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10 **THE CRIMINAL CASES OF CHILDREN IN CONFLICT WITH THE LAW:
LITIGATION AND NON-LITIGATION RESOLUTIONS**

Martha Eri Safira

Faculty of Sharia Institut Agama Islam Negeri Ponorogo, Indonesia
Email: marthasafira82@gmail.com

Dewi Iriani

Faculty of Sharia Institut Agama Islam Negeri Ponorogo, Indonesia
Email: de.calissta8113@gmail.com

Neneng Uswatun Hasanah

Faculty of Sharia Darussalam University Ponorogo, Indonesia.
Email: ummafath@gmail.com

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Abstract: The increasing number of child cases in Ponorogo Regency from 2015 to 2019 requires fast, simple handling and can have a deterrent effect on children. From this, problems can be formulated related to how the process of resolving child cases is through litigation and non-litigation at the Police, District Courts, KPPA Ponorogo, as well as LK3 Ponorogo. This research is a qualitative descriptive study, with a sociological juridical approach, and the data are obtained based on field research to related institutions, then analyzed by inductive analysis. The settlement of cases of children in conflict with the Law is conducted by litigation to the Police and the Ponorogo District Court by the relevant Law. Meanwhile, non-litigation, namely diversion, has not been effective because it was found that there was a repetition of crimes, such as theft, raiding, which were carried out by several children, indicating that the non-litigation approach had not provided a deterrent effect on children. Meanwhile, in non-litigation terms, the roles of institutions in Ponorogo Regency, such as the KPPA, LK3 are still lacking even though their handling is by the Child Protection Law and the Child Justice System Law. To see and understand the handling of children dealing with the Law directly, it is also known that law enforcement officers in Ponorogo choose to prioritize human values with non-litigation even though there are not by the Law; this is what contributes to this research.

Abstrak: Meningkatnya kasus anak yang terjadi di Kabupaten Ponorogo dari Tahun 2015 sampai dengan Tahun 2019 membutuhkan penanganan yang cepat, sederhana dan dapat memberikan efek jera terhadap anak. Dari hal tersebut, dapat dirumuskan permasalahan terkait bagaimana proses penyelesaian perkara anak secara litigasi dan non litigasi di lembaga Kepolisian, Pengadilan Negeri, KPPA Ponorogo, serta LK3 Ponorogo. Penelitian ini merupakan penelitian diskriptif kualitatif, dengan pendekatan yuridis sosiologis, dan data diperoleh berdasarkan penelitian lapangan ke lembaga-lembaga terkait, kemudian dianalisis dengan analisis induktif. Penyelesaian kasus anak yang berkonflik dengan hukum secara litigasi ke lembaga Kepolisian dan Pengadilan Negeri Ponorogo sesuai dengan Undang-Undang terkait. Sedangkan secara non litigasi

yaitu dengan diversi belum efektif, karena ditemukan adanya pengurangan pidana yang dilakukan oleh beberapa anak menunjukkan bahwa pendekatan non-litigasi belum memberikan efek jera terhadap anak. Sedangkan secara non litigasi, peran lembaga-lembaga yang ada di Kabupaten Ponorogo, seperti KPPA, LK3 masih sangat kurang walau penanganannya sudah sesuai dengan Undang-Undang Perlindungan Anak dan Undang-Undang Sistem Peradilan Anak. Jadi selain melihat dan memahami penanganan anak berhadapan dengan hukum secara langsung, juga diketahui bahwa aparat penegak hukum di Ponorogo memilih mengedepankan nilai-nilai kemanusiaan dengan non-litigasi walaupun ada hal yang kurang sesuai dengan undang-undang, hal inilah yang menjadi kontribusi dalam penelitian ini.

Keywords: *Legal protection; Litigation; Non-litigation; Children With Legal Conflicts.*

INTRODUCTION

Children are the future of the nation. However, the current development in the era of technology and globalization recently also affects children's behavior and does not even rule out children to become perpetrators of criminal acts.¹ From year to year, cases of children in conflict with the law are increasing. Children whose behavior deviates from a society and the law are called a "bad boy".² In the handling of the Police and the Ponorogo District Court, naughty children are called children in conflict with the law. This refers to UUSPA, where naughty children are called children in conflict with the law, namely as determined in Article 1 (number 3) of Law No. 11 of 2012 concerning on the Juvenile Criminal Justice System (hereinafter abbreviated as UU SPPA): "Children who are in conflict with the law are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a criminal act." Therefore, we need a child protection system that can guarantee the growth and development of children who experience conflicts with the law. The government should protect the right of children, especially by providing space for children to play and study as well as protect them when they are in conflict with the law to avoid violence and discrimination.³ In connection with this research, this study wants to examine the handling of children in conflict with the law both in litigation and non-litigation in Ponorogo Regency, whether it is in accordance with UU SPPA and UU PA or not. Previous research conducted by Eva, Bilher, and Rharve, was literature research and normative analysis, while this study wants to see firsthand how litigation and

¹ Eva Achjani Zulfa, "Anak Nakal: Diversi dan Dilema Penerapannya," *Jurnal Hukum & Pembangunan* 39, no. 4 (December 3, 2009): 1, <http://dx.doi.org/10.21143/jhp.vol39.no4.290>.

² Bilher Hutahaeen, "Penerapan Sanksi Pidana Bagi Pelaku Tindak Pidana Anak," *Jurnal Yudisial* 6, no. 1 (March 11, 2013): 66, <https://doi.org/10.29123/jy.v6i1.119>.

³ Rharve et al., "Implementation of Diversion in General Prosecutor Levels on Children as Criminal Offenders According to Law No. 11 of 2012 on Juvenile Justice System," in *Proceedings of the International Conference on Law, Governance and Islamic Society (ICOLGIS 2019)* (International Conference on Law, Governance and Islamic Society (ICOLGIS 2019), Banda Aceh, Indonesia: Atlantis Press, 2020), 155, <https://doi.org/10.2991/assehr.k.200306.202>.

non-litigation are handled at KPPA Ponorogo Police, Ponorogo District Court, KPPA and LK3 Ponorogo Regency.

Litigation and non-litigation resolutions are the main considerations in protecting children as contained in Law No. 11 of 2012 concerning on the Juvenile Criminal Justice System (abbreviated as UUSPPA). Settlement of cases using non-litigation channels is the preferred choice of the parties. On the perpetrator's side, stigmatization can be avoided, while the victim is satisfied with compensation and/ or a certain agreement with the perpetrator. Instead of being convicted, the perpetrator was returned to his parents while the victim, for example, received certain compensation and an apology. Although the resolution through non-litigation was not always agreed upon, especially by the victims, this kind of settlement was proven to have been chosen by the conflicting parties, especially the child case.⁴ This is also what the Ponorogo Resort Police and the Ponorogo District Court have also pursued. The difference with Analiyansyah's,⁵ research is that this research will later be a field study, namely cross-checking field data with the concept of handling child cases in UU SPPA and UU PA.

Litigation and non-litigation resolution are also applied in Islamic law. Regarding the criminal acts conducted by children in UU SPPA and Islamic law, there is a common ground, namely children who can be legally processed or convicted are from 12 years to 18 years of age. In Islamic law, the age range of a child is a child who has reached puberty (or at puberty). In Islamic law, there is no legal responsibility for a child until he reaches puberty.⁶ This research will also discuss the concept of handling children's cases from the perspective of Islamic criminal law.

Data on children in conflict with the law were not only obtained at the Polres and Courts, but also from the Commission for the Protection of Women and Children (KPPA)⁷ of Ponorogo Regency and the Family Consultation and Counseling Institute (LK3)⁸, Ponorogo. The data obtained from KPPA in 2015 were 25 cases of children in conflict with the law, 10 cases from KPPA finally also entered the KPPA of Ponorogo Police. In 2016, there were 26 cases of children in conflict with the law, but 9 were raised to KPPA of Ponorogo Police. Meanwhile, in

⁴ Analiyansyah and Syarifah Rahmatillah, "Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum (Studi Terhadap Undang-Undang Peradilan Anak Indonesia dan Peradilan Adat Aceh)," *Gender Equality: International Journal of Child and Gender Studies* 1, no. 1 (March 1, 2015): 52, <http://dx.doi.org/10.22373/equality.v1i1.779>.

⁵ Analiyansyah and Syarifah Rahmatillah, "Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum (Studi Terhadap Undang-Undang Peradilan Anak Indonesia dan Peradilan Adat Aceh)."

⁶ Adam Sani, Rusjdi Ali Muhammad, and Mohd Din, "Pemidanaan Anak Menurut Konsepsi Hukum Islam Dan Hukum Pidana Indonesia," *Jurnal Ilmu Hukum* 3, no. 3 (July 18, 2015): 12-13, <http://www.jurnal.unsyiah.ac.id/MIH/article/view/4776>.

⁷ Abbreviated as Komisi Perlindungan Perempuan dan Anak

⁸ Abbreviated as Lembaga Konsultasi dan Konseling Kesejahteraan Keluarga

2017 there were 18 cases³⁴ of children in conflict with the law, and 9 were transferred to KPPA of Ponorogo Police for legal proceedings. Whereas in 2018, there were 20¹⁰ cases of children in conflict with the law, and 2 of them reached the Court. Some of these cases can be resolved through non-litigation by KPPA.⁹ Meanwhile, in the LK3 in Ponorogo, there were 12 cases that entered LK3 in 2015, then 2016 there were 9 cases, and in 2017 there were 15 cases. At the end of November 2017, there was 1 insect case handled, and until now it is still being processed on a non-litigation basis.¹⁰ From the data obtained at the Ponorogo Police, not all cases have reached the Court because the Ponorogo Police have succeeded in solving them with diversion in the help of the Madiun Correctional Center, then the Regional KPPA and Ponorogo LK3 Social Service. However, there are certain cases that have finally been tried at the District Court.¹¹

The research approach used is a qualitative approach by collecting data in the field as the object of research, then systematically compiled and analyzed by theory and statutory regulations. This research has natural characteristics (natural setting) and descriptive, whether the process is more important than results. The analysis tends to be done by inductive analysis, and the meaning is essential.¹² Related to the settlement of children's cases with litigation and non-litigation, this research is carried out very carefully, and prioritizes the accuracy of data in the field because it will be analyzed whether the settlement of children's cases is in accordance with the applicable law or not. While the type of research is a case study,¹³ which is an intensive description and analysis of certain phenomena or social units, such as individuals, groups, institutions or communities.¹⁴ The case research here is the handled cases of children in conflict with the law, in the KPPA of the Ponorogo Police, Regional KPPA, LK3, and Ponorogo Court.

CHILD CRIMINAL JUSTICE SYSTEM IN POSITIVE LAW AND ISLAMIC LAW

The term of criminal justice system has become a term to show a working mechanism in overcoming crime using a system approach. As a system, criminal justice is the result of interactions between statutory regulations, administrative practices and social attitudes or behavior.¹⁵

⁹ Aziz and Anna, staf KPPA Ponorogo, Interview, March 20, 2019.

¹⁰ Tajib, staf of LK3 The Department of Social in Ponorogo, Interview, August 2018.

¹¹ Tatik, Head of Unit KPPA Polres Ponorogo, Interview, July 17, 2018.

¹² Mulya J Meleong, *Metologi Penelitian Kualitatif* (Bandung: PT Remaja Rosdakarya, 1989), 3.

¹³ Nathan B. Merriam and Edwin L. Simpson, *A Guide to Research for Educators and Trainers of Adults* (Malabar, Fla: R.E. Krieger Pub. Co, 1984), 21.

¹⁴ Robert Bogdan and Sari Knopp Biklen, *Qualitative Research for Education: An Introduction to Theories and Methods*, 5th ed (Boston, Mass: Pearson A & B, 2007), 32.

¹⁵ Romli Atmasasmita, *Sistem Peradilan Pidana: Perspektif Eksistensialisme Dan Abolisionisme* (Bandung: Eresco, 1996), 65.

Mardjono Reksodiputro,¹⁶ defined the criminal justice system as a crime control system consisting of police institutions, prosecutors, courts and correctional institutions for convicted people, with the aim to prevent the public from becoming victims of crimes, solving cases of crimes occurred so that the public is satisfied that justice has been served and that guilty shall be convicted, and endeavor that those who have committed crimes to not repeat their crimes.

The purpose of providing legal protection for criminals, especially children, is to respect the child's human rights so that their fate is not in limbo, provide legal certainty for children, and avoid arbitrary and unfair treatment.¹⁷ Meanwhile, the conception of child protection covers a broad scope, in the sense that child protection is not only about the protection of the child's body and soul but also the protection of all their rights and interests which can ensure a proper growth, covering spiritually, physically and socially in a hope of becoming adults who are able to work.¹⁸

Juvenile justice system started in the first, the investigator in this case the police as an institution when the brat formal firstly contact with the criminal justice system, which will also determine whether the child would be released or processed further. Second, prosecutors and parole agencies will also be determined whether the child would be released or processed to juvenile justice. Third, the juvenile court, the stage when the child will be placed in the choices ranging from freed up to be included in the institution of punishment.¹⁹

In line with UU SPPA,² the juvenile criminal justice system in Islamic criminal law, children who commit a criminal offense before the age of 12 will not be subject to criminal responsibility either *hudud*, *qishas/ diyat* or *ta'zir*. Penalties for children who are guilty in Islam are imposed on their parents, because parents are obliged to educate their children to be good people. If a child becomes a criminal, it means that the parents do not carry out their obligations properly, then the parents will bear the consequences, being sanctioned for their negligence.²⁰ Thus, the concept of diversion and restoration of justice was introduced in UU SPPA.

¹⁶ Mardjono Reksodiputro, *Sistem Peradilan Pidana Indonesia (Melihat Kepada Kejahatan Dan Penegakan Hukum Dalam Batas-Batas Toleransi)* (Jakarta: UI-Press, 1993), 35.

¹⁷ Dikdik M. Arief Mansur and Elisatris Gultom, *Urgensi Perlindungan Korban Kejahatan: Antara Norma Dan Realita* (Jakarta: RajaGrafindo Persada, 2007), 72.

¹⁸ Mardjono Reksodiputro, *Sistem Peradilan Pidana: "Peran Penegak Hukum Melawan Kejahatan Perlindungan Hak Asasi Manusia Dalam Sistem Peradilan Pidana"* (Jakarta: Pusat Pelayanan Keadilan dan Pengabdian Hukum UI, 1994), 74.

¹⁹ M. J. Alputila, M. A. Tajuddin, and Kahar, "Diversion Approach As An Alternative Case Resolution Son Of The Conflict With The Law On Child Criminal Justice System (Case Study Of Merauke)," *ICOP Conference Series: Earth and Environmental Science* 343 (November 2019): 5, <https://doi.org/10.1088/1755-1315/343/1/012249>.

²⁰ Sani, Muhammad, and Din, "Pemidanaan Anak Menurut Konsepsi Hukum Islam Dan Hukum Pidana Indonesia," 12.

THE CONCEPT OF HANDLING CHILDREN IN CONFLICT WITH THE LAW BOTH IN LITIGATION AND NON-LITIGATION, IN POSITIVE LAW AND ISLAMIC LAW

In studies, child crime factors carried out in various place settings shows the consistency of the role of psycho-social aspects.²¹ The factors causing children to face the law are grouped into 2 factors, internal factors and external factors. The first is internal factors of children dealing with the law, including family economic limitations; the family is not harmonious (Broken Home); lack of attention from parents, either because parents are busy working or working abroad as migrant workers; weak faith and piety to children and parents. Meanwhile, external factors are the progress of globalization and technological without being matched by children's mental readiness; poor social environment for children with their friends; there is no institution or forum to confide in for counseling where children express their feelings; lack of children's play facilities resulting in children being unable to correlate their creativity and then directing their activities to violate the law.²²

Law No. 11 of 2012 Article 1 paragraph 2 (two) and 3 (three) concerning the juvenile criminal justice system also contains an understanding of children who are in conflict with the law, namely children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses of criminal acts. A child in conflict with the law, hereinafter referred to as a child, is a child who has reached the age of 12 (twelve) but has not reached the age of 18 (eighteen), who is suspected of committing a criminal act.²³ The most fundamental points in this Law are the explicit regulation of Restorative Justice and Diversion.²⁴

The convention of children's rights expressly states that: "In all actions concerning children from, whether undertaken by public or private social welfare institution, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration."²⁵

Diversion

The word diversion comes from the English which means "Transfer". The Juvenile Criminal Justice System Law regulates diversion, which functions to

²¹ Fathul Lubabin Nuqul and Ardana Reswari Miranda Ningrum, "Considering the Potential of Pesantren's Contribution in Diversion Programs for Juvenile Offenders," *Proceeding of International Conference on Engineering, Technology, and Social Sciences (ICONETOS)* 1, no. 1 (February 8, 2020): 26.

²² Yanny Tuharyati, "Penyelesaian Kasus Anak Di Kabupaten Bondowoso," *JURNAL PENELITIAN IPTeKS* 1, no. 1 (January 2016): 105, <https://doi.org/10.32528/ipteks.v1i1.262>.

²³ Republic of Indonesia Law Number 11 Of 2012 About Child Criminal Judgment System.

²⁴ Andre Dwijaya Saputra, Elwi Danilm, and Yoserwan Yoserwan, "The Role of Investigator in Applying Diversion to Children in Conflict with the Law in the Jurisdiction of Padang City Police," *International Journal of Multicultural and Multireligious Understanding* 6, no. 5 (October 24, 2019): 457, <https://doi.org/10.18415/ijmmu.v6i5.1113>.

²⁵ Muchammad Qomaruddin Qomaruddin, Gunarto Gunarto, and Aryani Witasari, "Legal Flexibility in Children Diversion Which Conflict With the Law (ABH) Case Study At Ex Residency of Cirebon Jurisdiction," *Jurnal Daulat Hukum* 3, no. 1 (April 12, 2020): 58, <https://doi.org/10.30659/jdh.v3i1.8456>.

make children facing with the law not being stigmatized as a result of the their undergoing judicial process. Diversion can be taken from the level of investigation, prosecution, and examination of cases of children in district courts.²⁶ Diversion is a diversion of the settlement of cases of children who are suspected of having committed certain criminal acts from the formal criminal process to peaceful settlement between the suspect/ defendant/ perpetrator of a criminal act and the victim facilitated by the family and/ or community, child social counselors, police, prosecutors, or judge.²⁷

Investigators, Public Prosecutors, and Judges, when considering whether to implement diversion or not, should pay attention to the category of crime committed by the child; age of the child; results of community research from Correctional Institution (BAPAS); the loss caused by the child's behavior; the level of concern and public opinion on the case; and the support of family and community environments.²⁸

The concept of diversion in Islamic law is also called *al-shulh* (mediation). The suitability of diversion to Islamic law can be seen from its orientation, where diversion and *al-shulh* are both victim-oriented. It can be seen in Law No. 11 of 2012 concerning on the Juvenile Criminal Justice System Article 9 paragraph (2) in which the diversion agreement must obtain the consent of the victim and/ or the victim's family and the willingness of the child and his/ her family, except for criminal acts in the form of violations, minor crimes, criminal acts without victims, or the value of the victim's loss which is not more than the local provincial minimum wage. Meanwhile, the difference in Islamic law can be seen from the criminal category. Like the *hudud* category which includes adultery, *qadzaf*, *khamar*, *maisir*, *sariqah*, *hirabah*, rebellion and apostasy whose penalties have been determined in the Al-Quran and Hadith, in this case *al-shulh* cannot be applied.²⁹

Restorative Justice

Restorative justice according to Tony Marshall is a process where all parties related to a certain crime jointly solving problems and how to deal with future consequences/ implications in the future.³⁰ Restorative justice developed by

²⁶ Analiyansyah and Syarifah Rahmatillah, "Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum (Studi Terhadap Undang-Undang Peradilan Anak Indonesia dan Peradilan Adat Aceh)," 58.

²⁷ Nasir Djamil, *Perlindungan Hukum Pidana Bagi Anak Di Indonesia* (Jakarta: Raja Grafindo Persada, 2011), 137.

²⁸ Zakki Mubarak and Achmad Sulchan, "The Roles Of Investigator In Implementing Diversion On Children Criminal Action," *International Journal of Law Reconstruction* 2, no. 1 (March 1, 2018): 49, <https://doi.org/10.26532/ijlr.v2i1.2992>.

²⁹ Israr Hirdyadi and Hera Susanti, "Diversi Dalam Sistem Peradilan Pidana Anak Di Indonesia dan Tinjauannya Menurut Hukum Islam," *LEGITIMASI: Jurnal Hukum Pidana dan Politik Hukum* 6, no. 2 (December 4, 2018): 193-94, <https://doi.org/10.22373/legitimasi.v6i2.3954>.

³⁰ Pri Jata Ayu Pramesti, "Hal-Hal Penting Yang Diatur Dalam UU Sistem Peradilan Pidana Anak," hukumonline.com/klinik, accessed September 22, 2020, <https://www.hukumonline.com/klinik/detail/ulasan/lt53f55d0f46878/hal-hal-penting-yang-diatur-dalam-uu-sistem-peradilan-pidana-anak/>.

UNICEF based on international legal instruments for children who have legal problems, one of which is The Beijing Rules. This concept emphasizes on justice, which can restore conditions for children as perpetrators of crime, children as victims of crime, and disturbed communities.³¹ in the sense of restorative justice, there is forgiveness from the victim to apologize the perpetrator, resulting in a recovery of the damage relationship, and restoration to its original state³²

The concept of restorative justice in Islamic criminal law, can be seen in the mind ideas including:³³

- 1) Prioritizing victim-oriented rather than just offender-oriented by involving the victim-family in solving criminal cases shows similarities to the essence of *qisas-diyat*.
- 2) Settlement of cases in restorative justice is on a non-penal line. This effort is made through a victim-perpetrator peace process. The treatise of Al-Qadha Khalifah Umar Bin Khattab, peace can be implemented based on clear corridors.
- 3) Restorative justice embodies justice for the parties, not only realizing legal justice, but also considering social justice, individual justice and also moral justice. Justice in Islam includes individual justice (*al-is al-fardiyah*) and social justice (*al-is al-ijtimaiyah*).

Resolving cases of restorative justice in Islamic law is known as *tahkim*. The term *tahkîm* comes from Arabic meaning to submit a verdict to someone and accept the verdict. According to the term, *tahkîm* is two or more people to concede the dispute and apply the law, *syara'* to their dispute.³⁴

In Islamic sharia, the legal basis that justifies the institution of *tahkîm* is the word of Allah in Q.s. al-Nisa [4]: 35 which means: "So take a *hakam* from a man's family and a *hakam* from a woman's family. If both of them want improvement, surely Allah will give *taufik* to both of them". It is also mentioned in Q.s. al Nahl [16]: 90 which means: "Verily Allah ordered (you) to act justly and do good deeds, to give to relatives, and Allah forbids from heinous acts, evil and enmity. He

³¹ Dewi Setyowati, "Diversion in the Child Criminal Justice System as an Effort to Implement Restorative Justice," *Unram Law Review* 4, no. 1 (April 23, 2020): 66-67, <https://doi.org/10.29303/ulrev.v4i1.108>.

³² Erna Trimartini, Hartiwiningsih, and Widodo Tresno Novianto, "Child Diversion Application Policy That Has a Conflict with Law to Make a Restorative Justice in Indonesia," in *Proceedings of the International Conference on Law, Economics and Health (ICLEH 2020)* (International Conference on Law, Economics and Health (ICLEH 2020), Semarang, Indonesia: Atlantis Press, 2020), 320, <https://doi.org/10.2991/aebmr.k.200513.063>.

³³ Ifa Latifa Fitriani, "Islam dan Keadilan Restoratif Pada Anak Yang Berhadapan Dengan Hukum," *IN RIGHT: Jurnal Agama dan Hak Azazi Manusia* 2, no. 1 (March 24, 2017): 127-28, <http://202.0.92.5/syariah/inright/article/view/1239>.

³⁴ Yusi Amdani, "Konsep Restorative Justice Dalam Penyelesaian Perkara Tindak Pidana Pencurian Oleh Anak Berbasis Hukum Islam Dan Adat Aceh," *Al-Adalah* 13, no. 1 (2016): 69, <https://doi.org/10.24042/adalah.v13i1.1130>.

teaches you so that you can take lessons ".³⁵

Restorative Justice in criminal law must aim to restore the situation as before the crime. When someone violates the law, the situation will change. Thus that is where the role of law is to protect the rights of every victim of crime.³⁶ The main purpose of restorative justice is to reparation for victims' losses, recognition of perpetrators for losses resulted from crimes committed, conciliation or reconciliation between victims, perpetrators and society, reintegration of perpetrators, and through peaceful resolution of conflicts (peacefully resolved).³⁷

SETTLEMENT OF CHILDREN'S CRIMINAL ACTIONS BY LITIGATION IN PONOROGO POLRES KPPA AND PONOROGO STATE COURT

The following is data on cases of children dealing with the law (ABH), legally (unsuccessfully diversified at the police level) and those that were successfully diversified (non-litigation) handled by the KPPA of Ponorogo Police unit from 2015 to 2018. In 2015, 12 cases were handled by litigation, 5 were successfully deviated at the Polres, while 7 cases had to go to court, because they were failed to be deviated. Then in 2016, there were 13 cases of children, 5 cases were successfully reconciled through diversion, while 8 other cases reached the District Court. Meanwhile, in 2017, there were 14 cases were handled by KPPA of Ponorogo Police, 7 cases could be diversified, while 7 other cases had to go through the process to the District Court. Meanwhile, from 2018 to 2019, there were 20 cases of children who were admitted, 11 were successfully diversified at the Police level and 9 went to court.³⁸

Based on the results of the research and the summary of the data as been presented in the paragraph above, the handling of litigation against children in conflict with the law were carried out by the KPPA of Ponorogo Police, the prosecution, and the court level.³⁹

In terms of law enforcement, police officers of KPPA unit, as well as the Panel of Judges who examined children's cases at the Ponorogo District Court, have

³⁵ Yus. Amdani, "Proses Pelaksanaan Penyelesaian Perselisihan Di Lembaga Peradilan Adat Aceh Tingkat Sampong (Desa)," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 48, no. 1 (January 1, 2014): 230, <https://doi.org/10.14421/asy-syir'ah.2014.%x>.

³⁶ Sadewo Fajar Ari, Abdurrahman Hamidah, and Aryani Fajar Dian, "The Application Of Restorative Justice System Through The Diversion Of Children In Conflict With Laws In Central Java Polda (Regional Police Of The Republic Indonesia)," *International Journal of Psychosocial Rehabilitation* 24, no. 2 (February 1, 2020): 2807-3808, <https://doi.org/10.37200/IJPR/V24I2/PR200701>.

³⁷ Ful Ernis, "Diversi dan Keadilan Restoratif Dalam Penyelesaian Perkara Tindak Pidana Anak di Indonesia (Diversion And Restorative Justice In Case Settlement Of Juvenile Justice System In Indonesia)," *Jurnal Ilmiah Kebijakan Hukum* 10, no. 2 (February 13, 2017): 168, <https://doi.org/10.30641/kebijakan.2016.V10.163-174>.

³⁸ Ritus.

³⁹ Martha Eri Safira and Dewi Iriani, *Penerapan Hukum Terhadap Anak Yang Berkonflik Dengan Hukum* (Ponorogo: Nata Karya, 2019), 200-236.

carried out their functions and duties according to the mandate of the Juvenile Criminal Justice System Law Number 11 of 2012, by applying diversion at the beginning of the case examination at every level. Apart from this, in handling it, the police and the prosecutor's office have also paid attention to the Child Protection Law regulated in Law Number 35 of 2014.⁴⁰

Handling litigation at the Ponorogo District Court, which is based on document review and the results of interviews with the criminal secretariat at the District Court, data on children's cases decided at the Ponorogo District Court, namely in 2015 were 7 (seven) child cases, then in 2016 there were 8 (eight) child cases, then in 2017 there were 7 (seven) child cases, while in 2018 there were 4 (four) child cases handled by Ponorogo State Court.⁴¹ The results of the research concluded from interviews with the clerk of the criminal section, Mr. Wahyudi, can tell that what who are decided by the panel of judges in these cases still pay attention to the rights of the child. In addition, the trial procedure carried out by the panel of judges is in accordance with the Child Protection Law and the Child Criminal Justice System Law. The trial was declared closed to the public, the child as the perpetrator of a criminal act was also accompanied by child observers both from Bapas and from KPPA in Ponorogo regency and Peksos. When the case was examined for a child whose being sentenced was more than 5 years in prison, the child was also accompanied by a lawyer. The trial atmosphere is also made as friendly as possible, so that the child does not feel pressured and afraid. Moreover, the resulted decision also puts forward the child's future, but the child can still be responsible for his actions.

The results of document tracing, in the form of a decision, in deciding child cases, the panel of judges also refer to the Child Protection Law and the Child Criminal Justice System Law. For example, case Number: 1/ Pid.Sus.Anak/ 2015/ PN.Po. This case happened to a child who was 17 years old at the time of the incident. The case was a maltreatment with criminal threats in Article 351 of the Criminal Code jo. 170 KUHP. The imposition of the verdict on January 2, 2015, namely with the result of a reconciliation decision (diversion) by giving compensation money as amounted Rp. 1,500,000.00, to the victim who is also still a child. In addition, the child was also given a deterrent effect on the child. The child was given a 25 day sentenced to do job training at the Ponorogo BLK.

Then, a case of Case Number 02/ Pid.Sus.Anak/ 2018/ PN.Png happened in 2018 is a case of rape committed by a child as a perpetrator against a child as a victim. It had been diversified, both at the police level and at the court level,

⁴⁰ The results of direct observation during one month (1-31 Juli 2018) in Unit KPPA Polres Ponorogo, July 2018.

⁴¹ Wahyudi, Head of The Criminal Department in PN Ponorogo, Interview, March 6, 2020.

but the perpetrator did not want to be responsible and did not feel guilty, with a reason that the rape was occurred because of seduction from the child as a victim herself. Every time of the trial, BAPAS Madiun officers were also brought in, and based on input from BAPAS Madiun as well, for his actions, the panel of judges punished this child as an offender by guidance outside the Correctional Institution, namely at Pondok Pesantren “Ababil”, which is located at Dolopo Madiun, for 2 (two) years and by coaching and training for 6 (six) months at the Ponorogo Social Service.

Of the two cases, the Ponorogo PN panel of judges in deciding the case of a child in which the child is the perpetrator of a criminal act, the result of the verdict does not have to be that the child is deposited in a juvenile penitentiary. There are several decisions from the cases of children from 2015 to 2018 in which the punishment for the child is entrusted to the social service and work training center between 25 days to the longest 6 (six) months, there are also cases where the child is punished by being put in the fostered Islamic boarding school. From the results of the verdict research and interviews at the Ponorogo District Court, it can be seen that the judges in hearing and deciding cases continue to prioritize the interests and future of the child and make every effort in order to make the child be able to return to society well. Moreover, this is in accordance with the mandate of UU SPPA and UU PA.

Meanwhile, examined from the Islamic criminal law system, what have done by law enforcement officials in litigation still prioritizes children’s rights and the best efforts for the child’s future, then the handling of children’s cases by litigation in Ponorogo Regency is also in accordance with the criminal law system. The punishment is also striven to improve children’s behavior, such as the case above, where the punishment for children is being put into Islamic boarding schools.

SETTLEMENT OF CHILDREN’S CRIMINAL ACTIONS BY NON-LITIGATION IN KPPA OF POLRES PONOROGO, KPPA, AND LK3

Non-Litigation Handling at KPPA Ponorogo Police

The following are the types of ABH cases successfully diversified (reconciled) by the PPA Unit of the Ponorogo Police in 2015-2019:⁴²

Type of Case	Year 2015 -2016	Year 2017	Year 2018 - 2019	Total
Theft	7 cases	3 cases	7 cases	17 cases
Sexual Intercourse	1 case	2 cases	2 cases	5 cases

⁴² Ritus, Unit KPPA Polres Ponorogo, Interview, March 5, 2020

Dumping child	-----	1 case	-----	1 case
Spreading of Pornography Content (Electronic Transaction/ IT)	-----	1 case	-----	1 case
Ran Away with Underage Child	-----	-----	-----	-----
Oppression	-----	-----	-----	-----
Gambling	2 cases	-----	-----	2 cases
Child Abuse	-----	-----	-----	-----
Total	10 cases	7 cases	9 cases	26 cases

The handling of diversion by the KPPA Unit of Ponorogo Police is in accordance with Article 7 of the UU SPA. The success of the reconciliation between the child and the victim, outside of court or in non-litigation, is known as Restorative Justice. It is based on the analysis of the application of justice restoration at the Ponorogo Police.

First is a prioritizing support and a healing of victims. Healing of victims from sexual harassment, both adult and child offenders must be prioritized. Victims of sexual abuse can be victims of boys in cases of sodomy, as well as victims of girls. There were 3 cases in the PPA unit of the Ponorogo Police, namely victims of sexual harassment in 2016, whereas 1 case was successfully diversified at the police level. In 2017, 1 case of 3 cases were successfully transferred, and the other two cases went to court. Another case, with victims of sexual harassment who will experience trauma, takes time and a strategy for the victim's recovery. Bripka Ritus⁴³, said that victims of abuse will be afraid to meet other people, especially men. The examination will be carried out by a psychologist and policewoman who check it, even then, it is not easy to get an explanation from the victim because usually the victim will be depressed so that she cannot communicate smoothly.

Second, the offender is responsible for what he did. From the results of the research, the reconciliation at the Ponorogo Police, between the child perpetrator and the victim who was successfully reconciled, contained several clauses, where the child perpetrator must still be responsible for the victim. The form of accountability, for example, in cases of theft, by replacing stolen items, while in cases of intercourse, the child perpetrator wants to marry the victim and provides material compensation with different values according to the agreement of the parties.

⁴³ Ritus, Unit KPPA Polres Ponorogo, Interview, April 16, 2019.

44 Third, dialogue between victims and perpetrators to reach understanding. A diversion agreement must be reached between the perpetrator and the victim. From the analysis, it was found that the diversion process at the Ponorogo Police was carried out through deliberations involving the child and their parents/guardians, the victim and/ or their parents/ guardians, community counselors, and professional social workers based on a restorative justice approach.⁴⁴

2 Fourth, there is an attempt to correctly place the losses incurred; the Reconciliation at the Ponorogo Police Station between the child perpetrator and the victim must obtain the consent of the victim and/ or the victim's family and the willingness of the child and his family. Based on the results of the diversion analysis carried out by KPPA of Ponorogo Police, the compensation requested was in accordance with the agreement between the child perpetrator, his parents or guardian, and the victim and the victim's family.

5 Fifth, the perpetrator of the violation must be aware of how not to repeat the crime again in the future. From the results of observations and research, it was found that the ABH perpetrator who was successfully diversified was obliged to make a statement letter that he would not repeat his actions. Between the perpetrator and the victim will meet witnessed by the police, BAPAS, social services, and KPPA. The community helps to integrate both victim and perpetrator. However, the fact is that there are children who also might continue to commit the same crime. This is a dilemma for the KPPA unit of Ponorogo Police because the rules in UU SPPA are clear, that diversion can only be carried out once against ABH at each level. However, KPPA of Ponorogo Police took a joint policy, by still giving the opportunity to be diversified for one more time. If, the child is still committing minor crimes and violations again, then the diversion process at the Polres for the child is no longer valid.

Non-Litigation Handling at KPPA and LK3 at Ponorogo

Based on the results of interviews with Ms. Anna, data on cases of children who committed criminal acts were obtained, namely in 2015 as many as 3 cases of underage sexual intercourse, 3 cases of theft, 2 cases of abuse (beatings), and 1 case of narcotics (marijuana). In 2016, there were 2 cases of sexual intercourse with minors, and 2 cases of dumping babies, 1 case of domestic violence for children molesting their mother, 7 cases of theft, and 3 cases of abuse (beatings). Whereas in 2017 there were 4 cases of underage sexual intercourse, and one of them was incest case committed by siblings, 3 cases of theft, while cases of abuse were 3 cases. Moreover, in 2018 there were 2 cases of intercourse with minors, and 1 case

⁴⁴ Look at Article 8 paragraf (1) & (2) Republic of Indonesia Law Number 11/2012.

of school violence (bullying), 1 case of abuse, 2 cases of theft, which the data were obtained until the end of July 2018.⁴⁵

Based on the results of interviews with Mr. Tajib, Mr. Iwan, and Mrs. Laila from Peksos⁴⁶, data were obtained on cases of children who committed criminal acts, namely in 2015 as many as 5 cases of sexual intercourse with minors, 5 cases of theft, 2 cases of abuse (beatings). In 2016, there were 2 cases of sexual intercourse with minors, and 2 cases of dumping of babies, 1 case of domestic violence for children molesting their mother, 7 cases of theft, and 3 cases of abuse (beatings). Whereas in 2017 there were 4 cases of underage sexual intercourse, and one of them was incest cases committed by siblings and 3 other cases were theft, while cases of abuse were 3 cases. The last, in 2018 there were 2 cases of intercourse with minors, 4 cases of school violence (bullying), 1 case of abuse, 3 cases of theft, which the data were obtained until the end of July 2018.

Based on the results of the interview, that the KPPA of Ponorogo Regency and LK3 from receiving reports of a crime that befell a child as a victim or perpetrator, up to its handling, have carried it out in accordance with the UU PA guidelines. If you need a psychologist, you will use psychology from the Lecturer of IAIN Ponorogo whereas if you need legal consultation, so far, you have also collaborated with Mrs. Martha also from IAIN Ponorogo⁴⁷, by visiting the perpetrator and victim, observing the environmental conditions of the perpetrator and victim, trying to reconcile the two parties, providing assistance when the case reaches the Court. Meanwhile, according to Mas Iwan,⁴⁸ there were several cases successfully reconciled between the victim and the perpetrator or with non-litigation. However, there are several cases that still have to go to court. Therefore, the way of diversion of justice and restoration of justice is also taken by LK3 together with KPPA of Ponorogo Regency in handling children in conflict with the law.

Oberserving the non-litigation handling carried out by related institutions in Ponorogo Regency and considering from Islamic law, the application of diversion and restoration of justice is in accordance with *al-shulh*, whereas both are victim oriented with the help of *tahkîm* as a restorative justice institution.

CONCLUSION

The handling of children in conflict with the law by litigation carried out by the KPPA unit of Ponorogo Police and the Ponorogo District Court, in terms of the juvenile criminal justice system, is in accordance with UU SPA and UU PA, as

⁴⁵ Anna, social worker from KPPA Ponorogo, Interview, July 10, 2019.

⁴⁶ Tajib, Iwan, and Laila, Office LK3 Ponorogo, Interview, April 13, 2019.

⁴⁷ Tajib, Head of LK3 The Department of Social in Ponorogo, Interview, July 15, 2019.

⁴⁸ Iwan, staf LK3 The Department of Social in Ponorogo, Interview, July 15, 2019.

43 well as the concept of a criminal justice system in Islam. Related to the arrest, detention, and the investigation process carried out by the Ponorogo Police KPPA, those are in accordance with UU SPPA and still prioritizes children's rights as regulated in the UU PA. Meanwhile, at the court level, the application of criminal sanctions imposed by the judges of the Ponorogo District Court also tries as much as possible to continue to prioritize children's interests which are also in accordance with the concept of benefit in Islamic law. Like some of the decisions that were used as examples, namely providing penalties in the form of social work, ABH who dropped out of school were also punished for taking job training, then the punishment was replaced by studying in a boarding school for 2 (two) years.

8 Meanwhile, the handling of children in conflict with the law through non-litigation by the KPPA unit of Ponorogo Police, KPPA unit of Ponorogo Regency, and Ponorogo Regency LK3 has also been in accordance with UU SPPA and UU PA. Although for minor crimes and re-committed violations (repeat offenses) were conducted by the same ABH, they are still given one more time to be diversified at the police level, even though they had violated the provisions of UU SPPA. The goal is that cases can be resolved more quickly and simply, whereas in the Islamic criminal concept, the application of non-litigation for ABH is in accordance with the concept of *al-shuhl* with the help of *tahkîm* as a restorative justice institution.

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17 In handling children in conflict with the law, it is necessary to have good coordination from law enforcement officials, and formal and non-formal institutions. The aim is to prevent children from committing crimes again that will harm themselves. There needs to be special attention from the local government of Ponorogo Regency in dealing with children in conflict with the law and children as victims, by drafting a law on child protection, building safe houses, and rehabilitation for children; both victims and child perpetrators.

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