



RECONSTRUCTION OF ARTICLE 7 PARAGRAPH 1 LAW NUMBER 11 OF 2012 CONCERNING THE JUVENILE CRIMINAL JUSTICE SYSTEM, BASED ON THE PRINCIPLES OF CRIMINAL INDIVIDUALIZATION IN ISLAMIC LAW

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Abstract

Especially for countries that have ratified the Convention on the Rights of the Child, trying to provide the best protection for children, this is a priority that must be done. In realizing maximum child protection, it is necessary to have policies that support the realization of real protection, with the issuance of Law Number 11 of 2012, concerning the Juvenile Criminal Justice System. In article 7 paragraphs 1 and 2 of the Law on the Juvenile Criminal Justice System, article 7 (1) At the level of investigation, prosecution and examination of children's cases in district courts, diversion must be attempted. (2) Diversion as referred to in paragraph (1) is carried out in cases of crimes The crime committed: (a) is punishable by imprisonment for less than 7 (seven) years and (b) is not a repetition of the crime. This research aims to examine and analyze the form of legal construction of the Juvenile Criminal Justice System specifically for implementing diversion for victims with charges less than 7 years old. The research method uses a statutory approach, a case approach, a comparative approach to the number of cases by reviewing and analyzing legislation, journals, cases, data and direct interviews. The results of the research found that the implementation of the legal construction of the Juvenile Criminal Justice System (1) cases of children are increasing (2) Implementation of Diversion is carried out from investigation to court, many are still carried out at a higher level (3) have an understanding that the word mandatory diversion is attempted, has the meaning that it can be carried out at various levels so that diversion occurs at several levels, and often occurs at the court level.

Keywords: Article 7 paragraph 1, Interests, Child cases.



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INTRODUCTION

Children are a trust and gift from Almighty God, in whom the honor and dignity of being a complete human being is inherent. Children are the shoots, potential, and successors of the young generation to the nation's ideals, have a strategic role and have special characteristics and characteristics that guarantee the continued existence of the nation and state in the future. In order for children to be able to bear these responsibilities in the future, they need to have the widest possible opportunities to grow and develop optimally, both physically, mentally and socially and have noble morals, it is necessary to protect and realize children's welfare by providing guarantees for the fulfillment of their rights. their rights, to realize the protection and welfare of children, it is necessary to have policies that support this.

The Government's efforts to protect children's rights have issued Law number 23 of 2002, in this law which is divided into articles generally recognizing children's rights as stated in the Convention on the Rights of the Child. This law has been amended by Law 35 of 2014, in this Law there is an emphasis on the role of Regional Government and the Community, increased punishment for perpetrators of violence against children, and the rights of children as victims to be able to apply for restitution (compensation). in accordance with article 71 D of Law Number 35 of 2014, concerning Amendments to Law Number 23 of 2002, concerning Child Protection.

To increase punishment for cases of sexual violence, Law Number 17 of 2016 has also been issued concerning the stipulation of Regulations in Lieu of Law Number 1 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning Child Protection, while for handling cases of children who dealing with the law, the Government has issued Law Number 11 of 2012, concerning the Juvenile Criminal Justice System.

Currently, children's problems are increasingly diverse, including abandoned children, street children, children with special needs, children in conflict with the law, children who are victims of violence either by adults or by children, or in other words children as perpetrators or children as victim.

The legal basis for resolving this problem is Law Number 11 of 2012, this Law was issued with the aim of realizing justice that truly guarantees the best protection for children in conflict with the law, and is stated in several articles regarding diversion; Article 5: (1) The juvenile criminal justice system must prioritize a restorative justice approach. (2) The Juvenile Criminal Justice System as intended in paragraph (1) includes; a. Investigations and criminal prosecution of children are carried out in accordance with the provisions of statutory regulations, unless otherwise specified in this law. b. Trials conducted by courts

within the general justice environment, and c. Guidance, mentoring, supervision and/or assistance during the criminal or action execution process. (3) in the juvenile justice system as intended in paragraph (2) letters a and b, diversion must be attempted

Article 7: (1) At the level of investigation, prosecution and examination of children's cases in the district court, diversion must be attempted. (2) Diversion as referred to in paragraph (1) is carried out in the event that a criminal offense is committed: (a) is punishable by imprisonment under 7(seven) years and (b) is not a repeat crime. Article 29: (1) Investigators are obliged to attempt diversion no later than 7 (seven) days after the investigation begins. In the articles mentioned above, the sentence "diversion must be attempted" is stated, whether diversion has been carried out for children under 7 years of age, and whether the children have been protected.

From the question above, I would like to explain whether cases in the Cirebon area are increasing, and cases with charges under 7 years old are being resolved by diversion, and whether the sentence stated in the mandatory effort in Law Number 11 of 2012 is sufficient to carry out diversion, and How does it relate to Islamic teachings?

METHOD

The research paradigm, which uses the constructivist paradigm, this type of research uses empirical normative legal research, with empirical normative, will examine written regulations by adding legal events or experiences in society, using a statutory approach, a case approach, journals, cases, data and direct interviews.

RESULTS AND DISCUSSION

Understanding Children

In the Al-Qurān, there are many explanations regarding the position of children which are closely related to the interactions of their parents. Among them:

1. Children as nature, Fiṭrah has the meaning: innate characteristics from birth, creation, religion, sunnah and in a state according to nature. And the Word of Allāh in QS. Al-Rūm [30]: 30, So turn your face straight towards the religion of Allāh; (remain on) the nature of Allah who has created humans according to that nature. there is no change in the nature of Allah. (That is) straight religion; but most people do not know that the Koran links fiṭrah and the human soul with the nature of the Islamic religion. both come from Allah. It is Allah who created the human heart to regulate it, move it, and treat its

pain and straighten it out of deviations. Fitrah itself is a potential that can be developed through the role of the environment, whether family, school or community. Thus, parents should educate their children so that they are always in the fitrah of Allah.

2. Children as *ataya*, *Ataya* has many meanings after undergoing a change in form. including: giving, making things easier, coming). Linked to the position of children, children are a gift bestowed by Allah. This information can be found in QS. Al-A'rāf: 190, when Allāh gives both of them a perfect child, then both of them become partners with Allah in the child He has bestowed on both of them. So Allah is exalted above what they associate with each other
3. Children as *zuriyyah*; Word of Allah SWT. QS. Al-Nisā verse 9: and let those who fear Allāh leave behind them weak children, whose (welfare) they fear. Therefore, let them fear Allah and let them speak the right words. Word of Allah SWT. QS. Al-Ahqāf : 15: We command humans to do good to both parents, whose mothers conceived them with difficulty, and gave birth to them with difficulty (also). carrying her until weaning her is thirty months, so that when she is an adult and reaches forty years of age she prays: "O my Lord, guide me to be grateful for Your blessings which You have given me and my parents and so that I can do good deeds that You are pleased; give kindness to me by (giving kindness) to my children and grandchildren. Indeed, I repent to You and indeed I am one of those who surrender
4. Children as *zīnah*. According to Munawwir, the position of children is like a living decoration for their parents. Because the word *zuyyinah* linguistically means to decorate or beautify. In this context the Al-Qurān aligns the position of children below women and above wealth, as something that humans tend to do in their nature. Allah's Word in QS. Āli-Imrān 14, made beautiful in (the view of) humans the love of what is desired, namely: women, children, large amounts of wealth in the form of gold, silver, chosen horses, livestock and rice fields. That is the joy of life in this world, and with Allah is a good place to return to (heaven).
5. Children as *slander*, Askar, stated, children as *slander* which has many meanings including: trials, reinforcements, torture, madness, going astray, illness, wealth and children, disagreements. Askar, In other words, these three letters can also form words that have other meanings, including: charming, attractive, seductive, persuading, slanderous, infatuated, things/circumstances, kinds, thieves, devils, gold-silver, disgrace, commotion, madness, etc. Based on this information, everything that captivates and attracts human hearts to the point of infatuation, if done

excessively, can invite trials, torture or other bad conditions. Sayyid Qutb stated that slander or trials are not only caused by difficulties, misery and the like. However, slander can also take the form of prosperity and wealth. Including prosperity and pleasure are children. As Allah says in QS. Al-Anfāl: 28. And know that your wealth and that of your children is only a trial and that with Allah there is a great reward. The position of a child as a slander means that the parents who are entrusted with raising and educating the child are tested to see how far they can be patient and responsible in carrying out the mandate from Allah, the Creator. This responsibility does not just concern the present, but also involves the future.

6. Children as a trust, Trust means: guide, honest/trustworthy, safe, peaceful, trusting, amen (reading after prayer), reassuring, secure, someone who trusts everyone, peace of mind, everything that Allah commands to his servants. His, mandate/entrustment. Allah's Word in QS. Al-Nisā: 9, and fear Allah those who leave behind them weak children, whom they fear for their (welfare). Therefore, let them fear Allah and let them speak the right words. The verse above gives a strong touch to someone's heart. Namely touching the hiding place of parents' instinctive love for weak children, and fear of Allah, the All-Calculating and All-Watching. This situation of children as a trust invites parents to accept, treat and take care of their children as a gift or mandate from God. In other words: the child appears in his role as a gift or mandate from God, and parents should recognize and accept and uphold their child's role like that.
7. Children as complaints, Aduwan which has various meanings including: enemy, enmity, antagonizing, persecuting, transgressing boundaries, distancing, mutual hostility, hatred, hatred, dispute, etc. Information about children as 'aduwān can be found in QS. Al-Tagābun: 14, O believers, indeed, among your wives and your children there are those who are enemies to you. So be careful of them and if you forgive and do not scold and forgive (them) then indeed Allah is Forgiving, Most Merciful

Convention on the Rights of the Child

Contained in the Convention on the Rights of the Child, the definition of a child is: A child as a human being, anyone under 18 years of age, unless otherwise determined by the law of the country concerned.

1. Law Number 39 of 1999, concerning Human Rights, a child is anyone aged 18 (eighteen) years and unmarried, including unborn children if this is in their interests.

2. Law Number 35 of 2014. The definition of a child contained in this Law: A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb
3. Law Number 11 of 2012
 - a. Article 1 paragraph 2, Children in conflict with the law are children who are in conflict with the law, children who are victims of criminal acts and children who are witnesses to criminal acts.
 - b. Article 1 paragraph 3, Children who are in conflict with the law, hereinafter referred to as children, are children who are 12 years old but not yet 18 years old who are suspected of committing a criminal act.
 - c. Article 1 paragraph 7, Diversion is the transfer of resolution of children's cases from the criminal justice process to a process outside criminal justice.
 - d. Article 1 paragraph 6, Restorative justice is the resolution of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim and other related parties to jointly seek a fair solution by emphasizing restoration to the original condition and not retaliation
 - e. The purpose of diversion, as stated in article 6:
 - Achieve peace between victims and children
 - Resolving children's cases outside the judicial process
 - Prevent children from deprivation of liberty
 - Encourage the public to participate
 - Instill a sense of responsibility in children
4. Law Number 35 of 2014. In this Law, it is stated in article 1 paragraph 1, a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb.

From the definitions above, it can be concluded that a child is someone who is not yet 18 years old, including in the womb and unmarried, children need guidance and direction, need education and teaching both formal and non-formal, if they encounter a legal case, children are treated differently from adults.

Definition of Protection

Protection for children is mandatory because children are inseparable from humans. There are several opinions about protection, including:

1. Human Rights Law Number 39 of 1999, in: article 3: Paragraph 1: every person is born free with equal and equal human dignity and is gifted with reason and conscience to live in society, nation and state in the spirit of brotherhood. Paragraph 2: everyone has the right to recognition, guarantees, protection and treatment before the law. Article 5: paragraph 3,: every person

who is a vulnerable group of people. In article 5, children are a vulnerable group.

2. Legal protection: According to Cst Kansil Legal protection, is a legal effort that must be provided by law enforcement officials to provide a sense of security, both mentally and physically from interference and various threats from any party.
3. Protection as stated in Law 35 of 2014. In the Law in article 1 paragraph 2, Child protection: is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate, in an optimally in accordance with human dignity, as well as receiving protection from violence and discrimination.

From several opinions above, protection is: all activities to guarantee and protect children to obtain their rights so that they can live, grow, develop and participate, optimally in accordance with human dignity, and receive protection from violence and discrimination.

Legal Basis

The basis for child protection, in accordance with existing legislation in Indonesia, includes:

1. The 1945 Constitution of the Republic of Indonesia.
2. Law Number 39 of 1999, concerning Human Rights,
3. Law Number 11 of 2012 concerning the Juvenile Justice System
4. Child Protection Law Number 35 of 2014
5. Law Number 17 of 2016, concerning the stipulation of PERPU 1 of 2016, concerning the second amendment to Law number 23 of 2002 concerning Child Protection into Law

Study and Impact of Article 7 paragraph 1

As stated in Article 7, paragraphs 1 and 2, Law on the Juvenile Criminal Justice System, article 7 (1) At the level of investigation, prosecution and examination of children's cases in district courts, diversion (2) Diversion as referred to in paragraph (1) must be sought.) is carried out in the event that the criminal act committed: (a) is punishable by imprisonment for less than 7 (seven) years and (b) is not a repetition of the criminal act.

From the sentences contained in the article above, there is the sentence "must strive for diversion". Must strive for has the meaning:

1. It is permissible to do and not to do diversion.
2. Does the implementation of diversion for children aged 7 years fulfill justice?

Discussion:

The first meaning is "Diversion can be done and may not be done"

Definition of Words:

- a) Mandatory
- b) attempted

Definition of the word mandatory according to several sources

a. Mandatory word

Mandatory, according to Arabic, is a legal status for an activity in the Islamic world. Activities that have mandatory legal status must be carried out by those who fulfill the mandatory requirements. If this activity is carried out, the perpetrator will be rewarded with goodness (reward), whereas if it is abandoned it will make those who abandon it a sin

b. Mandatory:

The meaning of the word obligatory, according to the Big Indonesian Dictionary, must be done, must not be carried out (abandoned), for example: a Muslim is obliged to pray five times a day and night

It should be: must be. Example: if we want to be successful in business, we must make efforts

The definition of the word is attempted according to several sources:

1. The word attempted (at+attempted+attempted)

- a. Passive form of strive
- b. Effort, consisting of the words: di, effort, right

In: prefix

Effort: effort, endeavor (to achieve a goal, solve a problem, find a way out and so on)

- c. Words in Indonesian that are given the prefix di and the ending kan. The prefix di has several meanings, from several definitions the word di is the passive form of the word me

2. Strive in the Big Indonesian Dictionary, comes from the word Effort is effort, effort (to achieve a goal, solve a problem, find a way out, etc.) try v try; make an effort, do something to find a way out (solution, etc.)

3. The word strives, sourced from APAARTI.COM, has 1 meaning. Strive comes from the root word effort. Meng basic effort. Trying has meaning in a verb or verb so that trying can express an action, existence, experience, or other dynamic meaning

Legal reconstruction of Article 7 Paragraph 1 and in accordance with the principles of Islamic law

Children with various predicates, Children as fitrah, Children as ataya, Children as *zuriyyah*, Children as *zīnah*, Children as slander, Children as trust, children as future heirs, children as vulnerable human beings, of all the predicates they bear, that children must be protected, in accordance with what is stated in the principles of Criminal Individualization in Islamic Law, listed.

The principle of criminal responsibility based on fault is also reflected in the provision that according to Islamic law criminal responsibility can be removed for 2 reasons, namely:

1. Matters related to the action (justifying reasons)
What is included in the reasons for eliminating criminal offenses related to actions according to A. Hanafi are:
 - a. False defense
 - b. Teaching
 - c. Treatment
 - d. Sports games
 - e. Elimination of guarantees for the safety of life and property
 - f. Using authority and carrying out obligations for the authorities (carrying out office orders)
2. Those related to the person's personal condition (reasons for forgiveness) are included as reasons for expunging the crime because things related to the person's condition (reasons for forgiveness) include:
 - a. Forced
 - b. Drunk
 - c. Crazy
 - d. Not yet mature

The actions committed by the maker are actually a criminal act and should be punished, however, Islamic law eliminates criminal sanctions due to the condition of the maker at the time of committing the crime.

The reason for the abolition is also stated in the hadith, according to what is stated in the Principles of Criminal Individualization in Islamic Law, as follows: the sins of the following three people are forgiven: a crazy person until he is sane, a sleeping person until he wakes up, and a small child until he dreams of having sex (hadith History of Ahmad, Abu Daud, and At Tirmidhi) Next: Abdurrahman I. Doi, said: that a child will not be subject to hadd punishment because of the crime he committed. Because there is no legal responsibility for a child of any age until they reach puberty. Godhi (judge) will only retain the right

to reprimand him for his mistakes or set some restrictions for him that will help correct him and stop him from making mistakes again in the future

The same thing was conveyed by Abu Zaid Al Qayrawani, saying that there would still be no hadd law for small children, even in the case of false accusations of adultery (Qadzaf) or in fact the child himself did it. From several opinions above, it states that if a person If a child commits a criminal act, he cannot be held accountable for his actions, but if the judge deems it necessary, he can still impose lighter sanctions.

From the description above, it is reflected that diversion is carried out with the condition that both parties accept it. And it is carried out for the benefit of various parties, especially children, children as victims and children as perpetrators. By diversion all parties related to the case, it is hoped that there will be no resentment and will accept the results of the diversion agreement. With consideration of the best interests of the child, all will receive the results of diversion, and justice will be fulfilled.

So "article 7 (1) At the level of investigation, prosecution and examination of children's cases. From Islamic law studies, it is stated that if a child commits a criminal act, then his actions cannot be held responsible, and if the judge needs to give sanctions, then a light sanction will be given.

With the sentence: must make efforts, with 2 meanings as explained above, and the view from Islamic law then:

It is proposed that the district court must carry out diversion. (2) Diversion as intended in paragraph (1) is carried out in the event that the criminal act committed: (a) is punishable by imprisonment for less than 7 (seven) years and (b) is not a repetition of the criminal act. By changing the sentence above, the impact will be:

1. The child's case will be resolved quickly, it will not have a wider impact on the child's psychology, the child will be the victim, it will be easier for the child to recover what he or she has done.
2. Felt after the incident, because the reporting process at the police did not take long, and no more discussion was heard about him and his case.
3. Children as perpetrators, children will feel embarrassed because many people are monitoring them, sanctions are given as a consequence and responsibility must be borne for committing deviations.
4. Children as perpetrators must make a statement that they will not carry out activities that are in conflict with the law. If there is a repetition, even though the case is not the same, then the diversion process will be canceled.

5. Family, will reduce resentment between the victim's family and the perpetrator's family, the family will monitor and guide their children.
6. The community participates in monitoring and developing children around them so that similar things do not happen
7. Officers will add to the monitoring network, and their duties will be assisted by the network team.
8. There will be more and more companions in rehabilitation, because families who have cases must be accompanied before the perpetrator or victim recovers.
9. Prisons for children: do not require a large space for children's prisons, because children under 7 years old are required to be diverted, food and drink and other facilities will be reduced, guidance will be handed over to the family, the impact is that the budget spent by the Government will be more efficient.

CONCLUSION

From the discussion above, it can be concluded as follows:

Cases of children in conflict with the law, especially in the Cirebon area, are increasing, this is in accordance with reports compiled by the Cirebon Cares for Children of the Nation Foundation, from cases prosecuted under 7 years old, diversion is carried out but diversion is carried out at various levels, starting from investigations, police, prosecutor's office, court

Islamic law considers that if a child commits a criminal act, he cannot be held responsible for his actions, however, if the judge deems it necessary, he can still impose lighter sanctions.

What is stated in Article 7 paragraph (1) is that investigators must make efforts to divert and strengthen it also with Article 29, within a maximum period of 7 (seven) days after the investigation begins, there are still things that have not been carried out, and carried out to a higher level. tall. With the mandatory sentence that diversion is attempted, there is still a gap for diversion not to be carried out.

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