, and even their parents or other adults. This fear can hinder social and emotional development, and lead to a loss of confidence in one's own abilities.

b. Trauma:

Legal processWhichSevere abuse, especially involving violence or imprisonment, can cause serious psychological trauma. This trauma can lead to behavioral problems, depression, anxiety, and difficulties in daily life.

c. Behavioral Problems:

Harsh punishment can cause children to experience behavioral problems, such as becoming more aggressive, behaving illegally, or even isolating themselves.

d. Depression and Anxiety:

Children who come into conflict with the law or experience punishment, especially imprisonment, are at risk of developing depression and anxiety. This depression and anxiety can hinder cognitive and social development and lead to difficulties in forming social relationships.

⁹Interview with AKP Wigiyadi as Head of the Semarang Police Samapta Unit, April 4, 2025.

¹⁰Interview with AKP Wigiyadi as Head of the Semarang Police Samapta Unit, April 4, 2025.

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e. Social Stigma:

Criminal penalties can cause children to experience social stigma, which can hinder their opportunities for employment, education, and a normal social life.

f. Damage to Family Relationships:

Frequent or harsh punishment can damage the relationship between children and parents, cause communication breakdowns, and trigger conflict within the family.

g. Deprivation:

Prison sentences can lead to deprivation, which is the lack of opportunities to obtain basic needs such as education, health care, and social support.

The various negative impacts of criminal sanctions on children demonstrate the importance of implementing diversion for children involved in cases of violence. The provisions of Articles 5, 7, and 9 of Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System clearly state that diversion, as an effort to realize restorative justice in the investigation of cases of violence perpetrated by children, is a legally mandated obligation. However, in reality, according to AKP Wigiyadi, most parents of victims of acts of violence between children prefer to pursue legal action through the courts, so that the perpetrators, who are still children, are expected to receive the harshest possible punishment. This is especially true in cases of violence that result in death.¹¹

It is important to understand that violent crimes committed by children constitute delinquency or juvenile delinquency, which is behavior that reflects errors in educational patterns, both at home and in the community, as well as at school. This problem cannot be assessed from one aspect, but must involve many aspects, including the individual aspects of the teenager himself. Basically, the occurrence of juvenile delinquency indicates the indiscipline of adolescents towards applicable rules and norms, whether family, school, community, or self-norms as an individual, and the instillation of these norms must be given to adolescents beforehand so that they have a good understanding related to these norms. The causes of this delinquency include the result of wrong parenting patterns, a poor school environment, bad social groups, an uncondusive social and community environment, weak self-control, and adolescent emotional maturity that does not develop according to the level of adolescent developmental age.

¹¹Interview with AKP Wigiyadi as Head of the Semarang Police Samapta Unit, April 4, 2025.

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3.2. Diversion as Ijtihad in the Investigation Process of Child Crime Cases Through Restorative Justice

In relation to upholding justice for all people, law enforcement must have the primary goal of creating legal justice, in addition to legal certainty and legal benefits. Justice is the measure that must be used in treating objects, namely humans. Therefore, this measure cannot be separated from the meaning of humanity. Therefore, our morality is the object, considering us as humans, as the measure in treating others. Justice is also understood as a state of mind or attitude that questions human mentality. A person can only act justly if they possess certain mental characteristics. In other words, justice is not something that can be manipulated through logic or reasoning, but rather involves the whole person.

The concept of restorative justice in Islamic criminal law. Considered in mind ideas, including:¹²

- a. Prioritizing victim-oriented rather than solely offender-oriented approaches by involving the victim and their family in resolving criminal cases demonstrates similarities to the essence of qisas-diyat. In Islam, scholars explicitly state that rights in Islamic criminal law are divided into the rights of God and human rights. In qisasdiyat, the victim's rights are greater than the rights of God (the rights of the state/society), thus providing alternative solutions with the options of qisas, diyat, or expiation. The concept of qisas-diyat, seen in modern criminal law regulations for crime victims, falls into the category of service models.
- b. Restorative justice resolution involves non-penal channels. This effort is carried out through a peace process between the victim and the perpetrator. According to the message of Caliph Umar Ibn Khattab (Riahi al-Qadha), peace can be implemented by adhering to clear guidelines.
- c. Restorative justice achieves justice for all parties, not only realizing legal justice but also considering social justice, individual justice, and moral justice. Justice in Islam encompasses individual justice (al-adalah al-fardiyah) and social justice (al-adalah al-ijtimaiyah). Justice in Islamic law always considers morality, and is not limited to the application of legal justice.

The concept of restorative justice based on Islam essentially aims to lead to the principle of maqasid al-syariah. Viewed from the perspective of God's purpose, maqasid al-syariah contains four aspects, namely:

¹²Ila Latifa Fitriani, *Islam and Restorative Justice for Children in Conflict with the Law*, (published thesis, Faculty of Sharia and Law, Sunan Kalijaga State Islamic University, Yogyakarta), 2012, pp. 127-128.

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- a. The aim of sharia is to establish sharia, namely the welfare of mankind in this world and in the hereafter;
- b. The determination of sharia that must be understood;
- c. Determination of sharia as taklifi law that must be implemented;
- d. The establishment of sharia to bring humans under the protection of the law.

In the study of maqashid al-syariah, which assumes that every sharia revealed by Allah always contains benefits for His servants for the present (in this world) and also in the future (in the afterlife), there is not a single law of Allah that does not have a purpose because a law that does not have a purpose is the same as taklif ma la yuthaq (a legal imposition that cannot be implemented).¹³Based on the existing explanation, it can be seen that restorative justice and the principle of maqashid al-syariah have similarities, namely realizing the welfare, safety, and peace for all groups in society or in its development in the effort to realize the protection of human rights and social welfare as well as social justice for all Indonesian people, where these two ideas are realized through diversion which is an effort that can be categorized as ijti had if its implementation is also based on Islamic spiritual values.

3.3. ConstraintsIn the Investigation Process of Child Crime Cases Through Restorative Justice

The implementation of restorative justice also faces several challenges and obstacles, such as a lack of understanding and support from the community, inadequate training for legal practitioners, and a lack of clear and systematic regulations for its implementation. Similarly, the facilities and infrastructure supporting the process are limited, as outlined below:¹⁴

- a. The limitations of Special Child Development Institutions in Indonesia require that juvenile offenders are still placed in adult prisons/detention centers;
- b. Places for fostering children under 12 years of age, and special care facilities for detained children if there are no special service rooms for children under the responsibility of the Social Welfare Administration Institution (LPAS) are not yet available evenly throughout Indonesia;
- c. Replacement prisons for children aged 14-18 years are not yet available evenly throughout Indonesia;

¹³Muhammad Khalid Masud, *Philosophy of Islamic Law*, edited by Ahsin Muhammad, (Pustaka Setia, Bandung, 1996), p. 244.

¹⁴Interview with AKPWigiyadi as Head of the Semarang Police Samapta Unit, April 4, 2025.

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d. Not all police stations have 24-hour childcare facilities in the Special Children's Service Room (RPKA).

Based on the above data, it can be understood that the goal of resolving criminal acts committed by children has not been optimally implemented as stipulated in the Child Protection and Child Protection Law, due to inadequate facilities. The juvenile criminal justice system is required to be implemented at all levels; not all violations committed by children can undergo the diversion process. Efforts to address the situation of children involved in violations of the law within the framework of the juvenile justice system are carried out by referring to the provisions of criminal acts that carry a prison sentence of less than 7 years, provided that the crime is not a repeat offense. If a child who has previously committed a violation of the law breaks the law again, then the assessment of the crime committed by the child can be included in the same or a different category. However, if a child who has previously experienced diversion again commits a violation of the law, diversion can no longer be applied as a method for resolving the child's case.¹⁵

The transfer of juvenile cases outside the criminal justice process, known as diversion, is part of state policy. This is done with the best interests of the child in mind, to prevent stigmatization and avoid imprisonment. Efforts to resolve juvenile crimes through diversion are implemented to the maximum extent possible, considering that Article 13 of the SPPA Law stipulates that if the diversion process does not result in an agreement between the victim and the perpetrator of the crime or if the agreement is not implemented, the process outside the juvenile justice process will be continued into the juvenile justice process as a formality contained in the Criminal Procedure Code. Based on the various existing weaknesses, it is clear that in the existing investigation process, diversion as a legal instrument to protect children as perpetrators of violence has not been realized. This also shows that the legal process is still unable to realize child protection in terms of children's basic rights.¹⁶

The obstacles in implementing restorative justice in Semarang City in cases of violence against children are:¹⁷

a. Lack of public knowledge regarding the resolution of criminal cases through restorative justice;

¹⁵Interview with AKPWigiyadi as Head of the Semarang Police Samapta Unit, April 4, 2025.

¹⁶Interview with AKPWigiyadi as Head of the Semarang Police Samapta Unit, April 4, 2025.

¹⁷Interview with AKPWigiyadi as Head of the Semarang Police Samapta Unit, April 4, 2025.

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- b. Lack of public awareness to make peace through restorative justice in cases of minor assault;
- c. The settlement of hate speech crimes through restorative justice has not been fully and specifically regulated at the level of government regulations, both central and regional.

The theory of legal validity states that any action taken by stakeholders, implementing institutions, or lawmakers is always within the complex context of social, cultural, economic, and political forces, among others. All these social forces are at work in every effort to implement applicable regulations, implement their sanctions, and in all the activities of implementing institutions. Ultimately, the role played by legal institutions and institutions is the result of the interaction of various factors.¹⁸

4. Conclusion

The investigation process for child criminal cases through diversion or the *ijtihad* method as an effort to realize restorative justice at the Semarang City Police is not yet optimal, this is because 70 cases of violence committed by children were resolved at the Semarang City District Court in 2024. Constraint in the process of investigating child criminal cases through restorative justice at the Semarang City Police in the form of the lack of public knowledge regarding the resolution of criminal cases through restorative justice; the lack of public awareness of reconciliation through restorative justice in cases of minor assault; and the lack of comprehensive and specific regulation of the resolution of hate speech crimes through restorative justice within government regulations, both central and regional.

5. References

Journals:

- Nur Cahyanti, Budi Raharjo, dan Sri Endah Wahyuningsih, Sanksi Terhadap Notaris Yang Melakukan Tindak Pidana Menurut Peraturan Perundang-Undangan Di Indonesia, *Jurnal Akta*, Vol 5 No 1 Maret 2018
- Sri Endah Wahyuningsih, Kebijakan Penegakan Hukum Pidana Terhadap Penanggulangan Money Laundering Dalam Rangka Pembaharuan Hukum Pidana Di Indonesia, *Jurnal Pembaharuan Hukum* Volume III No. 2 Mei - Agustus 2016

¹⁸William J. Chambliss and Robert B. Seidman in Esmi Warassih, *Legal Institutions: A Sociological Study*, UNDIP Press, Semarang, 2011, p. 10.

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Books:

Ghufran M, dan H. Kordi K, 2015, *Durhaka Kepada Anak Refleksi Mengenai Hak & Perlindungan Anak*, Pustaka Baru Press, Yogyakarta

Sugiono, 2009, *Metode Penelitian Kuantitatif, Kualitatif dan R&D*, Alfabeta, Bandung

Supramono, Gatot, 2007, *Hukum Acara Pengadilan Anak*, Djambatan, Jakarta

Wahyuningsih, Sri Endah, 2013, *Prinsip-Prinsip Individualisasi Pidana Dalam Hukum Islam Dan Pembaharuan Hukum Indonesia*, UNDIP, Semarang

Warassih, Esmi, 2011, *Pranata Hukum Sebuah Telaah Sosiologis*, UNDIP Press, Semarang

Interview:

Interview with AKPWigiyadi as Head of the Semarang Police Samapta Unit, April 4, 2025

Internet:

Solopos.com, 2016, Friday 20 May 2016, 05.00 WIB: 90% anak berhadapan hukum berakhir di penjara, in <http://www.solopos.com/2016/05/20/90-anak-berhadapan-hukumberakhir-di-penjara-721069>

Pusiknas Polri, "Jumlah anak Yang Terlibat Kasus Kekerasan", https://pusiknas.polri.go.id/detail_artikel/antara_tawuran_dan_senjata_tajam#:~:text=Throughout%20the%20year%202024%2C%20Polda%20Jawa,most%20related%20to%20brawl%20actions., May 7, 2025