

IMPLEMENTATION OF DIVERSION FOR CHILDREN OF SEXUAL ABUSE OFFENDERS: A CASE STUDY IN THE JURISDICTION OF THE BANDA ACEH POLICE

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ABSTRACT

This study examines the implementation of diversion for child perpetrators of sexual abuse in the Banda Aceh City Resort Police. The research aims to analyze the diversion process applied to children in conflict with the law and identify the inhibiting factors. Using an empirical juridical approach, data were collected through field research (interviews) and literature studies. The findings indicate that diversion is applicable only to child perpetrators who commit sexual abuse against adults if the penalty does not exceed seven years. However, cases involving abuse among children are ineligible for diversion due to higher sentencing threats. Additionally, children under 12 are returned to their guardians for education and social supervision. The main obstacles in implementing diversion include low public awareness and the economic status of perpetrators' families, affecting compensation fulfillment. Contributing factors to juvenile delinquency include lack of parental supervision, insufficient cooperation among stakeholders, and gadget influence.

Keywords: *Diversion, Criminal Acts of Sexual Harassment, Children in Conflict with the Law*

INTRODUCTION

Act No. 11 of 2012 on the Juvenile Criminal Justice System determines that children who are in conflict with the law are children who are in conflict with the law consist of the children who are victims of criminal acts, and children who are witnesses to criminal acts. Children in conflict with the law are children aged 12 to 18 years who commit criminal acts with a maximum penalty of no more than seven years in prison. A child witness is a child who is not yet 18 years old and provides information in an investigation,

prosecution, or trial related to a criminal act. The victim's child is a child who is not yet 18 years old who suffers physical, mental, or economic losses due to a criminal act.¹

According to the data from the Directorate-General of Corrections of the Ministry of Law and Human Rights, there was an increase in cases of children in conflict with the law between 2020 and 2023. As of August 26, 2023, the number of children involved in legal issues has almost reached 2,000. Of this number, 1,467 children are still in custody and undergoing judicial proceedings, while 526 children have served their sentences as prisoners. The increase in cases of children in conflict with the law shows the need for preventive and rehabilitative approaches to support their recovery.²

Meanwhile, based on the data from the Ministry of Women's Empowerment and Child Protection (Ministry of PPPA) in 2022, Aceh was recorded to have a fairly high number of cases of violence, reaching 994 cases. Meanwhile, other provinces such as South Sumatra reported 524 cases, Riau Islands 538 cases, and Bengkulu recorded 226 cases. The high rate of violence in Aceh shows the importance of further efforts to raise public awareness, strengthen reporting systems, and expand access to victim protection services.³ As for KPAI data from 2018 to 2022, cases of sexual violence against children have fluctuated. In 2019, it jumped significantly to 419 cases in 2020, and reached a peak with 859 cases in 2021, then decreased to 746 cases in 2022.⁴

The increase in the rate of sexual violence involving children as perpetrators and victims in Aceh shows the need for more comprehensive interventions. Public awareness must be strengthened to prevent the normalization of violence, while reporting and protection systems for victims need to be optimized. In addition, rehabilitation for children of violent offenders must be a priority to prevent them from committing similar

¹ Sharyn Graham Davies and Jazz Robson, "Juvenile (In)Justice: Children in Conflict with the Law in Indonesia," *Asia-Pacific Journal on Human Rights and the Law* 17, no. 1 (2016): 119–47, <https://doi.org/https://doi.org/10.1163/15718158-01701009>; Ika Darmika, "Diversion and Restorative Justice in the Criminal Justice System of Children in Indonesia," *Ijtima' Iyya Journal of Muslim Society Research* 3, no. 2 (2018): 180–211, <https://doi.org/10.24090/ijtimaiyya.v3i2.1921>.

² Advent Krisdamarjati Yohanes, "Meningkatnya Kasus Anak Berkonflik Hukum, Alarm bagi Masyarakat dan Negara", 29 Agustus 2023, <https://www.kompas.id/baca/riset/2023/08/28/meningkatnya-kasus-anak-berkonflik-hukum-alarm-bagi-masyarakat-dan-negara>, Diakses 10 Agustus 2024

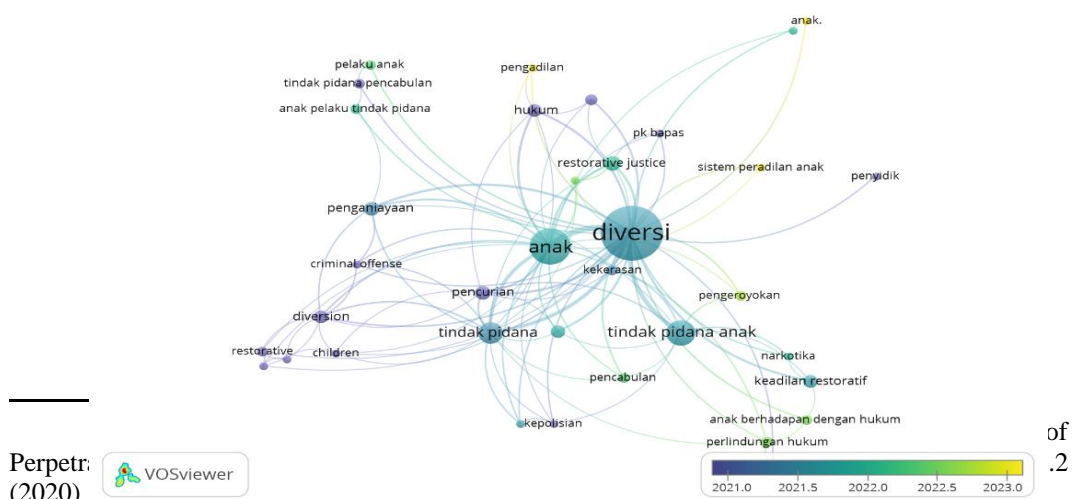
³ SIMFONI-PPA, "map of the distribution of violence cases by province 2024" accessed on <https://kekerasan.kemenpppa.go.id/ringkasan> on December 16, 2024

⁴ KPAI, "Data kasus perlindungan anak", diakses di <https://bankdata.kpai.go.id/tabulasi-data/data-kasus-perindungan-anak-2022> pada 18 Juni 2024

acts again in the future. A holistic approach that includes education, psychosocial assistance, and strengthening the role of the family and society is urgently needed to reduce the rate of sexual violence among children.

Various studies examined the application of diversion in the Juvenile Criminal Justice System (SPPA Law). Renna Prisdawati (2020) stated that diversion cannot be applied to children who commit criminal acts of molestation because the criminal threat exceeds seven years in prison, according to Article 7 paragraph (2) of the SPPA Law.⁵ Muhammad Ridwan Lubis (2021) highlighted that the obligation of diversion is sought at the level of investigation, prosecution, and examination in court, with the concept of restorative justice to protect children's rights and avoid a rigid justice system.⁶ Siti Komariah and Kuyus Kayowuan Lewoleba (2022) discussed legal protection for children with disabilities who commit violent crimes, as stipulated in Act No. 19 of 2011 concerning CRPD, with a focus on children as the subject of criminal acts. The fundamental difference between these studies and my research lies in the focus of the variables, the types of crimes, and the stages of applying the diversion discussed. The difference between this research and my research is that the variables in this study discuss obscenity, while in my research I use the variable of sexual harassment.⁷

Figure 1: Overview of the vosviewer's Meta Analysis of research related to the implementation of diversion of children as perpetrators of criminal acts from 2021 – 2023



Perpetrator (2020)



⁶ Fahrul Rozi Nasution, Mustamam, and Mukidi, "Restorative Justice Dalam Proses Penyidikan Terhadap Anak Sebagai Pelaku Tindak Pidana Persetubuhan." *Jurnal Ilmiah Metadata*, Vol.5 No.1 Edisi Januari (2023)

⁷ Komariah And Lewoleba. "Penerapan Konsep Diversi Bagi Anak Penyandang Disabilitas pelaku Tindak Pidana Kekerasan." *Jurnal USM Law Review*, Vol.4 (2021)

The Meta Analysis vosviewer image above presents studies related to children, diversion has been studied quite a lot by the size of the sphere contained in the image above, but only in the 2021-2022 time range, while in the 2023-2024 time frame there are still few studies related to children and diversion, as for the sexual abuse variable as described above, it is only fixated on the molestation variable where the author can conclude that the study related to sexual harassment is still are relatively minimal. Therefore, the author is interested in examining the implementation of diversion against children of sexual abuse perpetrators.

Based on the background that has been raised, there are two problems to be studied; first, how are the efforts of diversion by the Banda Aceh Police in the process of applying it to children in conflict with the law and second, what are the inhibiting factors in the implementation of diversion against children in conflict with the law. Related to the formulation of the problem, the purpose of this study is to examine the application of diversion in the earliest wave, namely at the stage of investigation by the police and what are the obstacles faced by the investigators by the police in the application of diversy to children of perpetrators of sexual abuse crimes in the jurisdiction of the Banda Aceh City Resort Police).

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METHOD

This research uses a normative juridical approach, which focuses on the analysis of applicable legal norms, such as laws and regulations, jurisprudence, and legal doctrines. This approach is combined with empirical studies through field studies to understand the implementation of diversion for children of criminal offenders in the Jurisdiction of the Banda Aceh Police. The research data was obtained through interviews with Banda Aceh Police Satreskrim (Satuan Reserse

Kriminal)⁸ investigators as well as literature studies from various legal sources, including Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Qanun Aceh Number 6 of 2014 concerning the Law of Jinayat.

Data collection was carried out through interviews with law enforcement officials, literature studies, and analysis of legal documents. Primary data was obtained directly from the results of interviews with investigators and officials of related units, while secondary data came from literature, journals, and relevant legal documents. The location of this study is the Banda Aceh City Resort Police, with a focus on the mechanism of diversion implementation and the factors that affect its effectiveness in the juvenile criminal justice system.

RESULT AND DISCUSSION

1. Diversion Efforts Carried Out by Banda Aceh Police in the Process of Implementing Children in Conflict with the Law

In the context of diversion efforts of child sexual abuse perpetrators, an important step in the juvenile criminal justice system aims to shift the settlement of children's cases from the formal judicial process to a more rehabilitative mechanism.⁹ As part of this study, the author analyzed 20 cases recorded at the Banda Aceh Police involving children as perpetrators of sexual abuse. This provides an overview of how the implementation of diversion is carried out at the local level, as well as the challenges and obstacles faced in the process. The next discussion will delve deeper into the application of diversion in this context, by referring to applicable legal principles and the results of the evaluation of the effectiveness of diversion implementation in providing justice in favor of children.

⁸ Satreskrim (Satuan Reserse Kriminal) is a unit that implements the duties of the Police in the field of law enforcement.

⁹ Usman Usman and Andi Najemi, "Mediasi Penal Di Indonesia," *Undang: Jurnal Hukum* 1, no. 1 (2018): 65–83, <https://doi.org/10.22437/ujh.1.1.65-83>.

Table 1.3 Data on Criminal Acts of Sexual Abuse Committed by Children in the Jurisdiction of the Banda Aceh Police

No	Year	Case Name	Number of Cases
1	2020	Criminal data Sexual abuse committed by children	4
2	2021		6
3	2022		5
4	2023		1
5	2024		4
Jumlah			20 kasus

Source: Data on the Determination of Children of Sexual Abuse Perpetrators at the Banda Aceh Police in 2024

The table above records the number of cases of sexual abuse committed by children in Banda Aceh City from 2020 to 2024. In 2020, four cases were recorded, while in 2021 the number increased to six cases. In 2022, the number of cases decreased slightly to five, and in 2023 only one case was recorded. In 2024, the number of cases will increase again to four. Overall, during the five years there were a total of 20 cases of sexual abuse committed by children. This data illustrates the fluctuation in the number of cases from year to year.

Although diversion is expected to be an alternative solution in handling child sexual abuse perpetrators, the reality is that not all cases in the Banda Aceh Police can be eligible to be applied. Diversion can only be carried out if the perpetrator's child meets certain criteria, such as age, maximum threat of criminal offense, and whether or not there is an element of repetition in the criminal act (*recidivism*) committed. In some cases of sexual abuse, either because of the high level of violence or the significant impact on the victim, the diversion process is not always feasible. Therefore, even though diversion has a rehabilitative purpose, in some cases, child sexual abuse perpetrators must still go through formal judicial channels to ensure the protection of victims' rights and proper justice.

Aipda Jamil as a Kanit II PPA Satreskrim Polresta Banda Aceh revealed

that, the child of the perpetrator of sexual abuse is processed by Local Act No. 6 of 2014 on Qanun Jinayah which is referred to in Article 1 No. 25 then will be prosecuted with article 46 if the victim is an adult and article 47 if the victim is a child.⁴³ This is because Aceh has a special law that regulates sexual harassment, therefore the perpetrators of sexual harassment in Aceh are prosecuted with Qanun Jinayah and not with the Criminal Code which is in line with the legal principle of the specialist leg crossed by the generalist leg.¹⁰

Article 1 No. 27 reads: "Sexual harassment is an immoral act or obscene act that is deliberately committed by a person in public or against another person as a victim, both male and female, without the victim's willingness".

Followed by Articles 46 and 47:

Article 46: "Every person who deliberately commits sexual harassment shall be threatened with 'Uqubat Ta'zir whipping a maximum of 45 (forty-five) times or a fine of a maximum of 450 (four hundred and fifty) grams of pure gold or imprisonment for a maximum of 45 (forty-five) months." Article 47: "Every person who deliberately commits Sexual Harassment as referred to in Article 46 against a child, is threatened with 'Uqubat Ta'zir whipping a maximum of 90 (ninety) times or a fine of a maximum of 900 (nine hundred) grams of pure gold or imprisonment for a maximum of 90 (ninety) months."

Then, Aipda Jamil continued, from the explanation of the Qanun Jinayat Local Act above, in accordance with the guidance of Act No. 11 of 2012 on the Juvenile Criminal Justice System in Article 7, then, with the accumulation of existing punishments that can be tried to be diversioned are children who commit sexual abuse to adults because the threat of punishment ranges from three years and nine months, Meanwhile, children who commit sexual abuse of fellow children cannot be diversioned due to the accumulation of a sentence of seven years and five months, therefore children who committed sexual abuse of fellow children cannot be diversioned.¹¹

¹⁰ Interview with Jamil, Head of Sub Unit II of the Women and Children Protection Unit of the Banda Aceh Police, November 19, 2024.

¹¹ Interview with Jamil, Head of Sub Unit II of the Women and Children Protection Unit of the Banda Aceh Police, November 19, 2024.

This is also in line with Article 66 of Qanun Aceh No. 6 of 2014 on the Local Act of Jinayah (Qanun Jinayah), that the handling of children who commit jarimah is returned to the law that regulates juvenile justice: "If a child who has not reached the age of 18 (eighteen) years old commits or is suspected of having committed a jarimah act, then an examination must be carried out on the child guided by the laws and Regulations concerning Children's Criminal Justice."¹²

However, he added that if the child who commits a criminal act is not yet 12 years old, if the child is indicated to have committed a criminal act or any criminal act, then the child must be returned to the parents to undergo guidance and education at home. This statement was as stated by the Aceh High Court Judge of the Islamic High Court at the Aceh Qanun Jinayah Decade Seminar that "in the SPPA law, a child who is not yet 12 years old cannot be prosecuted against him, while a child who is not yet 14 years old cannot be imprisoned while a child who has reached the age of 18 years can be imprisoned."¹³

In the event that a criminal act committed by a child who has not reached the age of 18 years and is submitted to the court after the child exceeds the age limit of 18 years but has not yet reached the age of 21, the child will still be submitted to the juvenile court. Furthermore, based on Article 21 of Act No. 2012 on the Juvenile Criminal Justice System, jo Article 67 of the Government Regulation of the Republic of Indonesia No. 65 of 2015 on the Implementation of Diversion and Handling of Children Under the Age of 12 (twelve) Years, in the event that a child who has not reached the age of 12 years commits or is suspected of committing a criminal act, then the investigator, community supervisor will make a decision to hand it over to the parents/guardians or participate in the program of educational and coaching activities at government agencies or implementing institutions Social welfare".¹⁴

¹² M Ramli et al., "State, Custom, and Islamic Law in Aceh: Minor Dispute Resolution in the Perspective of Legal Pluralism," *Samarah: Jurnal Hukum ...*, 2024, <https://jurnal.ar-raniry.ac.id/index.php/samarah/article/view/15924>.

¹³ Interview with Jamil, Head of Sub Unit II of the Women and Children Protection Unit of the Banda Aceh Police, November 19, 2024.

¹⁴ Act No. 11 of 2012 on the Juvenile Criminal Justice System.

So far, researchers have identified 20 cases of child sexual abuse perpetrators at the Banda Aceh Police, but of all the cases found in the police, the Banda Aceh Police have not found that the victim is an adult. As intended by the law, because of that, the police have not been able to seek diversion to child offenders, this is because it is guided by article 7 of the SPPA Act where children who commit criminal acts whose threat of punishment exceeds seven years cannot be diversioned. Regarding the child perpetrator of sexual abuse of adults, which according to the provisions of the existing provisions can be diversioned, the Police investigator also explained what efforts were made by the Police in seeking diversion of the child.

The efforts made by the Banda Aceh Police PPA Unit in resolving this diversion case are through a family approach, involving parents, social institutions, and the correctional center as companions. Through deliberation to reach a mutually beneficial agreement, it is hoped that children can understand and take responsibility for the actions that have been done. In the process of resolving through a diversion carried out through deliberation, the victim initially felt doubtful. However, after being given an explanation of the purpose of diversion, the victim was finally able to accept the results of the deliberation. This deliberative effort also helps to strengthen the relationship between the victim and the perpetrator's parents.¹⁵

On the other hand, there is also a phenomenon where the child of the perpetrator of sexual abuse of fellow children also reconciles. This happened because there was a discussion outside the investigation process, where there was an agreement between the perpetrator and the victim which made the victim withdraw his report from the police. However, this is not included in the diversion process, but is included in the scope of *restorative justice*. In this context, dispute resolution focuses on restoring the relationship between the perpetrator and the victim, taking into account the needs of both parties. The form of agreement reached also varies, ranging from the payment of fines that are mutually agreed

¹⁵ Interview with Jamil, Head of Sub Unit II of the Women and Children Protection Unit of the Banda Aceh Police, November 19, 2024.

upon, the payment of the victim's medical expenses.¹⁶

Although this process is more mediation, it is important to ensure that the resulting agreement does not harm either party and still pay attention to the victim's rights, especially in cases of sexual harassment that can have a long-term impact on the victim's psychology.¹⁷

The diversion effort can be said to be successful if the victim and the perpetrator both agree on the agreement that occurred during the diversion process. The forms of agreements reached are various, some agree to pay the dispensation with a specified amount, or pay medical expenses, or agreements in the form of marriage as a form of settlement.¹⁸ In addition, there are also agreements that include rehabilitation for the perpetrator, such as counseling or education programs, with the aim that the perpetrator can understand the consequences of his actions and improve his behavior. The agreement must be based on a voluntary agreement from both parties, without any element of coercion, and taking into account the interests and rights of the victims, in order to achieve a fair and sustainable settlement.¹⁹

2. Inhibiting and Supporting Factors in the Implementation of Diversion Against Children in Conflict with the Law

In handling criminal cases, where the perpetrator of a criminal act is a child who is still in an early age, must face the law and can make the child experience traumanism in facing legal problems and can cause a *negative labeling* or bad label for the child because he has dealt with the police. The handling of criminal cases involving children is certainly different from the handling of cases in

¹⁶ Emmanuel Ariananto Waluyo Adi, *Penal Mediation as the Concept of Restorative Justice in the Draft Criminal Procedure Code*, *Lex Scientia Law Review*, vol. 5, 2021, <https://doi.org/10.15294/lesrev.v5i1.46704>.

¹⁷ Interview with Jamil, Head of Sub Unit II of the Women and Children Protection Unit of the Banda Aceh Police, November 19, 2024.

¹⁸ S Wahyudi and A Angkasa, "Application of Diversion Penal Mediation on Sexual Violence Cases to Realize Child Protection for Victims of Sexual Violence," *Jurnal Dinamika Hukum*, 2018, <https://dinamikahukum.fh.unsoed.ac.id/index.php/JDH/article/view/1704>.

¹⁹ Abdurrahman Alhakim, "Diversion As a Legal Concept That Is Equitable for Children in Indonesia," *Mizan: Jurnal Ilmu Hukum* 11, no. 2 (2022): 147, <https://doi.org/10.32503/mizan.v11i2.3102>.

adults.²⁰ Although the diversion mechanism has been clearly regulated in the Act on the Juvenile Criminal Justice System (SPPA), it does not mean that its implementation is free from obstacles or challenges.

There are several obstacles or obstacles that can come from various parties involved in the diversion process. Despite efforts, the diversion process still cannot be carried out perfectly by the authorized law enforcers. These obstacles are in the form of Internal obstacles, such as obstacles in obtaining an agreement between the victim and the child who is facing the law. In addition, there are also external obstacles such as limited adequate facilities and infrastructure in the implementation of the diversion process, there are often different understandings in the process of handling children who are facing the law among law enforcers, cooperation between public prosecutors and community advisors, the general public's understanding of diversion, and regulations regarding supervision of the implementation of diversion agreements.²¹

As for other inhibiting factors, according to Aipda Jamil Kanit II PPA Satreskrim of the Banda Aceh Police, there are inhibiting factors in the process of implementing diversion for children who are facing the law, including; Lack of public understanding. That public understanding is often an obstacle that makes it quite difficult for investigators in the process of implementing diversion. This is because most of the victims' guardians tend to reject the diversion process offered by APH because of their ignorance of the diversion itself. So, it is not uncommon for officers to have to explain to the guardian regarding diversion.²²

The criminal case judiciary has reached the restorative justice that requires efforts to have it realized; one of the ways is through penal mediation. The Criminal Law System has improved in its practice by prioritizing the restorative justice. In restorative justice, criminal law regulation aims to achieve fairness in improvement and restoration after the crime occurred. Restorative

²⁰ Andrew J. Becroft, "Children and Young People in Conflict with the Law: Asking the Hard Questions," *Juvenile and Family Court Journal* 57, no. 4 (2006): 1–37, <https://doi.org/10.1111/j.1755-6988.2006.tb00129.x>.

²¹ Interview with Jamil, Head of Sub Unit II of the Women and Children Protection Unit of the Banda Aceh Police, November 19, 2024.

²² Interview with Jamil, Head of Sub Unit II of the Women and Children Protection Unit of the Banda Aceh Police, November 19, 2024.

justice is different from retributive and restitutive justice. The retributive justice emphasises more on the punishment. On the other hand, restitutive justice focuses more on compensation. Therefore, restorative justice wants to introduce and develop a relationship between the perpetrator and the victim. Both parties must agree on the outcome of the agreement, and there is no refusal.²³

In addition, the condition of the victim's family is poor, so they cannot afford to pay compensation when peace is to be made. During the process of implementing diversion, it is often stated by the officer that the perpetrators actually come from families that are classified as lower middle, so that the compensation demands offered by the victim's guardian cannot be met by the perpetrators which causes the diversion process not to occur.²⁴ This is one of the obstacles in mediation.²⁵

Meanwhile, supporting factors, including, there are also several supporting factors in the diversion implementation process, which are as follows;^{5 7} The readiness of law enforcement officials, such as investigators, prosecutors, and judges, must have a deep understanding of the concept of diversion and *restorative justice*, through training and counseling is important to ensure the implementation of diversion in accordance with the provisions of the law. This is regulated in Act No. 11 of 2012 on the Juvenile Criminal Justice System.²⁶

The existence of facilities such as mediation rooms, child rehabilitation institutions, and accompanying experts is very important to support the diversion process. This makes it easier to implement diversion outside the formal judicial system.

And finally, no less important is the public's awareness of the importance of diversion and the restorative justice approach is an important factor. This helps

²³ Ratri Novita Erdianti, Wasis Suprayitno, and Sholahuddin Al-Fatih, "Penal Mediation as an Alternative Dispute Resolution for Indonesian Criminal Code," *Wacana Hukum* 26, no. 1 (2020): 39–48, <https://doi.org/10.33061/1.wh.2020.26.1.3629>.

²⁴ Interview with Jamil, Head of Sub Unit II of the Women and Children Protection Unit of the Banda Aceh Police, November 19, 2024.

²⁵ Z H A Syahr et al., "The Role of Indigenous Peoples, Social Workers, and the Syar'iyah Court in Diversion of Children Perpetrators of Jinayah," *Al-Manahij: Jurnal ...*, 2023, <https://ejournal.uinsaizu.ac.id/index.php/almanahij/article/view/7349>.

²⁶ Interview with Jamil, Head of Sub Unit II of the Women and Children Protection Unit of the Banda Aceh Police, November 19, 2024.

resolve cases through family mechanisms, thereby preventing stigma against children who are facing the law.

CONCLUSION

Diversion of the child of the perpetrator of sexual abuse is carried out with certain conditions, namely if the perpetrator is not a recidivist and the sanction of punishment does not exceed seven years. Children who abuse adults can undergo diversion, while those who abuse other children cannot be diversion because the threat of punishment is higher. Children under 12 years old cannot be made suspects, and the case is returned to the parent or guardian. The Banda Aceh Police PPA Unit implements a family approach by involving parents, social institutions, and correctional centers to reach an agreement through deliberation for the sake of responsibility and understanding of the child's actions.

The inhibiting factors in the diversion process are divided into internal and external obstacles. Internal obstacles include a lack of public understanding of the diversion mechanism, the social status of the perpetrator's family that affects the ability to meet compensation, and a lack of cooperation between related parties. Meanwhile, external obstacles include limited facilities and infrastructure, as well as differences in understanding among law enforcement. Supporting factors such as the readiness of law enforcement officials, adequate facilities, and public awareness of the importance of diversion are very helpful for this diversion process.

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