

## Implementation of diversion as an alternative for resolving cases of Child Abuse

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### Abstract

Children are the nation's heirs and future successors, possessing a long life expectancy and high aspirations. When a child commits a violation or comes into conflict with the law, they deserve special treatment. Juvenile delinquency is not the same as adult crime. Addressing juvenile delinquency must be based on a proper understanding, through diversion. Legal provisions regarding diversion for children who commit crimes are outlined in several laws and regulations, government regulations, and Supreme Court regulations governing the procedures for implementing diversion for children who commit crimes. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System explains diversion, as stated in Article 1, point 7, that diversion is the transfer of juvenile case resolution from the criminal justice process to a process outside the criminal justice system. This article aims to emphasize the important role of diversion in the juvenile criminal justice system, thus necessitating development. While diversion plays a crucial role in providing legal protection for children's human rights, it also faces obstacles. These obstacles require attention for the future development of diversion. This will ensure that the resolution of juvenile criminal cases through diversion will increasingly provide justice, benefit, and legal certainty in the best interests of the child.

**Keywords:** Diversion, abuse, children

### Introduction

Children are the part that is not can separated from sustainability life man in something nation and state. Children in The Indonesian Constitution has mentioned in a way firm its existence and guaranteed his rights on sustainability live, grow and develop as well as protected from violence and everything type form discrimination that is real in physical form as stated in the provisions of paragraph (2) of Article 28B of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945 )<sup>[1]</sup>.

Children can also be said to be trustworthy at a time the gift of Almighty God who is always must always guarded and because in self child attached dignity, honor and rights as humans who must held in high esteem high. Human rights child is part from Human Rights Man (HAM) contained in in The 1945 Constitution of the Republic of Indonesia and the Convention Union Nations on Children 's Rights.

Children are the nation's generation and the relay of leadership in the future and the next generation. successor ideals nation, so that every child entitled on continuity live, grow, and develop, participate as well as entitled on protection from action violence and discrimination as well as right civil and liberty as stated in Constitution Number 23 of 2002 concerning Child Protection<sup>[2]</sup>.

The rise case children in conflict with laws that can damage system public specifically Indonesian society carried out by children under age 18 years and consequences from his actions said, a child must face to face with law. With Thus, it is necessary existence change paradigm in handling children facing each other with law, among others, which is based on the role society, government and other state institutions that are obliged and responsible For give protection special to children facing each other with law.

Children facing each other with law according to Article 1 number 2 of the Law Number 11 of 2012 concerning

System Justice Child Criminalization is children in conflict with law, children who are victims of crime criminal and children who become witness action criminal. Then it is further explained in Article 1 number 3 that a child who has 12 years old, but Not yet 18 year old who is suspected experience suffering physical, mental, and/ or loss economy caused by action criminal<sup>[3]</sup>.

Age that is still considered young growth not often involved in actions crime resulting from mischief, the consequences of this mischief which have an impact on crime can be seen from one of the cases that occurred, namely the crime of criminal child abuse. Case child abuse is one of the problem serious problems faced by Indonesian society at the moment this. Based on data from the Ministry of Women's Empowerment and Child Protection (KPPPA), the number of case violence to child Keep going increase every year. In 2022-2024 it has been recorded as many as 11,278 cases violence to children, with 4,332 cases among them is case persecution.

Child abuse often caused by various factors, such as children's social interactions, environment social, family that does not harmonious, influence social media, and the lack of supervision from parents or caregivers and the government. In addition, children who do persecution often Not yet understand consequence from action they and not yet own ability For control emotions and behavior they.

The consequences of this action are criminal consequences that ensnare the child, as regulated in the Criminal Code provisions that commit violence in both mild and severe forms. This can be seen from the case that occurred on the day. Wednesday, November 8, 2023, perhaps at 17.00 WIB at the Dormitory of SMA Negeri 2 Banda Aceh City, located in Mulia Village, Kuta Alam District, Banda Aceh City, carried out by a 16 year old suspect together with six suspects against the 15 year old victim.

The act of a bag sixth suspect suspected violate persecution to children under age in a way together as intended in Article 80 of the Law Number 35 of 2014 concerning Changes to the Law Number 23 of 2002 concerning Child Protection in conjunction with Article 170 of the Criminal Code in conjunction with the Law Number 11 of 2012 concerning System Justice Child Crime.

Based on actions crimes committed by the six suspect against the victim, Diversion is determined based on from Report Public Prosecutor dated March 6, 2024, between the Child and the victim has reach agreement diversion March 5, 2024 that based on Article 1 of the Civil Code First and Second Party Second has agree and consent For do settlement case through track peace and family as poured out in the Peace Report that was made and signed handled on Monday, March 4, 2024.

In Article 2 that Party Second with involving various element has agree fulfil desires and hopes Party First. In Article 3 that Party First has accept various efforts that have been made done Party Second as mentioned in Article 2

above and has forgive Party First as well as No will sue later day to case this. In Article 4 that Party First and Second Party Second in a way together has agree For completed in a way diversion and signing letter peace.

In handling case child abuse, system justice criminal children in Indonesia have know draft diversion as alternative settlement case. Diversion is a process of diversion case from the judicial process criminal to external processes justice criminal, with objective For give chance to child For repair self and recover connection with the victim. Implementation diversion in case child abuse in Indonesia is still face a number of challenge. One of the challenge main is lack of understanding and awareness about draft diversion and objectives its implementation. In addition, the implementation diversion is also often faced with problems lack of coordination between institution related, such as District Court, Police, and Child Protection Agency.

Following is the action data criminal child abuse in the jurisdiction of the Banda Aceh Police Department

No	Year	Case Name	Amount Case	Information
1	2019	Action Criminal Persecution	8	Diversion
2	2020	Action Criminal Persecution	10	Diversion
3	2021	Action Criminal Persecution	7	Diversion
4	2022	Action Criminal Persecution	13	Diversion
5	2023	Action Criminal Persecution	8	Diversion
6	2024	Action Criminal Persecution	4	Diversion

Data on child abuse crimes within the Banda Aceh Police jurisdiction from 2019 to 2024 demonstrates the dynamics of the diversion policy's implementation as part of the juvenile criminal justice system. In 2019, eight cases of child abuse were resolved through diversion, increasing to 10 in 2020. In 2021, this number decreased to seven cases, while in 2022, there was a significant increase, with 13 cases successfully diverted.

However, the number dropped again to 8 cases in 2023, and then dropped drastically to just 4 cases in 2024. This fluctuation indicates that the implementation of diversion in handling children in conflict with the law is not yet fully consistent. This could be due to various factors, including differences in understanding among law enforcement officials regarding the urgency of diversion, limited supporting resources such as community counselors, and community resistance to resolving cases outside the judicial system.

Thus, a comprehensive evaluation of the diversion implementation policy is needed so that the principle of the best protection for children ( *the best interest of the child* ) as mandated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System can be achieved optimally.

Following is the action data criminal child abuse in the jurisdiction of the Pidie Police

No	Year	Case Name	Number of Cases	Information
1	2019	Crime of Assault	3	Diversion
2	2020	Crime of Assault	2	Diversion
3	2021	Crime of Assault	3	Diversion
4	2022	Crime of Assault	-	Diversion
5	2023	Crime of Assault	4	Diversion
6	2024	Crime of Assault	1	Diversion

Based on data on child abuse cases within the jurisdiction of the Pidie Police Department over the past seven years, there has been a fluctuation in the number of cases resolved through diversion. In 2019, three cases of abuse were recorded as being diverted, then this number decreased to two in 2020. In 2021, the number remained the same as in 2019, with three cases. However, in 2022, there was a significant decrease, with no cases being diverted. The number of cases increased again in 2023 with four cases, then decreased drastically to only one case in 2024, and then increased slightly to two cases in 2025.

This inconsistent pattern indicates that the implementation of diversion within the jurisdiction of the Pidie Police Department still faces various challenges. The low number of diverted cases, particularly in certain years, may indicate a suboptimal implementation of the principles of restorative justice as mandated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

The inconsistency in the application of diversion indicates that the implementation of the principle of restorative justice at the sectoral police level is not yet optimal, especially in cases involving children as perpetrators. In the context of Indonesian positive law, diversion is a normative mandate as stated in Article 7 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which requires law enforcement officers to seek solutions outside of formal justice for children who commit certain crimes.

Therefore, it is necessary to conduct further studies on the variation in the number of diversions from year to year at the Pidie Police Resort within the framework of an implementation evaluation, including analysis of the structural, cultural, and normative obstacles that may be faced by law enforcement officers in realizing a just, responsive, and recovery-oriented juvenile justice system.

Factors such as a lack of understanding among law enforcement officials about the urgency of diversion, limited supporting facilities, and community attitudes toward non-litigation solutions for child offenders likely contribute to the low diversion rate in this region. Therefore, evaluative efforts and institutional capacity building are needed to ensure more effective and sustainable implementation of diversion mechanisms.

In Indonesia, the implementation of diversion in case child abuse arranged in Constitution Number 11 of 2012 concerning System Justice Child Criminal Law This emphasize importance implementation diversion as alternative settlement case abuse committed by children, with objective For give chance to child For repair self and recover connection with the victim.

Implementation diversion in case child abuse Still face a number of challenge. One of the challenge main is lack of source adequate power and infrastructure For support implementation diversion. In addition, the implementation of diversion is also often faced with problems lack of awareness and participation from public in support implementation diversion. In the context of this research about implementation diversion as alternative settlement case child abuse is very important done.

At the diversion stage, diversion fails. Deliberation, as a form of diversion in resolving criminal cases, is not always successful. Even after deliberation, an agreement is not always reached. When this occurs, diversion fails, and the juvenile's criminal case is returned to the formal criminal justice process. However, the results of the deliberation that took place as a failed diversion effort can be used by certain parties (victims or law enforcement) as evidence in subsequent criminal proceedings (if diversion fails, it is certain that the juvenile's criminal case resolution process will return to the formal criminal justice process) [4].

If an agreement is reached based on the results of the deliberation, then the diversion is considered successful. The child is held accountable for his or her deviant actions without having to be placed in a formal criminal justice process. The results of the deliberation will certainly include several agreements that must be fulfilled by the parties. The parties in question, including the perpetrator (child), the victim, the community, and other parties, must submit to, obey, and comply with the agreement as a result of the joint deliberation. However, problems arise if the parties, especially the child (perpetrator) and the victim, do not comply, fulfill, and comply with the agreement. If one party does not comply with the agreement, then the deliberation is certain to be flawed. The parties will again dispute the child's criminal case, and it has the potential to be returned to the formal criminal justice process.

Study This aim For know the implementation process diversion, factors that influence success diversion, and impact diversion towards victims and perpetrators child in case persecution. With Thus, research This expected can give contribution to development system justice criminal children in Indonesia, in particular in implementation diversion as alternative settlement case abuse committed by children. In addition, research this is also expected can give recommendation for institution related in increase implementation diversion in case child abuse.

In some year lastly, has done a number of study about implementation diversion in case child abuse. However, research the Still limited to a narrow scope and not yet give

comprehensive overview about implementation diversion in case child abuse.

Study This expected can give contribution to development system justice criminal children in Indonesia, in particular in implementation diversion as alternative settlement case child abuse. Research this is also expected can give recommendation for institution related in increase implementation diversion in case abuse committed by children, so can give more benefits big for communities and children involved in case persecution.

In research this, will done analysis about the implementation process diversion, factors that influence success diversion, and impact diversion towards victims and perpetrators child in case persecution. Research this will also give recommendation for institution related in increase implementation diversion in case abuse committed by children. With Thus, research This expected can give significant contribution to development system justice criminal children in Indonesia, in particular in implementation diversion as alternative settlement case child abuse.

Based on from description the above problem, then viewed need For done something systematic research about implementation diversion to action criminal child abuse.

### Research Methods

Research methods used juridical-empirical, namely something study with do comprehensive study with observation and interviews in a way directly on location research, for complete study this too done review in a way literature like study some legislation related the problem being researched as material secondary in study This.

Approach method done with method Where sample taken based on the abilities that concern time, place and costs. The research samples taken and the parts estimated population represent all over population consists of from respondents and informants [5].

### Results and Discussion

#### Settlement of Children Who Commit Crimes of Abuse Based on the Juvenile Criminal Justice System Law

The concept of diversion existed before 1960 in the United States and Australia. The linguistic definition of diversion is diversion. The rationale for implementing the diversion system is the desire to avoid negative impacts on children's lifestyles and development due to their involvement in the criminal justice system.

In Indonesia, diversion in the Juvenile Criminal Justice System 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 as a replacement for Law Number 3 of 1997 concerning Juvenile Courts with the aim of realizing justice that guarantees the best rights and protection for children by implementing a diversion system.

The Juvenile Criminal Justice System Law represents a reform in the criminal justice system. This is due to the discovery of more flexible case resolution compared to the formal justice system currently in place. Article 5 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System stipulates that the juvenile justice system must prioritize a restorative justice approach. This law also provides legal certainty for the resolution of criminal cases outside the courts through diversion.

Diversion as stated in the Minimum Standards Rules for the Administration of Juvenile Justice (The Beijing Rules ) as an international standard in the implementation of juvenile criminal justice are based on recommendations from the results of a meeting of UN experts regarding " Children and Juveniles in Detention: Application of Human Rights Standards ", in Vienna, Austria from 30 October to 4 November 1994, has invited all countries starting in 2000 to implement The Beijing Rules, The Riyadh Guidelines and The United Nations Rules for the Protection of Juveniles Deprived of their Liberty <sup>[6]</sup>.

Based on Article 1 Number 7 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, diversion is: "The transfer of the settlement of a child's case from the criminal justice process to a process outside the criminal justice system." Children can be said to not be able to be given criminal law considering that the child is still a minor, of course in this case the act can be resolved through non-positive legal channels but does not eliminate the child from punishment for the act he committed.

Based on Article 8 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the diversion process is: "The Diversion Process is carried out through deliberation involving the Child and his/her parents/guardians, the victim and/or his/her parents/guardians, Community Guidance Officers, and Professional Social Workers based on a Restorative Justice approach."

The implementation of diversion supports the protection process for children in conflict with the law. In accordance with the main principles of diversion, it shares a common ground: preventing perpetrators of crimes from the formal criminal justice system and providing children with the opportunity to undergo alternative sanctions without imprisonment.

### **Obstacles and Barriers Occurring in the Implementation of Diversion at the Banda Aceh District Court**

In essence, investigators want settlement case diversion in children This successful and done in a way simple without even a little bit sacrifice interests of the victim, can just perpetrator request Sorry to the victim, if Sick treated, everything form losses incurred replaced, because here it is Spirit from diversion this is the real thing, but in the field, for reach matter the no as simple as That or Can said No easy, As for the usual obstacles happen in the field among others <sup>[7]</sup>

#### **Factors**

##### **a. Family**

##### **Lack of Family Support**

Children in conflict with the law need family support for the diversion process to be successful. If the family does not provide moral, psychological, or material support, the child is likely to be unable to properly participate in the diversion process. In some cases involving children from broken homes, diversion is difficult to achieve because the lack of support from the child's family prevents the child from thinking beyond his or her own thoughts. Moral support from the family plays a crucial role in the diversion process <sup>[8]</sup>.

##### **Lack of Family Understanding about Diversion**

Some families may not understand the concept of diversion or its importance, so they refuse or are not serious about participating in the diversion process. This is due to differences in perceptions regarding the meaning of justice among the families of diversion participants, both the victim and the perpetrator. During the diversion process, there will be times when both the victim and the perpetrator feel unfair or disadvantaged by the diversion process, making it difficult to reach a common ground. Indeed, legal science teaches that while someone feels that it is fair for them, it is not necessarily fair for others <sup>[9]</sup>. There are times when families prefer formal legal proceedings (court proceedings) for various reasons, such as wanting their child to be properly processed by law as a form of punishment or deterrent.

##### **Family Economic Problems**

Families experiencing economic hardship may be unable to provide the necessary support for the diversion process, such as transportation, counseling, or rehabilitation, not to mention when the victim requests compensation. In some cases, where the family comes from a lower-middle class, or what we call poor, the perpetrator's parents will resign themselves to the situation and say, "Okay, let's just go through the legal process. I can't handle it. He's so stubborn and won't listen to what we have to say." The parents are also often indifferent. This is what we often find when handling cases, resulting in failed diversion efforts <sup>[10]</sup>.

##### **Lack of Parental Guidance**

Parents or guardians who lack competence in guiding their children or who have a harsh or ineffective parenting style can hinder successful diversion. Children who engage in violence or engage in criminal activity are often found to be the result of weak parental supervision and lack of attention.

##### **b. Relatives**

The influence of relatives on children who will be diverted for their actions also has a big impact, relatives who feel it is better for their children to be tried legally can be an obstacle to diversion, because they want the legal process to run its course so that there is a deterrent effect. Relatives who are in an unhealthy social environment (for example, groups that frequently engage in delinquency or crime) can put negative pressure on children not to participate in the diversion process.

The presence of relatives in the diversion process also reflects the social and family values inherent in Indonesian society, where problem solving is often achieved through deliberation involving the families of both parties <sup>[11]</sup>. Furthermore, the mediation process between the child perpetrator and the victim can be more effective due to the emotional bond and trust between the parties <sup>[12]</sup>

##### **Peer**

Peer factors often hinder the diversion process in juvenile cases. The negative influence of friends involved in criminal or delinquent behavior makes it difficult for children to change and participate in out-of-court counseling. Social pressure from peer groups that tend to perpetuate negative behavioral patterns can hinder children's motivation to take diversion seriously. Furthermore, a lack of positive peer support can demotivate children from pursuing self-improvement.

Unsupportive social environments, such as gangs or communities frequently involved in legal issues, also reinforce these barriers. Furthermore, the influence of social media, spread through peers, plays a role in negatively influencing children's behavior. Rivalries or conflicts within peer groups can also create emotional tension that disrupts a child's consistency in the diversion process. Thus, unfavorable peer influence is a major factor hindering successful diversion in juvenile cases.

In Banda Aceh itself, there are currently many children who have formed groups, while in Jakarta (outside Aceh) it's like gangs, now in our country it's starting to go in that direction, forming groups whose activities tend to be nighttime activities, so at night they go out, hang out, smoke, don't go home, use their cellphones for online gambling, all of that, this situation, if not addressed wisely by families and village officials or the government, will certainly become a problem or issue in the future <sup>[13]</sup>.

## External Factors

### a. Customary institutions

Customary institutions act as social mediators with the moral authority to mediate and resolve conflicts through a family-like approach <sup>[14]</sup>. Customary institutions can become a barrier to the diversion process in juvenile cases if there are differences in perspectives and procedures between the customary system and the formal legal system. Customary institutions, which still adhere to traditions and inherited rules, sometimes struggle to accept the diversion mechanisms offered by the modern juvenile justice system. Furthermore, the dominant role of customary institutions in problem-solving often creates conflicts of interest and disagreements regarding how juvenile cases are handled, thus hindering the implementation of diversion.

Some customary institutions may also prioritize social sanctions or customary fines, which are inconsistent with the goal of diversion, namely the rehabilitation and development of children without legal stigma. Lack of coordination and communication between customary institutions and the judiciary makes the diversion process ineffective and potentially confusing for children and their families. Thus, the existence of customary institutions that are less adaptable to the concept of diversion can be a major obstacle to realizing a more humane and preventative handling of child cases. In some cases, the diversion process involving customary institutions is slow, uncoordinated, and sometimes unrecognized by formal legal institutions <sup>[15]</sup>.

### b. Commission Child Protection

Commission Child Protection (KPA) can also become barrier in the diversion process in the case child if there is mismatch view or lack of coordination with other parties involved in handling cases. In some situation, KPA which has task For protect rights child Can behave too protective or put forward different approaches from mechanism diversion, so that cause overlapping overlap authority and confusion in the process of handling children. In addition, limitations source power, good from aspect personnel and budget, can hinder role active KPA in support implementation diversion optimally.

Lack of understanding or socialization about draft diversion among KPA members also have the potential cause they No maximum in facilitate the diversion process. As a result, although the KPA plays a role important in protection child,

in in practice can appear obstacles that make implementation diversion become not enough effective and potential slow down settlement case child.

## Conclusion

Diversion is a more humane and effective solution than formal justice for dealing with children in conflict with the law. As the future of this great nation, the state must choose a good and appropriate solution to resolve cases involving children so that justice is achieved. However, its implementation faces various obstacles. The main obstacles include the presence of families from the parties involved in the diversion case, both families who support the diversion process and also those who openly reject diversion, both due to legal awareness and the economic capabilities of the parties' families. Technical obstacles in reaching a peace agreement, as well as structural obstacles such as the lack of adequate legal guidelines and the lack of competence of officials and the important role of the environment.

Differing perceptions of the meaning of justice among diversion practitioners, both victims and perpetrators. During the diversion process, there will be times when both the child victim and the child perpetrator feel unfair or disadvantaged, making it difficult to reach common ground. Indeed, legal science teaches that while someone may feel fair for themselves, it may not necessarily be fair for others.

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