

Penal Mediation in Juvenile Delinquency Cases in Manado: An Islamic Legal Perspective

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ABSTRACT

This study analyzes the implementation of penal mediation in cases involving children in conflict with the law in Manado. It examines the obstacles encountered during the penal mediation process in these cases from an Islamic legal perspective. The handling of children in legal matters cannot be equated with the treatment of adults who commit crimes. Penal mediation is an appropriate dispute resolution method for cases involving children, using a restorative justice approach by Islamic law. The research method employed is a normative-empirical approach involving direct interviews with investigators in cases of children in conflict with the law and a literature review examining Islamic law related to the application of juvenile justice. The study reveals that the implementation of penal mediation through diversion has not been fully optimized, as not all juvenile cases are mediated during the processes at the police, prosecutor's office, and court levels. Furthermore, the application of penal mediation in Islamic law aligns with the principles of *Islah* and *Suhl*, emphasizing the principle of reconciliation (*Islah*).

Keywords: Penal Mediation; Children; Restorative Justice; *Islah*.

INTRODUCTION

Law No. 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA) emerged as a breakthrough in resolving cases involving children in conflict with the law. Previously, the resolution of such cases often neglected the interests of children, whether they were victims or perpetrators (Davies & Robson, 2016). While the UU SPPA does not explicitly use the term penal mediation, it introduces the concepts of restorative justice and diversion. These approaches focus on resolving criminal cases by involving all relevant parties to seek the fairest possible solution collaboratively. The UU SPPA mandates the diversion of case resolution outside the judicial process, emphasizing the fulfillment of children's rights (Daud & Cahyaningtyas, 2020).

Based on the definitions in the UU SPPA, it can be concluded that penal mediation serves as the method employed in resolving criminal cases involving children. Although the term mediation is not explicitly mentioned, the explanations align with mediation techniques. The concept of penal mediation in Indonesia stems from the background of ideas related to criminal law reform and practical considerations (Effendy & Arpangi, 2021). "criminal reform" includes victim protection, harmonization, restorative justice, overcoming rigidity and formalities, avoiding the negative impacts of the current criminal justice and sentencing systems, and seeking alternatives to punitive measures (Arpin & Haritsa, 2018).

According to data released by the Indonesian Child Protection Commission (KPAI), from 2011 to 2019, 11,492 children were involved in legal cases (Children in Conflict with the Law - ABH), with the number increasing each year. In 2017, there were 910 children in conflict with the law, which rose to 2,200 in 2018 and 3,000 in 2019. The trend of ABH is higher in large cities, such as Manado than in smaller towns. Based on data from the Bapas Sulawesi Utara in 2018, there were 407 ABH cases in Manado, of which only 27 were successfully resolved through penal mediation (diversion) (Sulaiman & Halidi, 2019).

These figures show that out of 407 ABH cases in Manado, only 27 were resolved through penal mediation. This indicates that implementing the juvenile justice system (UU SPPA) in Manado is not optimal. The primary objective of the UU SPPA is to achieve a judicial process that is as fair as possible for the benefit of children, focusing on justice rather than punishment. A resolution approach that prioritizes rehabilitation and protecting children's rights is crucial to replace the repressive approach that emphasizes punishment alone (Mousavi et al., 2013).

Several previous studies have examined the juvenile justice system and the application of penal mediation in Indonesia. Research by Sulaiman & Halidi (2019) highlighted a significant increase in the number of children involved in legal cases, noting that the existing juvenile justice system has not been fully effective in providing rehabilitation. Other studies, such as those by Erdianti et al. (2020), explored the application of restorative justice and penal mediation in juvenile

delinquency cases, identifying a lack of understanding and limited resources as significant barriers to the optimal implementation of penal mediation.

This study offers a novel contribution by focusing on Manado, where the trend of ABH cases continues to rise, but penal mediation has not been maximized. Another novelty lies in integrating the perspective of Islamic law into penal mediation, mainly through the principle of *Islah* (peace) in resolving ABH cases. Additionally, this study identifies the challenges faced in implementing penal mediation and provides recommendations for optimizing the implementation of the UU SPPA, both from legal and practical perspectives.

METHODS

This study employs a normative-empirical legal approach, combining an analysis of existing legal norms with data collection through direct observation of practices in the field. In addition to observation and documentation, data were collected through direct interviews with investigators handling cases involving children in conflict with the law (ABH) in Manado. These interviews aim to gain a deeper understanding of the legal processes faced by children, the challenges encountered by investigators in handling ABH cases, and how the protection and recovery of children are carried out within the framework of the applicable legal system (Irwansyah, 2020).

RESULTS AND DISCUSSION

The Application of Penal Mediation in Cases Involving Children in Conflict with the Law

Mediation is one form of dispute resolution outside the court, commonly known as Alternative Dispute Resolution (ADR). This method is generally applied in resolving disputes in the field of civil law (Fadillah & Putri, 2021). Principally, criminal law does not formally recognize mediation. However, in practice, certain criminal cases are resolved through mediation (Erdianti et al., 2020). This practice signifies a conceptual shift in justice, transitioning from criminal justice to restorative justice. This is particularly intriguing, as the legal framework does not explicitly regulate mediation within criminal law (Adi, 2021).

Penal mediation, grounded in restorative justice, emphasizes a more humane approach to handling cases involving children in conflict with the law. It represents a paradigm shift from punitive measures to reconciliation, from retribution against offenders to the healing of victims, from isolation and violence to community involvement and cooperation, from destructive negativity to constructive resolution, and from punishment to forgiveness imbued with compassion. This philosophical value reflects broad human recognition, including repair, healing, forgiveness, mercy, reconciliation, and, where necessary, sanctions grounded in dialogue and negotiation (Eryke & Herlambang, 2020).

Criminal acts committed by children are forms of behavioral deviation. However, such behavior should not be equated with the deviant acts of adults. Similarly, a child who has committed a criminal should not be labeled a criminal, as these actions often occur as part of the natural developmental process marked by turbulence before reaching maturity. Today, there are numerous cases involving children in criminal acts. The Juvenile Criminal Justice System (UU SPPA) has been established to address and prevent such issues. This system resolves juvenile criminal cases through a "Restorative Justice" approach (Cahyaningtyas, 2018).

In its development in Indonesia, children often come into contact with the law, either as perpetrators or victims. Resolving cases involving children is expected to be conducted through diversion, transferring the resolution process from the formal criminal justice system to alternative measures outside the courts, as mandated by the UU SPPA. When children in conflict with the law are subjected to the criminal justice system, it presents fundamental challenges. This is not an ideal solution, given that the nature of crimes committed by children is often not severe. Children's actions are influenced by external factors such as their environment, education, and social interactions (Feldtmann, 2020).

Treating children in the same manner as adult offenders is inappropriate, considering their psychological, mental, and cognitive development. Resolving juvenile criminal cases through formal judicial processes can jeopardize their future. The use of the criminal justice system for children is inappropriate, as it may result in deep trauma in the long term. Instead, cases involving children should be resolved through penal mediation. The prerequisites for penal mediation highlight that the human dignity of the victim must be prioritized. Penal mediation involves a spiritual process to restore and rebuild the victim's confidence. The urgency of penal mediation, leading to restorative justice, aims to achieve a win-win solution in resolving cases (Mukdin & Heryanti, 2020).

The advantages of penal mediation include its flexibility, as the resolution process is generally left to the offender and the victim. Additionally, penal mediation is cost-effective. As an alternative to sanctions, the offender may offer compensation agreed upon by the victim, making justice a mutual agreement rather than being determined solely by prosecutors or judges. Taufiqurrahman Abildanwa, in his article, highlights that resolving criminal cases outside the judicial process is a consensual resolution agreed upon by the parties involved, positioning the offender and victim on an equal level (Septiyo et al., 2020).

The Implementation of Penal Mediation in Law Enforcement

Anyone, whether adults or children, can commit criminal acts. However, deviant behavior in children cannot be equated with that of adults. Similarly, the resolution process for juvenile cases must differ from that for adults. In Manado, one of the cities in Indonesia, there are cases involving children that conflict with the law.

Table 1. Children in Conflict with the Law

NO	Year	Number of Cases
1	2021	4
2	2022	3
TOTAL		7

Source: Criminal Investigation Data, Manado Police Department (2023)

Based on the data above, the number of cases involving children in conflict with the law is not significantly high. This is because the data was only obtained from two investigative units of the Manado Police Department, and all the children involved in these cases were categorized as perpetrators. Meanwhile, data on children in conflict with the law as victims are recorded in the PPA (Women and Children Protection) unit of the Manado Police Department, with a significantly higher number of cases. According to an interview with Marni (2023), it was stated that: “The majority of cases handled by the PPA unit involve criminal acts of sexual abuse with children as victims. The perpetrators are both adults and minors, but the data on the number of child perpetrators has not yet been compiled.” After that, the types of criminal acts committed are as follows:

Table 2. Criminal Acts Committed by Children in Conflict with the Law (ABH)

NO	Criminal Act	Number of Cases
1	Thef	2
2	Sharp Weapons	2
3	Assault	3
TOTAL		7

Source: Criminal Investigation Data, Manado Police Department (2023)

Based on the data in the table above, the criminal acts committed by children are categorized as minor offenses, such as theft (2 cases) and assault (3 cases), which carry a penalty of less than 7 years, and 2 cases involving the use of sharp weapons, which have a penalty of 10 years. From 2021 to April 2022, there were 7 cases of children in conflict with the law (ABH). According to the juvenile justice system, cases involving children must be resolved with a restorative justice approach, which seeks to resolve conflicts peacefully outside of court. Restorative justice is particularly important for children in conflict with the law because their psychological well-being must be considered.

In restorative justice, penal mediation and diversion concepts are commonly applied. In Indonesia, some forward-thinking judges have adopted the idea of restorative justice, specifically penal mediation. However, restorative justice cannot be used for all types of crimes. In practice, many juvenile judges in Indonesia have implemented restorative justice through penal mediation (Laksana, 2017).

Penal mediation in resolving cases involving children in conflict with the law is known as diversion, as stated in the Juvenile Criminal Justice System Law (UU SPPA). Penal mediation aims to resolve disputes by encouraging all parties (law enforcement, perpetrators, victims, and the community) to move beyond the formal legal framework of the criminal justice system (Khasanah, 2020). Penal mediation emphasizes communication to resolve conflicts without resorting to legal prosecution, which aligns with the concept of diversion. Diversion seeks to resolve juvenile cases by encouraging the involved parties to step outside the formal legal framework, aligning with the principles of penal mediation (Chandra, 2023).

In handling juvenile cases, children must receive special treatment. This special protection is outlined in Article 17 (1) of Law No. 11 of 2012 on the Juvenile Criminal Justice System. Given the nature and psychology of children, they require special treatment and protection, particularly regarding actions that may harm their mental and physical development. Article 27 (1) of the same law mandates that investigations involving children differ from those involving adults. Investigators must seek advice from Community Advisors (Pembimbing Kemasyarakatan) after a criminal act is reported or filed. This law aims to provide justice for children, allowing them to participate in resolving conflicts and take responsibility for their actions, incorporating diversion and restorative justice to emphasize restoring conditions to their original state (Afifah & Lessy, 2014).

While restorative justice is not explicitly regulated in the Criminal Procedure Code (KUHAP), Article 8 (1) of Law No. 11 of 2012 explains that the diversion process must involve deliberation with the child and their parents/guardians, the victim and their parents/guardians, Community Advisors, and professional social workers, all based on restorative justice principles. This article suggests that restorative justice is implemented through diversion, shifting the legal process from criminal justice to an alternative resolution outside the courts.

The diversion process relies heavily on restorative justice as a resolution mechanism. Article 7 (1) of Law No. 11 of 2012 states that diversion is required at every stage, from investigation to prosecution and trial in district courts. Article 7 (2) specifies that the restorative justice-based diversion process is applicable only in cases where the penalty is less than 7 years, and the offense is not a repeat crime. Article 9 (1) emphasizes that law enforcement officials, including investigators, prosecutors, and judges, must consider the type of crime, the child's age, the findings of community research, and the level of family and community support when applying diversion. Social Welfare Workers and community representatives may also be involved in necessary cases.

As the first point of contact in handling juvenile cases, the police play a critical role in determining whether a child's case proceeds to court or is resolved informally. According to the SPPA Law, the police are required to implement diversion whenever a juvenile offense is reported. Regarding ABH cases in the Manado Police Department, Effendi (2023) stated, "All ABH cases are mediated by involving the victim and perpetrator. For cases requiring diversion, efforts involve Community Advisors, families, village authorities, and community leaders. However, these efforts sometimes fail, as seen in a stabbing case involving a second-grade high school student. Meanwhile, an assault case was successfully mediated, though the mediation occurred at the village level after police mediation failed."

From the above explanation, it can be concluded that only one ABH case was successfully diverted, and even that effort initially failed. Although mediation is attempted in all cases, penal mediation at the police level is not fully implemented in compliance with the SPPA Law, which mandates diversion and consultation with Community Advisors after an offense is reported (Article 27(1)). A successful diversion case occurred in 2019 for an assault case. According to PPA Unit Head (Marni, 2023):

"All cases received by the police are mediated, although not all involve a diversion process with Community Advisors due to time and cost efficiency. A successful diversion in 2019 involved Community Advisors, victims, perpetrators, religious leaders, and community leaders. The results were documented in a diversion report and submitted to the court for an SP3 decision."

Penal mediation at the police level takes two forms: diversion involving Community Advisors, victims, perpetrators, and community leaders, and mediation involving only the victims and perpetrators. Despite these efforts, none of the mediated cases were resolved peacefully at the police level, which contradicts the restorative justice principles of the SPPA Law. Out of 7 ABH cases at the police level, 5 were minor offenses requiring diversion and should have been resolved peacefully, thus achieving the SPPA Law's restorative justice goals.

Implementation of Penal Mediation at the Prosecution Stage

According to the Juvenile Criminal Justice System Law (UU SPPA), diversion is mandatory during the prosecution stage. Based on an interview with Untu (2023), the Head of the General Crimes Division at the Manado District Prosecutor's Office, he stated:

"The diversion process is rarely carried out at the prosecution stage because it is assumed that diversion has already been conducted during the investigation stage. However, mediation efforts are not absent. In alignment with the spirit of the SPPA Law and the restorative justice approach, the

prosecution still attempts to interview the parties involved to assess the possibility of diversion and review the child's profile."

From this interview, it can be concluded that mediation through diversion is not effectively implemented during the prosecution stage; however, according to the SPPA Law and the Attorney General's Regulation No. PER-006/A/J.A/04/2015, diversion is mandatory during prosecution. The Head of the General Crimes Division explained that the prosecution often does not pursue diversion due to time and cost efficiency considerations. Diversion requires receiving recommendations or advice based on research conducted by Community Advisors, which incurs additional costs.

To align with the objectives and principles of the SPPA Law, prosecution is conducted humanely, prioritizing the child's interests. Prosecutors appointed to handle juvenile cases are competent child prosecutors, and sentencing is typically reduced, especially for minor offenses that do not result in victims. Ideally, diversion should be mandatory during the prosecution stage at the prosecutor's office. In addition to the mandate of the SPPA Law, the Attorney General has issued guidelines on implementing diversion. The prosecution has successfully applied restorative justice in adult criminal cases, as reported on various social media platforms. However, restorative justice should primarily be used in juvenile cases since children differ from adults. Their education, psychological well-being, and typical development must be prioritized.

Penal Mediation at the Court Stage

According to the SPPA Law, judges handling juvenile court cases must conduct mediation efforts through diversion. Based on data from the Manado District Court:

Table 3. Number of Juvenile Cases from 2019 to 2021

NO	Year	Number of Cases
1	2019	43
2	2020	37
3	2021	29
TOTAL		109

Source: Manado District Court (2023)

From the data above, it can be concluded that the number of juvenile cases has decreased yearly. Based on an interview with juvenile judge Bidarsari (2023), it was stated:

"The SPPA Law mandates diversion for juvenile cases. For every juvenile case handled, the appointed judge attempts diversion by involving the police, prosecutors, perpetrators, victims, Community Advisors, and lawyers. During mediation, the judge is a facilitator and strives to achieve successful diversion without taking sides, ensuring that all parties are heard. Lawyers often play a crucial role in mediation because their active efforts can facilitate the diversion process."

From the interview, it can be concluded that penal mediation at the Manado District Court aligns with the SPPA Law. However, based on the data and interviews, some judges do not attempt diversion when the parties involved are unwilling. In such cases, judges opt to reduce the sentencing period, such as lowering a 1.5-year sentence to 2 months, allowing the child to be released immediately after the trial. Judge Astea also stated that diversion in cases involving sexual or moral offenses is more easily implemented if the parties are mutually consenting and plan to proceed with the marriage.

Judges' implementation of penal mediation in court adheres to the SPPA Law, involving all relevant parties. However, not all cases requiring diversion are processed through diversion. Ideally, all parties involved in juvenile cases should prioritize the child's best interests. Subjecting children to court proceedings can have long-term negative impacts on their mental health.

Islamic Legal Perspective on Penal Mediation for Children in Conflict with the Law

Dalam pandangan Islam, Anak yang melakukan tindakan pidana tidak ditindaki dengan balas dendam melainkan dengan melakukan pendekatan yang menekankan pada *Islah* atau pemulihan dan pendidikan. Ini sejalan dengan konsep Mediasi pada penerapan mediasi penal dengan menggunakan restorative justice pada hukum pidana, yang fokus dalam memperbaiki hubungan sosial dan memberikan kesempatan bagi anak untuk bertanggung jawab atas kesalahannya (Angrayni, 2016). In Islamic perspective, a child who commits a crime is not punished with retribution but through an approach emphasizing *Islah* (reconciliation or restoration) and education. This aligns with the concept of penal mediation using restorative justice in criminal law, which focuses on restoring social relationships and providing children an opportunity to take responsibility for their mistakes (Angrayni, 2016).

Implementing penal mediation for children in conflict with the law corresponds to the Islamic principle of *Islah*, which means to resolve disputes. Terminologically, *Islah* refers to an agreement or contract made to resolve conflicts. According to the Hambali school of thought, *Islah* is a contract that serves as a means to achieve peace between two disputing parties (Al-Atsqalani, 2008). In applying penal mediation for children in conflict with the law, peace (diversion) is prioritized to achieve reconciliation for the child's best interests. This aligns with the principle of *Islah* in Islamic law, which seeks to end disputes between two

conflicting parties peacefully, ensuring no harm to either party (Hartono, 2022). As stated in the Qur'an, Surah Ash-Shura, verse 40: "The recompense of an evil deed is its equivalent. But whoever pardons and makes reconciliation, their reward is [due] from Allah. Indeed, He does not like wrongdoers." This verse emphasizes that every act has a corresponding consequence, but resolving issues through peace and reconciliation is the better path.

In cases involving children in conflict with the law, this means providing an opportunity for the child to take responsibility for their actions in an educational manner rather than through punitive measures that may harm their future. Through this method, children are given space to repent, reform their behavior, and learn from their mistakes without being subjected to harsh punishments that could jeopardize their development (Khairunnisa & Rasji, 2024). The *Islah* method for children emphasizes rehabilitation and restoration rather than punishment. This approach prioritizes restitution for victims and rehabilitation for the children involved, aligning with the principles of restorative justice widely applied in juvenile justice systems globally, including Indonesia (Anggraeni, 2020).

The process of *Islah* in resolving children's legal issues involves family and community participation. This aims to provide the moral, social, and emotional support needed for the child to reform their behavior. The family plays a key role in nurturing and guiding the child to grow into a better individual. Treating children like adults in legal processes can harm their future. Islam stresses the importance of protecting and guiding children to develop into virtuous individuals. In addition to *Islah*, Islam also provides a method of mediation in criminal dispute resolution called *Suhl*. In criminal disputes, *Suhl* often resolves conflicts through a restorative and peaceful approach. The principles of *Suhl* in criminal case resolution include dialogue and consensus, social relationship restoration, forgiveness, and reconciliation.

Etymologically, *Suhl* originates from the word صلح, which means peace. In Islam, *Suhl* is highly recommended as a method of dispute resolution because it leads to justice, balance, and restoration of damaged relationships. The process of *Suhl* involves dialogue, mutual agreements, and forgiveness, whether between individuals or groups. As the Qur'an states, Surah Al-Hujurat, verse 9: "And if two groups of believers fight, make peace between them. But if one of them oppresses the other, then fight against the one that oppresses until it returns to the ordinance of Allah. And if it returns, make peace between them in justice and act justly. Indeed, Allah loves those who act justly." This verse emphasizes that peace and reconciliation are the primary solutions to resolving conflicts.

CONCLUSION

The implementation of penal mediation for children in conflict with the law is carried out at the investigation stage by the police, the prosecution stage by the prosecutor's office, and the trial stage by judges in court. All ABH (Children in Conflict with the Law) cases are mediated at the investigation stage, but only one

case was resolved through diversion during 2021–2022, which ultimately failed. At the prosecution stage, mediation was not conducted at all. Meanwhile, at the trial stage, judges conducted penal mediation through diversion by involving all parties, although not all cases requiring mediation were resolved through diversion. Research shows that implementing penal mediation aligns with Islamic legal principles, such as *Islah* and *Suhl*, emphasizing peace and reconciliation. *Suhl* helps children take responsibility for their actions and provides opportunities to reform and move forward with new hope.

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