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Analysis of the Application of Diversion in Child Homicide Criminal Cases Involving Children in Conflict with the Law (ABH) Viewed from Law Number 11 of 2012 on the Juvenile Criminal Justice System

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Abstract

Under Law Number 11 of 2012 on the Juvenile Criminal Justice System, diversion is defined as the transfer of a child's case from the criminal justice process to a mechanism outside the formal court system and is generally limited to offenses punishable by imprisonment of less than seven years and not involving repeat offenses. Nevertheless, the Tual District Court successfully applied diversion in a homicide case carrying a potential sentence of up to fifteen years' imprisonment. This study aims to analyze the factors enabling the application of diversion in criminal offenses punishable by imprisonment exceeding seven years. Using a normative juridical research method, the study finds that the public prosecutor's use of alternative charges—based on the offender's status as a child in conflict with the law and the absence of recidivism—provided a legal basis for diversion. The application of diversion in this case served to realize restorative justice, educate the offender regarding the consequences of the act, and facilitate the restoration of relations between the victim's family and the offender, with the victim's family's willingness being the decisive factor in the diversion process.

Keywords: Diversion, Homicide, Children in Conflict with the Law

INTRODUCTION

The condition of children in Indonesia is currently a matter of serious concern. At the beginning of 2025, a homicide involving a young boy was committed in Tual, Maluku, by five perpetrators who were also minors. The victim was assaulted by the perpetrators and ultimately killed, with one of the key pieces of evidence being a medium-sized coral stone used as a weapon. This case, in which both the victim and the perpetrators were classified as Children in Conflict with the Law (Anak yang Berhadapan dengan Hukum/ABH), is particularly compelling for academic analysis. Homicide offenses generally carry a statutory threat of imprisonment exceeding seven years, which ordinarily precludes the application of diversion. Nevertheless, in this case, the Tual District Court (Pengadilan Negeri Tual) successfully implemented diversion for all five child offenders.

The Tual District Court received the homicide case involving child perpetrators from the Tual District Prosecutor's Office, registered under Case Number 2/Pid.Sus-Anak/2025/PN Tul (https://marinews.mahkamahagung.go.id, 2025). The panel of judges examining the case decided to order the implementation of diversion for the five children in conflict with the law. This decision was not merely the result of deliberation, but was also grounded in the alternative charges filed by the Public Prosecutor. The first charge carried criminal liability under Article 80 paragraph (3) in conjunction with Article 76C of Law of the Republic of Indonesia Number 35 of 2014 on the Amendment of Law Number 23 of 2002 concerning Child Protection, while the second charge was based on Article 80 paragraph (1) in conjunction with Article 76C of the same law (hereinafter referred to as the Child Protection Law). Under the first charge, the perpetrators faced a maximum imprisonment of fifteen years, whereas under the second charge they faced a maximum imprisonment of three years and six months.

Article 1 point 7 of Law Number 11 of 2012 on the Juvenile Criminal Justice System (hereinafter referred to as the JCJS Law) defines diversion as the transfer of the settlement of a child's case from the criminal justice process to a process outside the criminal justice system. The resolution of certain criminal cases that would otherwise be formally adjudicated in court is redirected toward achieving reconciliation between the offender and the victim or the victim's family, facilitated by the police, prosecutors, judges, or community counselors, and involving both the offender's and the victim's families. Of the five objectives of diversion stipulated in Article 6 of the JCJS Law, the overarching aim is to protect children and keep them away from judicial proceedings that may adversely affect their development and further damage the mental well-being of child offenders as a result of deprivation of liberty.

Diversion cannot be implemented solely on the basis of the age of the child offender. Generally, a child (juvenile) is understood as a person below a certain age who has not yet reached adulthood and has never been married. Indonesian legislation contains varying age thresholds, reflecting differing perspectives and interpretations of lawmakers and stakeholders. These differences are influenced by considerations of psychological aspects related to a person's mental maturity (Ratomi, 2013).

Under both the Child Protection Law and the JCJS Law, individuals under the age of 18 are classified as children. This is consistent with Law Number 16 of 2019 on the Amendment of Law Number 1 of 1974 on Marriage, which sets the minimum marriageable age at 19 for both males and females, based on the assumption of sufficient mental and physical maturity. This

approach aligns with Law Number 1 of 1946 concerning the Criminal Code (the former Penal Code). Criminal acts punishable under the Criminal Code are those that contain elements of unlawfulness (Prasetyo, 2009). In other words, no individual may be subjected to criminal punishment in the absence of an unlawful element (Ali, 2015). However, Article 47 of the Criminal Code also provides that even where all elements of unlawfulness are fulfilled, there are circumstances in which a person cannot be held criminally liable, one of which is not having reached the age of 16. According to F.E.D. Kumaat in his book *Pertanggungjawaban Pidana Pelaku Anak Dibawah Umur Terhadap Pencemaran Nama Baik di Media Sosial*, Articles 45, 46, and 47 of the Criminal Code clearly indicate that children under the age of 16 are not subject to criminal punishment, except for violations of specific provisions as stipulated in Article 45 of the Criminal Code (S et al., 2023; Triwati & Kridasaksana, 2021).

Article 7 paragraph (2) of the JCJS Law stipulates additional requirements for the application of diversion in criminal cases involving children in conflict with the law, namely that the offense is punishable by imprisonment of less than seven years and does not constitute a repeat offense. The elucidation of the JCJS Law clarifies that recidivism in this context refers to any criminal offense committed by a child, whether of the same type or a different type, including offenses previously resolved through diversion. This provision implies that diversion cannot be applied to homicide cases. This raises the question of how diversion was nevertheless applied in a homicide case involving children in conflict with the law within the jurisdiction of the Tual District Court.

This case reveals a significant gap or discrepancy between statutory regulations and the actual application of diversion to criminal offenses committed by children in conflict with the law. The homicide committed by the five child offenders carried a potential sentence of up to fifteen years' imprisonment. In this case, the Public Prosecutor submitted alternative charges, thereby allowing the panel of judges to select the charge with the lowest criminal sanction as the basis for imposing legal consequences on the child offenders. The critical issue that arises is whether such an approach is legally justified under the prevailing statutory framework.

This research differs substantially from previous studies addressing diversion in the resolution of criminal cases involving children in conflict with the law. Its novelty lies in its focus on the factors that enable the application of diversion in the settlement of criminal offenses punishable by imprisonment exceeding seven years, including homicide.

Evariati Sinaga et al., in their study entitled "Pelaksanaan Diversi dalam Sistem Peradilan Anak Dikaitkan dengan Undang-Undang Nomor 11 Tahun 2012", examined the implementation of diversion for children within the Indonesian legal system and the legal protection afforded to children during the diversion process under Law Number 11 of 2012 on the Juvenile Criminal Justice System. Their study emphasized that diversion must be maximized, as investigators, judges, and public prosecutors are required to apply diversion in child cases that meet the statutory requirements, and that the legal protections stipulated in the JCJS Law must be applied absolutely (Sinaga et al., 2019).

Another study by Louisa Yesami Krisnalita, entitled "Diversi pada Tindak Pidana yang Dilakukan oleh Anak", analyzed the factors that hinder the application of diversion in criminal cases involving children. The study found that internal institutional unpreparedness, limited competence and skills of implementing personnel in pursuing diversion, and a legal culture that does not yet support the principle of diversion constitute the main obstacles to its

implementation (Krisnalita, 2019). A different focus is found in the research conducted by Muliani S. et al., entitled “Reformulasi Syarat Pelaksanaan Diversi dalam Sistem Peradilan Pidana Anak di Indonesia”, which centers on reformulating the requirements for the implementation of diversion within Indonesia’s juvenile criminal justice system (Hambali, 2019a; Nurain & Subekti, 2021; Wiyono, 2016).

In general, existing studies have concentrated on the requirements and obstacles associated with the application of diversion in resolving criminal offenses committed by children in conflict with the law. Accordingly, this research distinguishes itself by adopting a contrasting focus between *das sein* and *das sollen* in the application of diversion.

RESEARCH METHOD

The research method employed in this study is normative juridical research, which utilizes both primary and secondary legal materials. Normative legal research is understood as a method of examining statutory regulations, viewed from the perspective of the hierarchy of laws and regulations (vertical analysis) as well as the harmony and consistency among laws and regulations at the same level (horizontal analysis) (Marzuki, 2009). Normative legal research applies a normative juridical approach. This approach refers to the analysis of law as it is written and formally enacted, focusing on applicable legal norms and statutory regulations (Sunggono, 2007).

RESEARCH FINDINGS AND DISCUSSION

Within Indonesia's Juvenile Criminal Justice System, diversion is recognized as a mechanism for resolving cases involving children. As stipulated in Article 6 of the Juvenile Criminal Justice System Law (UU SPPA), the objectives of diversion are to achieve reconciliation between the victim and the child, to resolve a child's case outside the formal judicial process, to prevent the deprivation of the child's liberty, to encourage community participation, and to instill a sense of responsibility in the child. The settlement of cases through diversion is also intended to raise the child's awareness that the act committed violates legal norms and causes harm to others (Hambali, 2019b). Ultimately, however, the primary objective is to prevent children in conflict with the law (ABH) from imprisonment, thereby avoiding the stigmatization of the child as a "criminal."

Society continues to attach negative stigma to children in conflict with the law who have undergone criminal proceedings. This stigma is even more pronounced when ABH are sentenced to imprisonment, as they are highly likely to experience prisonization, namely the process of internalizing prison life patterns through learning and interaction with fellow inmates (Nurain & Subekti, 2021). Even minimal exposure may influence ABH through interaction with more mature inmates, despite their placement in special juvenile blocks. This is due to interactions among inmates that are often shaped by shared ethnicity or regional origin, the type of offense committed, or even the length of sentence served.

As a manifestation of the juvenile criminal justice system, diversion must be grounded in its guiding principles, which include (Nurain & Subekti, 2021):

a. Protection;
b. Justice;
c. Non-discrimination;
d. The best interests of the child;
e. Respect for the views of the child;
f. The child's right to survival and development;
g. Guidance and supervision of the child;
h. Proportionality;
i. Deprivation of liberty and punishment as a last resort; and
j. Avoidance of retribution.

The critical question, however, is whether diversion also fulfills the principle of justice when applied to homicide cases in which both the victim and the perpetrator are children in conflict with the law.

Pursuant to Supreme Court Regulation (PERMA) Number 4 of 2014 on Guidelines for the Implementation of Diversion in the Juvenile Justice System (hereinafter PERMA No. 4/2014), diversion deliberation is a process involving the child, parents/guardians, the victim and/or the victim's parents/guardians, community counselors, professional social workers, representatives, and other relevant parties to reach a diversion agreement through a

restorative justice approach. In such deliberations, the judge appointed by the Chief Judge of the Court acts as the facilitator. During the deliberation process, the facilitator is obliged to provide all parties with the opportunity to speak. The child offender is heard in relation to the charges, parents or guardians are given the opportunity to convey matters related to the child's conduct, including their expectations regarding case resolution, and the child victim and/or their parents or guardians are invited to express their views on the desired form of settlement.

In the case of child homicide within the jurisdiction of the Tual District Court, diversion was ultimately implemented. The public prosecutor charged the five ABH perpetrators using alternative indictments. Under the first indictment, Article 80 paragraph (3) in conjunction with Article 76C of the Child Protection Law, the perpetrators faced a maximum imprisonment of fifteen years. Under the second indictment, Article 80 paragraph (1) in conjunction with Article 76C of the same law, they faced a maximum imprisonment of three years and six months. The decision to file alternative indictments was deliberate and closely linked to the fact that the perpetrators were classified as ABH.

Article 76C stipulates that every person is prohibited from placing, allowing, committing, ordering the commission of, or participating in acts of violence against a child. The criminal sanctions for violations of this provision are set out in Article 80 paragraphs (1) through (4). The alternative indictments submitted by the prosecutor were grounded in the fact that the perpetrators were ABH and that the homicide did not constitute a repeat offense. This means that although the perpetrators could have been charged with a sentence of up to fifteen years' imprisonment, the presence of these mitigating considerations enabled the prosecutor to submit alternative charges.

In this case, the child victim died as a result of the violence, which in principle would subject the perpetrators to a maximum imprisonment of fifteen years under Article 80 paragraph (3) of the Child Protection Law. Referring to Article 3 of PERMA No. 4/2014, judges are required to pursue diversion when presented with indictments that are subsidiary, alternative, cumulative, or a combination thereof, where the child is charged with offenses punishable by imprisonment both below and above seven years. Accordingly, the prosecutor's submission of alternative indictments provided the judge with a legal basis to pursue diversion. This is also consistent with Article 5 paragraph (3) of the Juvenile Criminal Justice System Law, which mandates efforts toward diversion.

The indictment constitutes the most fundamental basis in criminal procedure, as judges examine cases based on the contents of the indictment. According to Nedeburg, although procedural boundaries may be exceeded without nullifying the examination, a judicial decision may only address events that fall within those boundaries (Hamzah, 2017). Alternative indictments consist of multiple layered charges, where each layer serves as an alternative that excludes the others. In judicial practice, alternative indictments are often referred to as mutually exclusive indictments, relative indictments, or "choice indictments" (*keuze tenlastelegging*). Under such indictments, judges may directly select the charge that is deemed most appropriate and consistent with the evidence presented at trial (Krisnalita, 2019; Ratomi, 2013).

In criminal cases involving perpetrators over the age of 21, alternative indictments are typically formulated because the public prosecutor has not yet determined with certainty which qualification or statutory provision is most appropriate to apply. They are also used to reduce the risk of acquittal, often employing the conjunction "or" between charges. Alternative indictments are generally used when different offense qualifications share similar or nearly

identical characteristics (Hambali, 2019b). This differs from the juvenile criminal justice system, which prioritizes a restorative approach. To enable diversion in cases where all elements of the offense under the Child Protection Law are fulfilled, the indictment is formulated as an alternative indictment—not because the prosecutor is uncertain about the applicable provision, but due to the obligation to pursue the most beneficial outcome for the child offender, prioritizing rehabilitation and guidance over retribution. Consequently, indictments must also provide judges with sufficient discretion to pursue case resolution through deliberation, without disregarding the rights and expectations of the child victim or the victim's parents or guardians.

The resolution of a child homicide case through diversion represents a first of its kind. Under statutory provisions, all ABH perpetrators could have been subject to a maximum imprisonment of fifteen years. However, the fact that this was the perpetrators' first offense (i.e., not a repeat offense), combined with their ages—each being between 12 and under 18 years old—constituted strong grounds for the prosecutor to submit alternative indictments, thereby enabling the judge to pursue diversion subject to the consent of the victim's family.

The success of the Tual District Court in implementing diversion in a homicide case involving ABH constitutes a notable achievement. The diversion process realized restorative justice, not only by ensuring that the perpetrators understood the consequences of their actions and refrained from repeating similar conduct, but also by emphasizing the restoration of relationships between the victim's family and the perpetrators. This approach aims to restore social harmony in a sustainable manner. Moreover, the success of this diversion process demonstrates a concerted effort by all law enforcement institutions and involved stakeholders to overcome resource constraints in supporting the implementation of diversion and restorative justice.

CONCLUSION

The Juvenile Criminal Justice System Law (UU SPPA) positions diversion as a primary mechanism for resolving cases involving children. Nevertheless, certain exceptions remain, particularly in cases such as homicide, where diversion is generally difficult to implement. In addition to its severe impact on victims and society, homicide carries a statutory threat of imprisonment exceeding seven years, which ordinarily precludes the application of diversion.

However, the success of the Tual District Court in implementing diversion in a homicide case involving children in conflict with the law aged between 12 and 18 years demonstrates that, provided the offense does not constitute a repeat offense, diversion in homicide cases may also be applied. This approach serves not only to realize restorative justice and to educate the offenders so that they understand the consequences of their actions, but also to provide space for the restoration of relationships between the victim's family and the perpetrators. Most importantly, the decisive factor in the implementation of diversion in such cases is the willingness of the victim's family.

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