

Analysis Legal Criminal Accountability of Child Perpetrators in Cases of Abuse with Diversion Settlement (Decree Number 01/PenPid-Diversi/2024/PN Pdl)

Fajar Mauludi¹⁾ & Jawade Hafidz²⁾

¹⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: fajarmauludi.std@unissula.ac.id

²⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: jawadehafidz@unissula.ac.id

Abstract. *The 1945 Constitution of the Republic of Indonesia, in Article 1 paragraph (3) states that the State of Indonesia is a state of law, so that every human or community activity that is an activity of its life must be based on existing regulations and norms that apply in society. In enforcing justice, children in committing crimes cannot be equated in their handling with crimes committed by adults. Therefore, the Law on the Juvenile Criminal Justice System recognizes the existence of diversion which can reduce the punishment for juvenile criminals. The problem in this study is to determine the criminal responsibility of child perpetrators in cases of abuse with diversion settlement (determination number 01 / penpid-diversi / 2024 / pn pdl), and to determine the policy for implementing diversion in the juvenile criminal justice system as perpetrators of crimes in the upcoming criminal law reform. The research approach used in this study is through a normative legal approach using secondary data obtained through literature studies, then data analysis is carried out using qualitative descriptive analysis. Based on the results of the study, in the Decree Number 01/Penpid-Diversi/2024/Pn.Pdl, child perpetrators in their criminal responsibility are resolved through a diversion process at the prosecution level. This resolution is carried out because the child perpetrator is faced with the threat of imprisonment of less than 7 years. In accordance with applicable regulations, child perpetrators who face the threat of a criminal sentence with that duration have the right to resolve criminal cases through a diversion mechanism. Meanwhile, the diversion policy in the future is consistent in carrying out diversion efforts or diversion is a mechanism that allows children to be diverted from the social service process, prioritized, because the involvement of children in the judicial process has actually experienced a stigmatization process. The application of this mechanism at all levels of examination will greatly reduce the negative impact of children's involvement in the judicial process.*

Keywords: *Accountability, Children, Diversion, Policy*

1. Introduction

According to Law Number 35 of 2014 concerning Child Protection, a child is defined as someone who is not yet 18 years old, including a child who is still in the womb. Children themselves are an inseparable part of human survival and the sustainability of a nation and state.¹In the process of growing up, children often behave naughty, but in today's developments, juvenile delinquency often results in criminal acts that result in criminal sanctions.²One of the crimes that often occurs during the process of a child's maturation is fighting, and it is this fighting that triggers the crime of abuse.³

According to jurisprudence, abuse is intentionally causing unpleasant feelings (suffering), pain, or injury. The crime of abuse is regulated in the Criminal Code Articles 351, 353, 354, 355 and 358. The articles in the Criminal Code that regulate the crime of abuse are regulations for perpetrators of the crime of abuse, both adult perpetrators and child perpetrators.⁴

In the enforcement of justice, children committing crimes cannot be treated the same as crimes committed by adults. Therefore, the Child Criminal Justice System Law recognizes Restorative Justice and diversion which can reduce the punishment for juvenile criminals.⁵

In Indonesia, regarding Diversion in the Juvenile Criminal Justice System, it is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law) which has been in effect since July 31, 2014, replacing Law Number 3 of 1997 concerning Juvenile Courts with the aim of realizing a justice system that truly guarantees the protection of the best interests of children with the concept of Diversion.⁶

Diversion efforts have been implemented at the Pandegelang District Attorney's Office which has been determined by the Head of the Pandegelang District Court with a decree Number 01/PenPid-Diversi/2024/PN. Pdl, in the decree it is stated that it originates from the Public Prosecutor's report Number B-158/M.6.13/EKU.1/02/2024 dated February 12, 2024 regarding the request for a diversion determination in a child case, and the Diversion Minutes Number BA-01/M.6.13/EKU.1/02/2024, which stipulates the diversion agreement for the

¹Abu, Ahmadi and Supriyono, Widodo, 2012, *Psychology of Learning*, Rineka Cipta, Jakarta, p. 10.

²Maulana Hassan Wadong, 2000, *Advocacy and Child Protection Law*, PT Gramedia Widiasarana Indonesia, Jakarta, p. 56.

³Wagiati Soetedjo, 2013, *Criminal Law for Children*, Refika Adhitama, Bandung, p.11.

⁴Satjipto Rahardjo, 1983, *Problems of Law Enforcement*, Sinar Baru, Bandung, p. 24.

⁵M Nasir Djamil, 2013, *Children Are Not to be Punished*, Sinar Grafika, Jakarta, p. 35.

⁶Maidin Gultom, 2014, *Legal Protection for Children in the Juvenile Criminal Justice System in Indonesia*, Fourth Edition (Revised), Refika Aditama, Bandung, p. 5.

crime of abuse between the victim and the perpetrator at the Pandegelang Prosecutor's Office.

2. Research Methods

The approach method used by the author in compiling the journal uses the normative legal method. The research specification used in this study is the descriptive analysis type. In this study, the author emphasizes library research and primary materials in the form of applicable laws and secondary materials in the form of expert opinions, law books, journals and magazines.

The data collection technique used in this study used literature study, by collecting data from the results of reviewing library materials and secondary data including primary legal materials, secondary legal materials and tertiary legal materials. The data analysis technique in this study was carried out using qualitative data analysis, namely giving meaning and interpreting each data after being processed, it is then manifested in the form of sentences systematically to draw a conclusion about the object being studied.

3. Results And Discussion

3.1. Legal Analysis of Criminal Liability of Child Perpetrators in Criminal Cases of Abuse with Diversion Settlement (Decree Number 01/Penpid-Diversi/2024/Pn Pdl)

Criminal liability is the responsibility for crimes committed by a person. Criminal liability is basically a mechanism created by the Criminal Code to address violations of a "contrary agreement" for a particular act.⁷

Regarding accountability for criminal acts committed by children, it is also not easy to discuss, in the Child Protection Law Article 59 states:

"That the government and other state institutions are obliged and responsible to provide special protection. One of the special protections is for children in conflict with the law, both children in conflict with the law and children as victims of criminal acts."

The juvenile criminal justice system, regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), is the entire process of resolving cases of children in conflict with the law, starting from the investigation stage to the guidance stage after serving a sentence in conflict with the law, children who are victims of criminal acts and children who are witnesses to criminal acts.⁸

In the determination of case Number 01/Penpid-Diversi/2024/Pn.Pdl, the child perpetrator clearly committed violence against the victim, as a result of the

⁷Chairul Huda, 2006, From No Crime Without Fault Towards No Criminal Responsibility Without Fault, 2nd Edition, Kencana, Jakarta, p. 70.

⁸Achmad Sulchan, 2021, Criminal Procedure Law and Criminal Justice System in Procedural Practice, Unissula Press, Semarang, p. 45.

criminal act of abuse committed by the child perpetrator so that the child perpetrator is subject to Article 76C of Law of the Republic of Indonesia Number 35 of 2014 Amendment to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection.

The child perpetrator in the determination of case Number 01/Penpid-Diversi/2024/Pn.Pdl in committing violence only caused minor injuries to the victim, not serious injuries, let alone death, so that the child perpetrator can be subject to sanctions in accordance with Article 80 paragraph (1) with a maximum imprisonment of 3 (three) years 6 (six) months and/or a maximum fine of IDR 72,000,000.00 (seventy-two million rupiah). In the determination of case Number 01/Penpid-Diversi/2024/Pn.Pdl, it is stated that cases of abuse committed by child perpetrators can be resolved using the restorative justice method, namely through diversion.

In case Number 01/Penpid-Diversi/2024/Pn.Pdl, the child perpetrator can carry out diversion, because it fulfills Article 7 paragraph (2) of the UUSPPA which states that diversion can be carried out because the perpetrator is only threatened with imprisonment of less than 7 (seven) years and is not a repeat of the crime.

The crime of abuse committed by the perpetrator based on Article 76C in conjunction with Article 80 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection is only punishable by imprisonment for a maximum of 3 (three) years and 6 (six) months and/or a maximum fine of IDR 72,000,000.00 (seventy-two million rupiah), while Article 351 (1) of the Criminal Code is only punishable by imprisonment for a maximum of 2 years and 8 months or a maximum fine of IDR 4.5 million.

The child perpetrator has also just committed a crime of abuse, which means it is not a repeat crime. So the requirements for the child perpetrator to be able to carry out diversion have been met. In case Number 01/Penpid-Diversi/2024/Pn.Pdl, diversion was carried out 2 times, at the investigation level and the prosecution level, during the investigation stage, diversion failed to reach an agreement. From the results of the diversion at the prosecution level, both the parents/guardians of the child perpetrator agreed and agreed to a request for compensation of IDR 5,000,000 to the child victim. The settlement of the case of abuse by the child perpetrator to the child victim was resolved at the prosecution level with a diversion settlement.

From the results of the study above, the form of criminal responsibility of child perpetrators in cases of abuse with diversion settlement is in the form of compensation of Rp. 5,000,000. Diversion is not to eliminate the criminal responsibility of a criminal perpetrator, but a form of state protection for child perpetrators who are still minors.

3.2. Diversion Implementation Policy in the Criminal Justice System for Children as Criminal Offenders in the Upcoming Criminal Law Reform

Diversion is a mechanism that allows children to be diverted from the criminal justice process to social services, because children's involvement in the justice process can cause stigmatization. The implementation of this mechanism at all levels of examination can reduce the negative impacts that children may experience in the justice process. The investigation process for children is a critical phase that can shape the child's personality, either for the better or otherwise. Therefore, a special police unit is needed that is trained to handle crimes committed by children.

Pembatasan diversifikasi pada Pasal 7 ayat (2) Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak, patut dikemukakan penjelasan dalam Commentary Rule 11 Beijing Rules, bahwa diversifikasi khususnya ditujukan untuk the offence of non-serious nature. Namun selanjutnya dikemukakan, bahwa diversifikasi itu tidak perlu dibatasi pada kasus-kasus kecil/ringan, sehingga menjadikan diversifikasi sebagai alat/instrument penting (it need not necessarily be limited to petty cases, thus rendering diversion an important instrument). Berdasarkan hal tersebut, dalam Rancangan Undang-Undang Kitab Undang-Undang Hukum Pidana (RUUKUHP) yang sekarang telah menjadi Undang-Undang Nomor 01 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, juga diakomodir dalam Pasal 112, selain hal tersebut di dalam Undang-Undang Nomor 01 Tahun 2023 juga mengakomodir pasal mengenai setiap anak dapat dikenai tindakan yang sama dalam UU Nomor 11 Tahun 2012 Pasal 82 ayat (1) dan ayat (2), namun untuk ayat (3) dan (4) tidak dimasukkan kedalam Undang-Undang Nomor 01 Tahun 2023 sehingga Pasal 112 ayat (3) Undang-Undang Nomor 01 Tahun 2023 hanya berbunyi bahwa anak dibawah usia 14 tahun tidak dapat dijatuhi pidana hanya dapat dikenakan tindakan (pasal 69 UU No. 11 tahun 2012).⁹

Dalam hal penjatuhan pidana terdapat dua jenis pidana pokok dan pidana tambahan dimana pidana pokok dijelaskan dalam pasal 115 dan pidana tambahan dijelaskan dalam pasal 116. Sehingga dalam KUHP terbaru terdapat pidana tambahan yang terdiri atas perampasan keuntungan yang diperoleh dari Tindak Pidana/ pemenuhan kewajiban adat. Pada UU SPPA dan KUHP terbaru juga tidak tanpa celah dimana sangat menggantungkan keberhasilan diversifikasi pada persetujuan korban yang akibatnya menempatkan kepentingan terbaik bagi anak menjadi pilihan sebagaimana konsep dasar adanya UU SPPA dan KUHP. Hal tersebut secara tegas menjelaskan bahwa negara sepenuhnya menyerahkan keputusan Diversifikasi perundingan antara korban dan pelaku anak. Sepanjang terkait pemidanaan anak, KUHP tidak secara signifikan menutup celah yang ada dalam UU SPPA bahkan lebih mirip dengan adaptasi dari UU SPPA.

Berbagai faktor dipertimbangkan dalam penerapan diversifikasi untuk kasus tindak pidana penganiayaan oleh anak, di antaranya adalah sifat dan kondisi perbuatan yang dilakukan, riwayat pelanggaran sebelumnya, tingkat keterlibatan anak dalam

⁹Dessita Ameliawati, 2022, *Diversion Implementation Policy in the Juvenile Justice System as Criminal Offenders*, Semarang, Unissula Faculty of Law, p. 117.

kasus tersebut, sikap anak terhadap tindakannya, reaksi orangtua atau keluarga anak terhadap perbuatan tersebut, serta dampak yang ditimbulkan terhadap korban. Diversi diterapkan untuk mengatasi beberapa masalah, seperti kapasitas penjara yang sudah melebihi batas, kurangnya Lembaga Pemasyarakatan khusus anak di Indonesia (hanya ada 16 LPKA di Indonesia), dan kurangnya efek jera jika anak hanya dijatuhi sanksi pidana penjara.

Diversion, or diversion, is a mechanism that allows children to be diverted from the judicial process to social services. This mechanism is prioritized to reduce the stigmatization experienced by children during the judicial process. The implementation of diversion at all levels of examination can greatly reduce the negative impact of children's involvement in the judicial process. Investigation of children is an important starting point and can affect the development of a child's personality. Therefore, a special police unit is needed that is trained and able to serve and handle children professionally and empathetically. With this special unit, it is hoped that the process of investigating and handling children in conflict with the law can be carried out better, paying attention to the best interests of the child, and helping children to return to society better.

In handling cases of children in conflict with the law, investigators need to carry out their duties with great care and deep consideration. In addition to seeking opinions from various experts, investigators must also pay attention to the child's psychological and social conditions. This process aims to ensure that every step taken in the investigation is not only based on existing legal regulations, but also considers the welfare and future of the child. Thus, investigations of children must be carried out comprehensively, professionally, and with high empathy, so that they can support the process of rehabilitation and reintegration of children into society.

The Indonesian National Police considers the benefits of diversion to the community in early and rapid handling of deviant behavior committed by children. This early and rapid handling not only saves costs incurred by the local police, but also provides an opportunity for children to get proper guidance. Children involved in criminal acts will receive guidance from the police, criminal counselors, justice department officers, and schools. Furthermore, the child will follow appropriate consultation, education, or social community activity programs. If successful in completing this program, the prosecutor will not continue the charges and the action will not be recorded in the case file.¹⁰

The implementation of diversion policies for children as perpetrators of criminal acts based on the values of justice must be able to realize justice as Pancasila justice.

¹⁰Dwi Hapsari Retnaningrum, 2008, Protection of Children Who Commit Crimes (Study of Non-Litigation Settlement in Criminal Cases of Children in Banyumas, Purbalingga, Banjarnegara, Kebumen, and Cilacap Regencies), Research Report, FH UNSOED, Purwokerto, p. 59.

4. Conclusion

Based on the results of the research and discussion that have been described in chapter 3 (three), it can be concluded that the Determination Number 01/Penpid-Diversi/2024/Pn.Pdl, child perpetrators in their criminal responsibility are resolved through a diversion process at the prosecution level. This resolution is carried out because the child perpetrator is faced with the threat of imprisonment of less than 7 years. In accordance with applicable regulations, child perpetrators who face the threat of a criminal sentence with this duration have the right to resolve criminal cases through a diversion mechanism.

While the diversion policy in the future is consistent in carrying out diversion efforts or diversion is a mechanism that allows children to be diverted from the social service process, prioritized, because the involvement of children in the judicial process has actually experienced a stigmatization process. The implementation of this mechanism at all levels of examination will greatly reduce the negative impact of children's involvement in the judicial process. Child investigation is a starting point that affects the child's personality, he can be good or otherwise, therefore, there needs to be synergy between the police, prosecutors, and courts in serving and handling children.

5. References

Books:

- Abu, Ahmadi and Supriyono, Widodo, 2012, *Psychology of Learning*, Rineka Cipta, Jakarta.
- Achmad Sulchan, 2021, *Criminal Procedure Law and Criminal Justice System in Procedural Practice*, Unissula Press, Semarang.
- Chairul Huda, 2006, *From No Crime Without Fault Towards No Criminal Responsibility Without Fault*, 2nd edition, Kencana, Jakarta.
- Dessita Ameliawati, 2022, *Diversion Implementation Policy in the Juvenile Justice System as Criminal Offenders*, Semarang, Unissula Faculty of Law.
- Dwi Hapsari Retnaningrum, 2008, *Protection of Children Who Commit Crimes (Study on Non-Litigation Settlement in Criminal Cases of Children in Banyumas, Purbalingga, Banjarnegara, Kebumen, and Cilacap Regencies)*, Research Report, FH UNSOED, Purwokerto.
- M Nasir Djamil, 2013, *Children Are Not to be Punished*, Sinar Grafika, Jakarta.
- Maidin Gultom, 2014, *Legal Protection of Children in the Juvenile Criminal Justice System in Indonesia*, Fourth Edition (Revised), Refika Aditama, Bandung.
- Maulana Hassan Wadong, 2000, *Advocacy and Child Protection Law*, PT Gramedia Widiasarana Indonesia, Jakarta.
- Satjipto Rahardjo, 1983, *Problems of Law Enforcement*, Sinar Baru, Bandung.
- Wagiati Soetedjo, 2013, *Criminal Law for Children*, Refika Adhitama, Bandung.

Legislation:

Criminal Code (KUHP)

Criminal Procedure Code (KUHAP)

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

Republic of Indonesia Law Number 35 of 2014 Concerning Amendments to Law
Number 23 of 2002 Concerning Child Protection

The 1945 Constitution of the Republic of Indonesia

Journals:

Adhe Ismail A, Constitutionalism Concept in Implementation of Indonesian State
Administration, *Journal of Sovereign Law*, Vol. 4 No. 2, June 2021.

Aryani Witasari, Muhammad Sholikul Arif, Implementation of Diversion to Realize
Restorative Justice in the Juvenile Criminal Justice System, Vol. 35 No. 2,
2019.

Feri, SW, and Arpangi, Settlement Policy of Criminal Actions which are Performed
by Children through Penal Mediation, *Jurnal Daulat Hukum*, Vol. 4 No. 2,
June 2021.

Muhammad Baharuddin and Akhmad Khisni, Effectiveness of Pleidoi by The
Supreme of Criminal Murder, *Law Development Journal*, Vol. 2 No. 2,
June 2020.

Umar Ma'ruf, Anita Indah Setyaningrum, Diversion as a Form of Settlement of
Criminal Cases of Children Through the Restorative Justice Approach by
Investigators of the Central Java Regional Police, *Khaira Ummah Law
Journal*, Vol. 14 No. 3, September 2019.