

The Implementation of Diversion for Juvenile Offenders in Indonesia on Fiqh Jinayah Perspective

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Abstract: This study examines the implementation of diversion for juvenile offenders from the perspective of *fiqh jinayah*. Diversion is a mechanism for resolving juvenile criminal cases by transferring the settlement process from the formal criminal justice system to alternative processes outside the court system. The increasing number of children involved in criminal offenses necessitates special attention regarding their criminal responsibility. This research employed a qualitative method with a sociological approach. Data were collected through interviews with law enforcement officers and social institutions, as well as through the examination of legal documents and relevant scholarly articles. The findings indicate that the implementation of diversion is consistent with the concept of criminal responsibility for children in *fiqh jinayah*. However, its implementation has not yet been optimal. This is reflected in the relatively low rate of case resolution through diversion mechanisms. The limited effectiveness of diversion is influenced by several factors, including the low level of public understanding, the unequal availability of facilities and infrastructure such as LPKA, LPKS, and Rehabilitation Centers, as well as the insufficient understanding of diversion among law enforcement officials. Therefore, comprehensive evaluation and public education across various sectors are necessary to enhance understanding and improve the success rate of diversion implementation.

Abstrak: Penelitian ini mengkaji tentang penerapan diversifikasi terhadap anak pelaku tindak pidana dari perspektif *fiqh jinayah*. Diversifikasi merupakan mekanisme penyelesaian perkara anak dari proses peradilan pidana ke proses di luar peradilan pidana. Tingginya kasus anak sebagai pelaku tindak pidana menuntut adanya perhatian khusus mengenai pertanggungjawaban pidana terhadap anak tersebut. Metode penelitian yang digunakan adalah kualitatif dengan pendekatan sosiologis. Pengumpulan data dilakukan melalui wawancara dengan aparat penegak hukum dan lembaga sosial serta penelaahan dokumen hukum dan artikel yang relevan. Hasil penelitian menunjukkan bahwasannya penerapan diversifikasi selaras dengan konsep pertanggungjawaban pidana terhadap anak dalam *fiqh jinayah*. Namun, implementasinya belum optimal. Hal ini terlihat dari masih rendahnya tingkat penyelesaian kasus melalui diversifikasi. Rendahnya efektivitas diversifikasi ini dipengaruhi oleh rendahnya pemahaman masyarakat, belum meratanya fasilitas sarana dan pra-sarana seperti LPKA, LPKS, dan Pusat Rehabilitasi, dan juga pemahaman aparat penegak hukum yang belum matang. Oleh karena itu, perlu adanya evaluasi dan edukasi secara menyeluruh dari berbagai sektor guna meningkatkan pemahaman dan tingkat keberhasilan diversifikasi.

Keywords: *Diversion, Juvenile, Offenders, Fiqh Jinayah*

Introduction

Children constitute a strategic group in national development due to their position as the next generation that will determine the quality of future human resources. In their developmental stage, where physical and psychological maturity has not yet been fully attained, children require special and comprehensive legal protection. Unfavorable social interactions may potentially encourage children to engage in deviant behavior which, in certain contexts, is classified as a criminal offense. The Ministry of Immigration and Corrections of the Republic of Indonesia recorded that, as of mid-2025, there were 2,018 cases involving children in conflict with the law. Of this number, 449 children were detained and undergoing judicial proceedings, while 1,569 children were serving sentences as juvenile inmates. The high number of such cases demands serious attention and appropriate handling (Afini, 2025).

Therefore, the juvenile criminal justice system in Indonesia is designed differently from the adult criminal justice system by emphasizing the principles of protection, guidance, and rehabilitation, while prioritizing the best interests of the child, as regulated under positive law through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (Politis et al., 2025). Diversion, as a case resolution mechanism stipulated in the law, constitutes a form of settlement outside the formal judicial process involving cross-sectoral collaboration. It aims to prevent negative stigmatization, restore social relationships, and ensure the continuity of a child's growth and development. This mechanism is intended to create an inclusive environment and a compassionate justice system, so that children are not alienated from their social environment and are able to continue their lives as normal (Purba et al., 2025).

Fundamentally, Islamic law does not explicitly recognize the mechanism of diversion. However, through *fiqh jināyah*, Islam acknowledges the concept of criminal responsibility for children. This concept is based on the principle of *ahliyyah al-adā'* (legal capacity), which requires the presence of reason and maturity (*baligh*) as the basis for criminal liability. Children who have not yet reached the age of maturity are considered not to possess the full capacity to understand the consequences of their actions; therefore, they cannot be subjected to criminal sanctions of a *hudūd* or *qisās* nature. Consequently, the form of liability that may be imposed upon children is *ta'zīr ta'dībī*, namely corrective and educational punishment intended to guide and reform behavior rather than to impose repressive sanctions (Janah, 2020).

This demonstrates that both the state and religion have established mechanisms for addressing criminal acts committed by children by prioritizing the best interests of the child. Nevertheless, despite the existence of a strong legal foundation, the implementation of diversion in Indonesia remains far from optimal and continues to face numerous challenges. The lack of effective cross-sectoral collaboration has become one of the primary factors contributing to the low success rate of diversion in Indonesia. Comprehensive efforts are therefore required, including evaluation and education directed toward law enforcement officials, social institutions, families, schools, and the wider community, so that a proper understanding of diversion may be effectively internalized and implemented as intended.

Based on the background described above, this paper aims to examine and answer the following issues: how is the implementation of diversion for juvenile offenders in Indonesia from the perspective of *fiqh jināyah*? Furthermore, what challenges are faced by law enforcement officials and social institutions in the implementation of diversion?

Literature Review

Diversion

The concept of diversion in the juvenile justice system originated from the establishment of juvenile courts in the nineteenth century, which aimed to distinguish the legal treatment of children from the adult criminal justice system. This idea emerged as a response to the need to protect children from the negative impacts of repressive and stigmatizing criminal proceedings (Djamil, 2015). The primary principle of diversion emphasizes a persuasive and non-penal approach by providing children with the opportunity to rectify their mistakes through mechanisms outside the formal criminal justice system. Such an approach places rehabilitation and guidance as the main objectives rather than mere punishment (Muladi, 1995). Furthermore, juvenile justice essentially serves as an instrument for realizing child welfare-oriented justice. Therefore, its implementation should avoid, as much as possible, the application of punitive criminal sanctions (Adi, 2014).

Juvenile Offenders

Children in conflict with the law, or child offenders, are defined as children who have reached the age of 12 (twelve) years but are not yet 18 (eighteen) years old and are alleged to have committed a criminal offense. In the context of Islamic law, however, no specific numerical age limit is explicitly mentioned in either the Qur'an or the Hadith. Instead, Islam determines the status of childhood based on signs of maturity (*baligh*) and the capacity to bear legal responsibility (*taklif*) under Islamic law (Hanifah et al., 2025). The discussion concerning diversion and juvenile criminal responsibility demonstrates that both positive law and Islamic law emphasize the importance of protecting children and prioritizing rehabilitation over retributive punishment. Nevertheless, the practical implementation of diversion in Indonesia continues to face various obstacles, particularly in relation to institutional coordination, public understanding, and the readiness of supporting facilities. Accordingly, this research is important to examine the implementation of diversion for juvenile offenders from the perspective of *fiqh jināyah*, as well as to analyze the challenges encountered by law enforcement officials and social institutions in its application.

Method

This study employed a qualitative method with a sociological approach, whereby law is understood not merely as written norms, but also as a practice operating within social life. The sources of research data consisted of both primary and secondary data. Primary data were obtained through direct information gathering through interviews and observations. Semi-structured interviews were conducted with law enforcement officials involved in handling juvenile cases, namely investigators from the Women and Children Protection Unit of Cirebon City Police Resort, prosecutors at the Cirebon District Attorney's Office, and Class I Parole and Probation Office of Cirebon. Secondary data were obtained from statutory regulations, institutional documents, accredited scientific articles, as well as relevant archives and news reports. Data analysis employed the interactive model developed by Matthew B. Miles and A. Michael Huberman, which includes the stages of data reduction, data presentation, and conclusion drawing. To ensure the validity of the findings, this study applied triangulation of both data sources and data collection techniques.

Results and Discussion

The Implementation of Diversion for Juvenile Offenders in Indonesia

The provisions regarding diversion are stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In its implementation, diversion is required to adopt a restorative justice approach, as mandated by Article 5 paragraph (1) of the Juvenile Criminal Justice System

Law (*UU SPPA*). Restorative justice refers to the settlement of criminal cases by involving the offender, the victim, the families of both parties, and other related parties in order to collectively seek a fair resolution by emphasizing restoration to the original condition rather than retaliation. Fundamentally, the concept of diversion through a restorative justice approach emerged as a form of criticism toward dissatisfaction with the conventional criminal justice system. A criminal justice system oriented toward retributive justice primarily emphasizes punishment of offenders as a form of retaliation or deterrence to prevent future criminal acts. Such a system is considered incapable of facilitating the active participation of parties directly involved in the conflict, as the resolution process focuses solely on the relationship between the state as prosecutor and the offender as the accused party. Consequently, the position of victims and the role of the surrounding community tend to be neglected (Amalin & Widjajanti, 2025).

Special protection for children in conflict with the law is also regulated under Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 on Child Protection. Article 59 paragraph (2) mandates that special protection shall be provided to children, including children in conflict with the law. This provision emphasizes the necessity of implementing special protective measures for children involved in legal conflicts to ensure that they do not experience fear or trauma during the law enforcement process involving them.

The requirements for diversion are regulated under Article 7 paragraph (2) of Law Number 11 of 2012, namely: the offense must carry a penalty of imprisonment of less than seven years and must not constitute a repeat offense (*recidivism*). This serves as a concrete limitation indicating that not all criminal offenses committed by children may be resolved through diversion. Furthermore, the stigma suggesting that “children are immune from the law” is inaccurate. In principle, children must still be held accountable for their actions, albeit through mechanisms different from those applied to adults in general. In the context of children in conflict with the law, children generally do not commit unlawful acts or criminal offenses without underlying reasons motivating such behavior. Juvenile delinquency may be understood as behavior leading to social pathological symptoms among adolescents, caused by social neglect that encourages conduct deviating from societal norms (Kartono, 2009).

In line with this perspective, criminological studies suggest that unlawful behavior among children and adolescents is influenced by social and environmental factors, including (Pertiwi & Andaryuni, 2024): *Family Disharmony, Association With Peers Engaging In Deviant Behavior, Traumatic Experiences Such As Bullying And Violence Within Educational Environments, Exposure To Media Portraying Deviant Conduct, Family Economic Factors And Adverse Social Environmental Conditions*. This phenomenon demonstrates that diversion constitutes a concrete solution for addressing cases involving children in conflict with the law, as it emphasizes restorative settlement rather than retaliation and involves not only law enforcement officials, but also the participation of all members of society surrounding the child.

According to Prof. Subekti, the ultimate purpose of law is essentially to serve the objectives of the state, namely achieving public welfare, justice, and happiness for all citizens (Subekti, 1955). Thus, the purpose of law is not solely directed toward achieving justice, but also toward creating a balance between the demands of legal certainty and the values of justice itself (Artadi, 2007). In implementing diversion for juvenile offenders, all law enforcement officials, including police officers, prosecutors, and judges, refer to the special provisions stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (*UU SPPA*). As mandated under Article 7 paragraph (1) of the law, diversion efforts must be pursued at every stage of examination, including investigation, prosecution, and court proceedings.

Law enforcement officials authorized to conduct diversion must be individuals who possess experience as investigators, prosecutors, or judges, demonstrate interest, attention, and dedication toward children’s issues, and have participated in technical training concerning juvenile justice (Sugama et al., 2024). In conducting investigations involving children suspected of committing

criminal offenses, investigators are required to seek recommendations or considerations from Balai Pemasyarakatan (Bapas) in preparing a social inquiry report (litmas), as mandated by Article 64 paragraph (1) of the Criminal Justice System of Children in Law. This report serves as the basis for investigators in determining whether a case is suitable for diversion. In addition, the social inquiry report functions to ensure the protection of children's rights throughout the legal process.

Despite the detailed and concrete regulations concerning diversion, the success rate of diversion remains relatively low. For example, in Cirebon City, data obtained from the Class I Parole and Probation Office of Cirebon recorded 294 cases involving children in conflict with the law in 2024. Meanwhile, in 2025, there were 216 recorded cases, with the following classifications:

Table 1. Types of Cases Involving Children in Conflict with the Law in 2025

Type of Case	Amount
Child Protection Cases	76
Emergency Law Violations (Possession of Sharp Weapons)	73
Assault	26
Theft	22
Robbery	8
Narcotics	1
Other Cases	10
Total	216

The high number of cases is not proportional to the success rate of diversion, as illustrated below:

Table 2. Diversion Success Rate in 2025

Diversion Outcome	Amount
Failed	27
Successful	29
Total	56

Out of the 216 cases recorded in 2025, only 56 cases met the requirements for diversion. Of these, only 27 cases were successfully resolved through diversion, while the remaining 29 cases failed and proceeded to prosecution. This demonstrates that the success rate of diversion in the City of Cirebon remains suboptimal, as it has not even reached 50% of the total number of cases eligible for diversion. This finding confirms that although the implementation of diversion has been carried out in accordance with the regulations stipulated in the Juvenile Criminal Justice System, law enforcement officials continue to encounter numerous obstacles in practice. Such obstacles include the high amount of compensation demanded by victims, the limited public understanding regarding diversion, and the inadequate availability of supporting facilities and infrastructure in various regions.

Lawrence M. Friedman, in his legal system theory, states that the effectiveness and success of law enforcement depend upon three principal components (Friedman, 1975): (a) Legal Substance, namely legal products in the form of rules, norms, and applicable legislation, including the living law within society; (b) Legal Structure, namely the institutional framework or "machinery" responsible for implementing the law, such as law enforcement agencies and correctional institutions; (c) Legal Culture, namely the attitudes, values, perspectives, and expectations of society toward law and the legal system. In the context of implementing diversion for juvenile offenders in Indonesia, the component of *legal substance* has functioned appropriately. However, the components of *legal structure* and *legal culture*, which involve the roles of law enforcement officials and the legal awareness of society, have not yet operated optimally. This condition contributes to the relatively

low success rate of diversion implementation in Indonesia and highlights the need for periodic and comprehensive evaluation.

The Implementation of Diversion for Juvenile Offenders in Indonesia from the Perspective of Fiqh jināyah

Islamic law, through *fiqh jināyah*, has established the concept of criminal liability for children. This is based upon the principle of *ahliyyah al-adā'* (legal capacity), which requires the existence of reason and maturity (*baligh*) as the basis for criminal liability. Children who have not yet reached the age of maturity are considered not to possess full capacity to comprehend the consequences of their actions; therefore, they cannot be subjected to criminal sanctions of a *hudūd* or *qisās* nature. Sayyid Sabiq emphasizes that children are not subject to *hudūd* punishments because the conditions of *taklīf* have not yet been fulfilled, as reflected in the saying of the Prophet Muhammad ﷺ (Dawud, 2009):

عَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الصَّبِيِّ حَتَّى يَحْتَلِمَ، وَعَنِ الْمَجْنُونِ حَتَّى يَعْقِلَ: رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ

“The pen has been lifted from three groups: from the sleeping person until he awakens, from the child until he reaches puberty, and from the insane person until he regains sanity.” (HR. Abu Dawud No. 4403).

In principle, when a child commits an act materially classified as a *jarimah* (criminal act), the sanction that may be imposed is *ta'zīr ta'dībī*, namely an educational and corrective punishment intended to reform behavior rather than impose repressive punishment. This view is also expressed by Abdul Qadir Audah in *Al-Tasyrī' al-Jinā'ī al-Islāmī*, where he states that children who commit criminal acts cannot be subjected to *hudūd* or *qisās* sanctions because they have not fulfilled the conditions of criminal *taklīf*. Instead, only educational measures (*ta'dīb*) adjusted to the child's age, condition, and welfare may be applied (Audah, 2007). According to him, criminal responsibility may only be imposed upon a person when two fundamental elements are fulfilled. First, there must be the capacity to understand one's actions (*al-idrāk*), namely the ability to comprehend the nature of the act and its legal consequences. Individuals lacking rational awareness, such as children (*ṣabī*), insane persons (*majnūn*), or those who have lost consciousness, cannot be held criminally liable. Second, criminal responsibility requires the existence of free will (*al-ikhtiyār*), meaning that the criminal act is committed voluntarily and not under coercion (*ikrah*). A person acting under pressure or coercion that eliminates free will cannot be fully punished. If either of these elements is absent, criminal liability cannot be imposed completely (Audah, 2007).

Although Islam does not explicitly recognize the mechanism of diversion, it recognizes the concept of *al-iṣlāḥ* or reconciliation. The term *al-iṣlāḥ* refers to efforts aimed at improvement and reconciliation in order to eliminate conflict and social harm. This concept is consistent with the principles of diversion and its implementation for juvenile offenders in Cirebon City. Islam emphasizes that conflict resolution should not merely focus on punishment, but rather on restoring social relations and fostering the moral development of offenders, particularly when the offender remains within the category of children who have not yet attained full legal responsibility (*ghayr mukallaf*). Likewise, the concept of diversion emphasizes the best interests of the child and regards punishment as a last resort (*ultimum remedium*) within the juvenile justice system (Darmawan et al., 2025). As Allah SWT states in the Qur'an Surah Al-Hujurat 49:10.

Furthermore, Sayyid Sabiq in *Fiqh al-Sunnah* explains that reconciliation signifies the termination of disputes. As narrated by Abu Dawud, Tirmidhi, Ibn Majah, Al-Hakim, and Ibn Hibban from Amr bin Auf, the Prophet Muhammad ﷺ said :

الصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ إِلَّا صُلْحًا حَرَّمَ حَلَالًا أَوْ أَحَلَ حَرَامًا وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ إِلَّا

شَرْطًا حَرَمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا " . قَالَ أَبُو عِيسَى هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ .

"Reconciliation is permissible among Muslims, except reconciliation that makes lawful what is unlawful or makes unlawful what is lawful. Muslims are bound by their conditions, except conditions that make lawful what is unlawful or make unlawful what is lawful." (HR. Tirmidzi No. 1352).

According to Sayyid Sabiq, reconciliation may only be requested by individuals legally authorized to act voluntarily. The reconciliation initiated by a discerning minor (*mumayyiz*), the guardian of an orphan, or the manager of a waqf is considered valid if it provides benefits for the child, orphan, or waqf. This principle aligns closely with the concept of diversion, which prioritizes the best interests of the child (Sabiq, 1988). The low success rate of diversion, caused by the insufficient understanding of law enforcement officials and resistance from society, demonstrates that the values of *iṣlāḥ* and *maṣlaḥah* taught within Islamic law have not yet been fully internalized within the legal consciousness of society. When society prioritizes a repressive approach toward juvenile offenders, the objective of *iṣlāḥ* cannot be achieved and may instead generate social stigma that hinders the rehabilitation process of children. Consequently, social barriers in the implementation of diversion may be viewed as a gap between Islamic legal norms emphasizing reconciliation and prevailing social practices that remain retributive in nature (Erlangga et al., 2023). Although positive law and Islamic law through *fiqh jināyah* employ different approaches, both place the protection and rehabilitation of children as their primary objectives. Within *fiqh jināyah*, the principles of *ta'dīb* and *ṣulḥ* reflect mechanisms for resolving juvenile cases outside formal litigation, consistent with the concept of diversion in positive law. Therefore, *fiqh jināyah* not only demonstrates compatibility with the diversion system, but may also serve as a moral and ethical foundation for developing a juvenile justice system that is more humane, just, and oriented toward public welfare (*maṣlaḥah*).

Conclusion

The implementation of diversion for juvenile offenders in Indonesia is regulated under positive law through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. This regulation mandates that all cases involving children as offenders must, at every stage of the process, first seek resolution through diversion. This principle is consistent with the system of punishment for children in *fiqh jināyah*, which emphasizes sanctions of a *ta'zir ta'dib* nature, namely educational and corrective measures.

However, the existence of clear and concrete regulations concerning diversion is not proportional to its level of success in practice. This is because the implementation process continues to encounter numerous challenges and obstacles, including the low level of public understanding, which remains oriented toward a retributive system of punishment, the insufficient understanding of diversion among law enforcement officials, and the inadequate availability of supporting facilities and infrastructure. These conditions reflect the fact that the principles of Islamic law have not yet been comprehensively internalized within the diversion process. Therefore, cross-sectoral evaluation and education are required in order to ensure that the implementation of diversion may operate more effectively in the future.

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Conflict of Interest

This article has no conflicts of interest.

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