

RETHINKING RESTORATIVE JUSTICE FOR JUVENILE OFFENDERS IN INDONESIA: TOWARD A BEST-INTEREST-OF-THE-CHILD FRAMEWORK

REPENSANDO A JUSTIÇA RESTAURATIVA PARA DELINQUENTES JUVENIS NA INDONÉSIA: RUMO A UMA ESTRUTURA QUE PRIORIZE O INTERESSE SUPERIOR DA CRIANÇA

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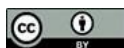
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Abstract

A child's growth period requires consistent supervision and guidance from their surroundings, especially their parents. However, in the practice of law enforcement in Indonesia, children in conflict with the law are often treated like miniature adults. Legal proceedings against children, especially those who have committed crimes punishable by seven years or more of imprisonment, often ignore the principle of the best interests of the child as mandated in the juvenile justice system. This situation raises legal issues related to the retributive rather than restorative nature of law enforcement. This study aims to analyze whether the concept of Restorative Justice can be applied in the settlement of cases involving children facing criminal penalties of seven years or more, as well as how the mechanism for its application works within the juvenile criminal justice system in Indonesia. The research method used was the normative juridical method, with a statutory, conceptual, and case approach. Data was obtained through a literature study of relevant legislation, legal literature, and court decisions. The results of the study show that the application of Restorative Justice can be an alternative solution that complements the juvenile criminal justice system in Indonesia, including for juvenile offenders who face seven years or more of imprisonment. Through a diversion mechanism based on the principles of Restorative Justice, the process of resolving

Resumo

O período de crescimento de uma criança requer supervisão e orientação consistentes por parte do seu ambiente, especialmente dos seus pais. No entanto, na prática da aplicação da lei na Indonésia, as crianças em conflito com a lei são frequentemente tratadas como adultos em miniatura. Os processos judiciais contra crianças, especialmente aquelas que cometeram crimes puníveis com sete anos ou mais de prisão, muitas vezes ignoram o princípio do interesse superior da criança, conforme exigido pelo sistema de justiça juvenil. Esta situação levanta questões jurídicas relacionadas com a natureza retributiva, em vez de restaurativa, da aplicação da lei. Este estudo tem como objetivo analisar se o conceito de Justiça Restaurativa pode ser aplicado na resolução de casos envolvendo crianças que enfrentam penas criminais de sete anos ou mais, bem como a forma como o mecanismo para a sua aplicação funciona no sistema de justiça criminal juvenil na Indonésia. O método de investigação utilizado foi o método jurídico normativo, com uma abordagem estatutária, conceptual e de casos. Os dados foram obtidos através de um estudo bibliográfico da legislação relevante, literatura jurídica e decisões judiciais. Os resultados do estudo mostram que a aplicação da Justiça Restaurativa pode ser uma solução alternativa que complementa o sistema de justiça criminal juvenil na Indonésia, incluindo para jovens infratores que enfrentam sete anos ou mais de



juvenile cases can be transferred from the criminal to the non-criminal track through mediation and negotiation involving the perpetrator, victim, family, community, and law enforcement officials. This approach has proven to better guarantee the protection of children's rights, restore social relationships, and prioritize the best interests of the child compared to the conventional approach of punishment.

Keywords: Restorative Justice. Children in Conflict with the Law. Diversion. Best Interests of the Child.

prisão. Através de um mecanismo de diversão baseado nos princípios da Justiça Restaurativa, o processo de resolução de casos juvenis pode ser transferido da via criminal para a via não criminal através da mediação e negociação envolvendo o infrator, a vítima, a família, a comunidade e os agentes da lei. Esta abordagem provou garantir melhor a proteção dos direitos das crianças, restaurar as relações sociais e priorizar o interesse superior da criança em comparação com a abordagem convencional de punição.

Palavras-chave: Justiça Restaurativa. Crianças em Conflito com a Lei. Desvio. Melhor Interesse da Criança.

1 INTRODUCTION

Children are part of the nation's future generation who have the right to grow and develop optimally, physically, mentally, and socially. However, in the practice of law enforcement in Indonesia, children in conflict with the law often face lengthy and exhausting legal processes, from the investigation stage, prosecution, trial, to the execution of court decisions. From the investigation stage, law enforcement officials have been given the authority to detain children. These detention conditions often cause severe mental burdens and psychological pressure for children, especially when they have to sit in court as defendants (*pesakitan*). The retributive punishment process through the formal criminal justice system has proven ineffective in achieving the goal of rehabilitating children. Detention centers have the potential to become breeding grounds for new crimes, as children mix with other offenders, and in some cases with adult prisoners. (Sherman et al., 2007) As a result, the criminal justice system for children fails to encourage behavioral change and instead risks worsening the child's development process.

To address this issue, Indonesia has enacted Law No. 11 of 2012 on the Juvenile Criminal Justice System (SPPA), which introduces the mechanism of diversion as a form of reform in the juvenile criminal justice system. The provisions on diversion as stipulated in Articles 6 to 15 of the SPPA Law are a concrete manifestation of the application of the principle of restorative justice, which emphasizes guidance and rehabilitation rather than

retribution. Diversion is a mechanism for transferring the settlement of juvenile cases from formal judicial proceedings to non-formal settlements, involving the perpetrator, victim, family, community, and law enforcement officials in a deliberation to reach a fair agreement for all parties.

According to Setya Wahyudi, diversion is a form of transferring the handling of juvenile delinquency from the conventional judicial process to a more social service-oriented approach. Meanwhile, Lilik Mulyadi interprets restorative justice as “deliberation-based justice” that seeks to involve all elements of society in resolving juvenile cases peacefully and educationally.(Strang et al., 2013) Although the concepts of diversion and restorative justice have been regulated normatively, their practice in the field still faces various obstacles. Most law enforcement officials do not fully understand the philosophy of child protection and the spirit of restorative justice as mandated by the Child Protection Law. In many cases, children in conflict with the law are immediately processed formally without any in-depth review of the possibility of applying diversion, even in cases that do not actually involve direct victims. A positivistic approach to Article 7 of the Child Protection Law makes the application of diversion very limited and loses the spirit of child protection that should be the basis of the juvenile justice system.

This situation shows a gap between legal norms oriented towards the best interests of the child and law enforcement practices that are still retributive and formalistic. Therefore, efforts are needed to reformulate the concept of diversion to be more in line with the principle of *the best interests of the child* and the values of *restorative justice* in the Indonesian criminal justice system. Referring to the problems and research questions described above, several frameworks are discussed that serve as analytical tools for discussing the problems and helping to understand the research results.

The implementation of *diversion* in the juvenile criminal justice system in Indonesia still faces various fundamental obstacles.(Umbreit et al., 2004) First, the principle of the best interests of the child has not been fully realized because the majority of juvenile cases are still resolved through rigid formal channels and result in imprisonment. Empirical data shows that out of 283 juvenile cases in the Bekasi District Attorney's Office (2017–2024), only nine cases sought diversion and four of them were successfully agreed upon. This condition illustrates the lack of application of restorative justice in practice, even though the philosophy of diversion should place children as

subjects who must be protected from the negative impacts of the formal justice system. Second, there are legal and regulatory constraints that limit the scope of diversion. Article 7 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) only allows diversion for crimes with a maximum penalty of seven years, even though the crimes committed by children are becoming increasingly complex and serious. This contradicts *The Beijing Rules*, which emphasize that diversion should not be limited to minor cases. In addition, the implementation of PERMA Number 4 of 2014, which expands the scope of diversion, only applies at the court level and does not yet cover the investigation and prosecution stages. The diversion process is also inefficient because the provisions of Article 12 of the SPPA require a court decision for each agreement, which results in a protracted process and a loss of the essence of child protection.

Third, structural and cultural issues also hinder the optimization of diversion. The limited availability of facilities such as the Special Child Guidance Institution (LPKA) and the Temporary Child Placement Institution (LPAS) means that children are often placed in adult detention centers. On the other hand, the diversion data system has not been integrated between the police, the prosecutor's office, the courts, and the Correctional Center. Another factor that is no less important is the weak understanding of law enforcement officials regarding the philosophy of child protection and the principle of the best interests of the child, so that the practice of diversion is often only an administrative formality. Thus, a comprehensive reformulation of the diversion policy is needed in terms of substance, structure, and legal culture, to be more in line with the spirit of *restorative justice* and humanitarian values in child protection.

Table 1

Number of Juvenile Cases at the District Attorney's Office of Bekasi Regency (2017–2023)

No.	Year	Total Cases	Diversion Efforts
1	2017	37	-
2	2018	36	-
3	2019	40	-
4	2020	40	2
5	2021	40	-
6	2022	37	1
7	2023	25	1
8	2024	28	5
Total	283	9	

Based on these conditions, this study seeks to answer several key questions: (1) how is diversion regulated and implemented in the juvenile criminal justice system at the investigation, prosecution, and trial stages; (2) how can the concept of diversion realize the best interests of the child in the juvenile criminal justice system; and (3) how can diversion be reformulated in an ideal way to guarantee the best interests of children in Indonesia.

Thus, the objectives of this study are to: (1) analyze the implementation of diversion at each stage of the juvenile criminal justice process; (2) examine the concept of diversion based on the best interests of the child; and (3) formulate a reformulation of diversion based on the principle of restorative justice as an effort to optimize the protection of children in the Indonesian criminal justice system.

2 LITERATURE OVERVIEW

The grand theory used in this study is the theory of justice, which emphasizes the state's responsibility in realizing the welfare of its people. Jeremy Bentham's (Bradshaw et al., 2006) thinking in the 18th century became an important milestone, with the view that punishment is not merely retributive, but must be oriented towards social goals through the principle of utilitarianism, that is, the greatest benefit for as many people as possible. Punishment, therefore, should not be a tool for revenge, but a means to achieve preventive, deterrent, and reformatory goals in order to protect society and rehabilitate offenders. In addition to utilitarian theory, thinking about justice has also developed

through ethical theory, which places law solely in the service of justice. Law, in this view, is a reflection of moral values about what is fair and unfair. In the context of legal philosophy, the relationship between law and justice as expressed by Aristotle and Thomas Aquinas shows a reciprocal relationship: laws are formed based on the values of justice that exist in society, while at the same time providing new norms that affirm justice itself. In the Indonesian context, justice must be placed within the framework of Pancasila as the basis for social justice. A just law is a law that provides protection to all citizens, including children as legal subjects with their own specific characteristics. Therefore, the application of justice in law enforcement against children in conflict with the law must be oriented towards the best interests of the child, so that a more humane approach such as restorative justice becomes relevant and in line with the national legal ideal.

Second, there is the Legal System Theory as Middle Theory. According to Lawrence M. Friedman, the legal system consists of three main elements, namely legal structure, legal substance, and legal culture. All three must work in harmony so that the law can be enforced fairly and effectively. Legal structure includes law enforcement agencies and the professionalism of their officials; legal substance relates to the content and process of rule-making; while legal culture reflects the level of public awareness and compliance with the law. (Daly, 2003) An imbalance between these three elements can cause the legal system to malfunction and hinder justice. Furthermore, Friedman argues that the legal system has four main functions: resolving disputes, sanctioning deviant behavior, promoting social change, and recording or documenting legal events. The first two functions are oriented toward protecting legal interests, while the latter two are related to social adaptation and legal administration in society. Thus, the legal system functions not only repressively but also progressively in shaping social behavior in accordance with the value of justice. In the context of this study, Legal System Theory is used as a middle theory to analyze the relationship between legal structure, substance, and culture in the application of *diversion* based on the best interests of the child. This theory helps to see how these three elements can be reformulated so that the process of law enforcement against children who are threatened with seven years or more of imprisonment still guarantees justice, benefit, and legal certainty in accordance with the principles of child protection.

Next is the principle of *the best interests of the child*, which is a fundamental principle in child protection law as affirmed in the Convention on the Rights of the Child, specifically Articles 3 and 4. This principle affirms that in every action relating to children, whether by state institutions, courts, or social institutions, the best interests of the child must be the primary consideration. Countries that have ratified the convention are obliged to guarantee the implementation of children's rights through legislative, administrative, and social measures in accordance with child protection standards. Although not explicitly explained in the convention, the meaning of “best interests of the child” is contextual and may differ between cultures. According to John Eekelaar, the best interests include protection of the child's physical, emotional, and intellectual development so that they can grow into adulthood without obstacles and have the freedom to determine their future. Thus, this principle covers material, emotional, psychological, and participatory aspects, in which the child's opinion must also be respected as stipulated in Article 12 of the Convention on the Rights of the Child. In the Indonesian context, the application of the principle of the best interests of the child is an integral part of the theory of child protection, which requires legal and social efforts to ensure that children's rights are fulfilled. Low public awareness of children's rights often places children in a vulnerable position, especially when the economic needs of the family are prioritized. Therefore, legal protection oriented towards the best interests of the child must be the main guideline in every child justice policy and practice, including in the application of the restorative justice approach.

3 RESEARCH

The method used in this study is socio-legal research, which is legal research that combines normative and empirical approaches. (Efendi, 2022) This approach attempts to view law not only as written norms (law in books), but also as social practices that are alive and functioning in society (law in action). According to Soetandyo Wignjosoebroto, socio-legal research views law as both norms (rules) and *nomos* (social facts), which are inseparable. Thus, this study not only examines the positive legal norms regarding diversion, but also the empirical reality of its application in the field. This study uses several approaches, namely:

1. Statute approach, by examining all regulations relevant to the juvenile criminal justice system and the implementation of diversion;
2. Analytical approach, by analyzing legal terms and concepts in legislation to understand their application in legal practice and court decisions;
3. Conceptual approach, tracing legal doctrines and theories to build scientific arguments against the normative vacuum in the application of diversion;
4. Qualitative and quantitative empirical juridical approach, examining how these legal provisions are implemented in practice and the extent to which the principle of restorative justice is applied by law enforcement officials; and
5. Interdisciplinary approach, utilizing social science perspectives to understand the dynamics of the behavior of officials, society, and children in conflict with the law.

These approaches are expected to provide a comprehensive picture of the reformulation of diversion based on the best interests of the child within the framework of restorative justice.

Research Specifications. The specifications of this research are descriptive-analytical in nature, aiming to systematically describe empirical facts and analyze them using relevant legal theories and norms. Through this approach, the research seeks to find the optimal form of diversion implementation in the juvenile criminal justice system so that it is more in line with the principles of justice, benefit, and legal certainty. Next, the data used in this study consists of:

1. Primary data, obtained through free guided interviews with law enforcement officials (investigators, prosecutors, judges, community counselors), as well as community leaders and informants who are concerned with the issue of children in conflict with the law. The research locations included several law enforcement institutions in Jakarta, Bekasi, Lampung, and customary areas in Bali and Banten.
2. Secondary data, which includes primary legal materials (laws and regulations, court decisions, official minutes), secondary legal materials (books, journals, research results), and tertiary legal materials (legal dictionaries, encyclopedias, and other relevant sources).

Data was collected through two main techniques, namely field studies and literature studies. Field studies were conducted through interviews and observations of

the implementation of diversion, while literature studies were conducted to examine literature and regulations relevant to the juvenile criminal justice system. Data Analysis Methods.(Marzuki, 2019) The data obtained was analyzed qualitatively and descriptively, namely by organizing, grouping, and interpreting the data based on specific categories to find patterns and themes. Normative data was analyzed prescriptively, while empirical data was interpreted inductively to find the relationship between legal norms and the practice of implementing diversion.

The results of the analysis are presented narratively and systematically, supported by a qualitative data matrix that links empirical findings, legal norms, and the theories used. With this presentation, the research results are expected to provide a comprehensive understanding of the reformulation of diversion policies based on the best interests of children in the juvenile criminal justice system in Indonesia.

4 DISCUSSION

4.1 Basic definition of diversion as a form of restorative justice

Restorative justice is an approach to criminal case resolution that began to develop in the 1960s. This approach was born in response to the limitations and weaknesses of the conventional criminal justice system, which tends to emphasize retribution (retributive justice) and punishment alone.(S. G. Bazemore, 2001) In restorative justice, the main focus is no longer on the perpetrator as the object of punishment, but rather on efforts to restore social relationships that have been damaged as a result of the crime, by directly involving the perpetrator, the victim, and the community in the resolution process. Although theoretically this approach still causes debate among legal academics and criminologists, empirically restorative justice has developed rapidly and has greatly influenced modern criminal law policies in various countries. This paradigm shift reflects the emergence of a new awareness that the main objective of the criminal justice system should not only be to punish, but also to restore social balance and repair the damage caused by crime.

Within the framework of restorative justice, criminal acts are still understood as acts that violate the law and harm individuals and society. However, the difference lies in

the main subject considered to be the victim. If in the conventional criminal justice system the state is seen as the main victim of legal violations, then in restorative justice, the real victims are the individuals and social communities directly affected by the crime. Therefore, criminal acts are seen as violations of social relationships that give rise to moral and social obligations to repair the damage that has occurred. (Murphy & Harris, 2007) Restorative justice is thus understood as a process of resolving criminal cases that emphasizes the active participation of victims, perpetrators, and the community in seeking joint solutions oriented towards reparation, reconciliation, and reintegration. This approach requires emotional and social involvement between the parties concerned in order to reach a fair, humane, and sustainable agreement. Furthermore, the restorative justice approach is considered the most recent paradigmatic development in the criminal justice system. The United Nations (UN), through its *Basic Principles on the Use of Restorative Justice Programs in Criminal Matters*, considers restorative justice to be a rational and humane approach to handling criminal cases. This view is in line with the opinion of G.P. Hoefnagels, who states that criminal policy must be rational (*a rational total of the responses to crime*), meaning that all responses to crime must be directed toward achieving a balance between the interests of victims, perpetrators, and society.

Restorative justice is thus understood not only as an alternative to a repressive criminal justice system, but also as a new conceptual framework for criminal law reform. This approach emphasizes the importance of community and victim involvement, which has often been marginalized by the formal mechanisms of the criminal justice system. On the other hand, for law enforcement officials, the restorative justice paradigm serves as an ethical and philosophical guide in handling criminal cases, so that the law enforcement process truly reflects the values of substantive justice, humanity, and the best interests of the parties involved, especially for children in the context of the Juvenile Criminal Justice System. (Zehr, 1990)

Philosophically, the concept of diversion is rooted in *The United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, better known as The Beijing Rules, which were adopted by UN General Assembly Resolution 40/33 in November 1985. In these rules, the basic principles of diversion are outlined in Rule 11 and Rule 17.4, which explicitly emphasize the importance of a non-punitive approach in dealing with children in conflict with the law. The Commentary Rule 11 explains that diversion

is basically intended to deal with offenses of a non-serious nature. However, the explanation also emphasizes that diversion should not be limited to minor offenses, because in practice, diversion can actually be an important instrument in the juvenile criminal justice system. The statement “*It need not necessarily be limited to petty cases, thus rendering diversion an important instrument*” shows that diversion has strategic significance as a means of preventing children from undergoing formal judicial proceedings that could potentially damage their psychological and social development.(Kim & Gerber, 2012) Furthermore, Rule 17.4 states that “*The competent authority shall have the power to discontinue the proceeding at any time*”. This means that the competent authority has the power to discontinue legal proceedings at any time if it is deemed to be in the best interests of the child. This authority reflects the special characteristics of dealing with child offenders, which is fundamentally different from dealing with adult offenders. In this context, the discontinuation of legal proceedings is not seen as a form of impunity, but as a manifestation of child protection policies and the application of the principle of the best interests of the child.

Based on *The Beijing Rules*, diversion can be understood as the granting of discretionary authority to law enforcement officials to take policy measures in handling or resolving child cases outside of the formal judicial mechanism. These measures may include termination of investigation or prosecution, return of the child to their parents or community, and participation in social service programs and community-based guidance. The application of diversion is possible at every stage of the juvenile criminal justice process, from the investigation and prosecution stages to the court hearing. The main objective of diversion is to reduce the negative impact of children's involvement in the formal justice system, such as stigmatization, deprivation of liberty, and the potential for recidivism.(González & Buth, 2019) Substantively, the objectives of diversion are oriented towards three main points, namely:

1. Achieving peace between the victim and the child offender through a fair and humane settlement mechanism;
2. Preventing the deprivation of the child's liberty, whether through detention or imprisonment; and
3. Encouraging community participation in guiding and instilling a sense of responsibility in children in conflict with the law.

Thus, diversion is not merely an alternative mechanism, but rather the embodiment of the restorative justice paradigm, which places the best interests of the child as the primary consideration in every process of juvenile criminal law enforcement.

4.2 Regulation and implementation of diversion in the investigation stage

The investigation stage is the initial stage of the criminal justice process. At this stage, it is possible for investigators to decide not to proceed with criminal proceedings. Therefore, this stage is the most strategic stage for seeking reconciliation by mediating between the child offender, the victim, and their families in order to avoid criminal proceedings and the stigma associated with them by finding a solution that benefits all parties, both the offender and the victim of the crime. Because the investigation stage is quite crucial, in conducting investigations involving children, the SPPA Law requires investigators to seek reviews and/or considerations from Community Counselors, as regulated in Articles 27 and 28 of the SPPA Law as follows:

Article 27

- (1) In conducting investigations into cases involving children, investigators are required to seek advice or recommendations from a Community Counselor after a crime has been reported or filed.
- (2) If deemed necessary, investigators may seek advice or recommendations from education experts, psychologists, psychiatrists, religious leaders, professional workers or social health workers, and other experts.
- (3) When examining Child Victims and Child Witnesses, investigators are required to request a social report from Professional Social Workers or Social Welfare Workers after a crime has been reported or complained about.

Article 28

“The results of the Social Investigation must be submitted by Bapas to the Investigator within a maximum of 3x24 (three times twenty-four) hours after the investigator's request is received.”

Considering these provisions, it is clear that in conducting investigations, the SPPA Law requires investigators to be equipped with social studies from Community Counselors or considerations and advice from other relevant experts. These social studies

are very important for investigators to be able to comprehensively understand the problems of children in conflict with the law. Therefore, it is hoped that by understanding the social context beyond the criminal acts committed by the child, investigators can seek a peaceful resolution at the first opportunity, namely when a report or complaint is received or when the investigator/inquirer becomes aware of the child's criminal acts. In relation to peaceful efforts, the SPPA Law has provided for diversion at the investigation stage, as stipulated in Article 29 of the SPPA Law as follows:

- (1) Investigators are required to seek diversion within a maximum of 7 (seven) days after the investigation begins.
- (2) The diversion process as referred to in paragraph (1) shall be carried out within a maximum of 30 (thirty) days after the commencement of diversion.
- (3) In the event that the diversion process reaches an agreement, the investigator shall submit the diversion report and the diversion agreement to the head of the district court for a decision.
- (4) In the event that the diversion fails, the investigator shall be required to continue the investigation and refer the case to the public prosecutor, attaching the diversion report and the community research report.

In accordance with these provisions, investigators are obliged to seek diversion in cases where the crime committed by a child meets the provisions of Article 7 of the SPPA, namely in cases where the crime is punishable by imprisonment of less than 7 (seven) years and is not a repeat offense. The diversion process is carried out through mediation involving the child and his/her parents/guardians, the victim and/or his/her parents/guardians, community counselors, and professional social workers based on a restorative justice approach. Mediation with a restorative justice approach is an approach in the diversion stage to jointly seek a fair solution with an emphasis on restoring the original situation. The mediation is intended to bring about peace between the victim and the perpetrator, creating an agreement that can improve the situation for both parties.

In conducting the investigation, the investigator is required to coordinate with the public prosecutor within a maximum of 1x24 (one times twenty-four hours) from the start of the investigation (*vide* Article 31 of the SPPA Law). The purpose of this coordination is to provide guidance and the main objective is to ensure that the files are complete in terms of form and substance, so that the filing process can be completed immediately and

children in conflict with the law can be protected from the negative stigma of the case handling process at the investigation stage.

Police sectoral regulations do not contain further provisions regarding the handling of children in conflict with the law and/or further provisions regarding the diversion mechanism in the police force. However, Law Number 2 of 2002 concerning the Indonesian National Police (“Polri Law”) in Article 16 paragraph (1) states that *“in order to carry out tasks in the field of criminal proceedings, the Indonesian National Police has the authority to: a. carry out arrests, detentions, searches;... h. Conducting the termination of investigations.”* Furthermore, Article 18 paragraph (1) of the Police Law states that *“For the public interest, officials of the Indonesian National Police in carrying out their duties and authorities may act according to their own judgment.”* These provisions should serve as a reference for the police to exercise discretion, particularly in handling cases involving children in conflict with the law. However, the use of this authority is not yet clear in terms of what cases it applies to, and it is not limited to children in conflict with the law but is the general authority of the police institution. (Rossner, 2017) The following is a presentation of the stages of implementation of diversion during the investigation phase. Next, primary data processing is presented in the form of the number of data fluctuations per year handled by the Indonesian National Police from 2021 to 2024.

Table 2

Recapitulation of Juvenile Cases and Diversion Data at the Indonesian National Police (POLRI) for the Period 2021–2024

No.	Year	Number of Juvenile Cases Handled	Termination of Investigation through Diversion	Remarks
1.	2021	5,237	379	Throughout 2021, POLRI data recorded that diversion efforts were carried out in 379 cases at the investigation stage. This figure represents only a small portion (7.2%) of the total 5,237 juvenile cases handled.
2.	2022	4,05	314	Throughout 2022, POLRI data recorded that diversion efforts were carried out in 314 cases at the investigation stage. This figure represents only a small portion (7.7%) of the total 4,050 juvenile cases handled.
3.	2023	2,317	312	Throughout 2023, POLRI data recorded that diversion efforts were carried out in 312 cases at the investigation

				stage. This figure represents only a small portion (13.4%) of the total 2,317 juvenile cases handled.
4.	2024	5,315	389	Throughout 2024, POLRI data recorded that diversion efforts were carried out in 389 cases at the investigation stage. This figure represents only a small portion (7.3%) of the total 5,315 juvenile cases handled.

Referring to this data, it can be seen that the resolution of cases involving children in conflict with the law through diversion at the investigation stage only reached an average percentage of 8.9% per year of the total number of child cases handled by the Indonesian National Police in the period from 2021 to 2024.

4.3 Regulation and implementation of diversion at the examination stage in court

The implementation of diversion at the examination stage in court is a crucial part of the juvenile criminal justice system because it is the last opportunity to seek a resolution to a juvenile case outside of the formal and repressive judicial process. Diversion at this stage is carried out after the public prosecutor has transferred the case to the district court, and is explicitly regulated in Article 52 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law). Based on these provisions, the diversion process in court has a structured mechanism and strict time limits. (Adnyana et al., 2024) First, the chief judge is required to appoint a judge or panel of judges to examine the juvenile case no later than three (3) days after the case file is received from the public prosecutor.

Second, after being appointed as a juvenile judge, the judge has the obligation to seek diversion within a maximum period of seven (7) days from the date of appointment. Third, the diversion process must be carried out within a maximum period of thirty (30) days and can be carried out in the mediation room of the district court as a form of implementing the principle of peaceful case resolution. If the diversion process is successful and the parties (the child offender, the victim, and related parties) reach a diversion agreement, the judge is required to submit the diversion report along with the diversion agreement to the Chief Judge of the District Court for the issuance of a court decision. (Posumah, 2023) Conversely, if a diversion agreement is not reached, the case proceeds to the trial stage in accordance with the juvenile criminal procedure. This

scheme emphasizes that diversion is not merely a moral choice, but a mandatory legal obligation for juvenile judges as stipulated in the SPPA Law.

In addition to the SPPA Law, the regulation on diversion at the court stage is also reinforced through Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System (PERMA No. 4 of 2014). This regulation serves as an implementing regulation as well as an extension of the norms regarding diversion provisions in the SPPA Law. In Article 2, the Supreme Court emphasizes that diversion can be applied to children aged 12 to 18 years, including children who are married but have not yet reached the age of 18. Furthermore, Article 3 of PERMA No. 4 of 2014 provides an important legal breakthrough, namely the obligation for juvenile judges to continue to seek diversion even if the child is charged with a criminal offense carrying a penalty of 7 (seven) years or more, as long as the charges are in the form of subsidiarity, alternatives, cumulative, or combinations, and there is one element of a criminal offense carrying a penalty of less than seven years. Thus, the Supreme Court has expanded the scope of diversion and filled a legal void that was not previously explicitly regulated in the SPPA Law.

This approach shows that the Supreme Court is trying to uphold the principle of “the best interests of the child” by ensuring that diversion can still be pursued as far as possible, even if the case is complex or carries a high criminal penalty. This is in line with the spirit of restorative justice, which is the main spirit of the juvenile criminal justice system in Indonesia. Through the restorative justice approach, the settlement of juvenile cases is not solely aimed at punishment, but at restoring the social and moral balance that has been damaged by the crime, with the active participation of the juvenile offender, the victim, their families, and the community. Diversion at the court stage serves as a means to protect children from the negative impacts of a lengthy and stigmatizing criminal justice process, while providing restorative justice for victims through agreements oriented towards peace, responsibility, and social rehabilitation. (Retnaningsih et al., 2020) Thus, the implementation of diversion at the court examination stage is not only a form of positive law enforcement, but also a concrete manifestation of a new paradigm of juvenile justice in Indonesia, namely, humanistic, participatory law enforcement oriented toward protecting children as subjects who must be nurtured, not punished.

In the implementation of diversion at the court examination level as outlined in the above scheme, (Wikan Sinatrio Aji, 2025b) there are slight differences regarding the scope of the diversion requirements as stipulated in Article 7 of the SPPA Law. This is because the Supreme Court has issued Perma 4/2014 on the implementation of diversion at the court examination level, which seeks to fill the legal void regarding the criteria for Diversi obligations that are not regulated in the SPPA Law, particularly for children who are charged with subsidiary, alternative, cumulative, or combined charges, where one of the criminal penalties is less than 7 (seven) years, then the judge in the court examination is obliged to seek Diversi. In order to fill the legal void regarding the criteria for diversion obligations that are not regulated in the SPPA Law, particularly for children who are charged with subsidiary, alternative, cumulative or combined charges, where one of the criminal penalties is less than 7 (seven) years, the judge in the court examination is obliged to seek diversion.

The implementation of Perma 4/2014 has a significant impact on the fact that the percentage of juvenile cases eligible for diversion at the court hearing stage is quite high compared to the previous stage (investigation and prosecution) The following is a presentation of primary data processing in the form of annual fluctuations in diversion data handled by courts throughout Indonesia from 2021 to 2024, divided into two categories, namely District Courts and Sharia Courts:

Table 3

Table Recapitulation of Child Case Handling and Diversion at the Trial Examination Stage in District Courts and Sharia Courts Summary of Diversion Cases at District Courts

Period	Number of Juvenile Cases	Number of Diversion Attempts	Status of Outcome		
			Successful	Unsuccessful	In Progress
2021	5,178	142 (2.74%)	30	19	93
2022	5,533	67 (1.21%)	27	35	5
2023	5,19	657 (12.6%)	464	189	4
2024	4,96	996 (20.08%)	424	173	399

Referring to this data, it can be seen that the resolution of cases involving children in conflict with the law through diversion at the trial stage reached an average percentage

of 9.3% annually of the total number of child cases handled by all District Courts under the Supreme Court in the period 2021 to 2024.

4.4 Philosophical of diversion based on the best interests of the child principle

Philosophically, the best interests of the child principle is a legal and ethical principle that places the welfare and interests of children as the primary factor in any decision, policy, or action involving children. This principle recognizes that children are vulnerable individuals who need protection and have the right to live, develop, and be respected. This principle recognizes that children have specific rights and require special protection and attention to ensure their development and welfare. (Wikan Sinatrio Aji, 2025a)

The principle of the best interests of the child is based on the understanding that a good decision for a child is one that is most beneficial to their overall welfare, both in the short and long term. This involves consideration of various factors that may affect a child's life, such as safety, health, education, family relationships, cultural identity, and participation in decision-making processes. The principle of the best interests of the child requires a holistic approach that considers the physical, emotional, social, and developmental needs of the child. Any decision or action involving a child should seek to protect and promote the child's rights and ensure that they receive care appropriate to their age, maturity, and circumstances. In the context of family law, the principle of the best interests of the child is often a primary consideration in matters of guardianship, custody, parental separation, care of neglected children, or adoption. This principle provides guidance for courts, social agencies, and other relevant parties to make decisions that are most beneficial to children in these situations.

Applying the principle of the best interests of the child does not mean that the wishes or interests of adults are ignored, but that decisions and actions must be based primarily on the interests and well-being of the child. This principle also encourages the involvement of children in decision-making processes appropriate to their age and maturity, giving them the opportunity to express their opinions and influence decisions that affect their lives. The principle of the best interests of the child is based on the belief that children are vulnerable individuals who are still in the process of physical, mental,

and emotional development. This principle emphasizes the importance of protecting and promoting the welfare of children, as well as ensuring that decisions taken take into account the child's perspective, needs, rights, and are oriented towards the child's healthy development.

In its implementation, the principle of the best interests of the child requires a holistic approach that considers various factors that may affect children, including physical and mental health, education, family environment, social relationships, and other relevant factors. This principle also includes the understanding that every child is a unique individual, with different needs and desires, so that decisions made must be in accordance with the conditions and characteristics of the individual. In the legal context, the principle of the best interests of the child is used in various situations, including in family court proceedings, the determination of custody, guardianship, adoption, child protection, and other decisions involving the interests and welfare of children. This principle has also been recognized in various international instruments as a key principle, such as in the Convention on the Rights of the Child, which stipulates that the best interests of the child must be a primary consideration in any action involving children.

It is important to note that the principle of the best interests of the child does not mean that the wishes or interests of adults are completely ignored. However, the interests and welfare of the child must be the dominant factor in decision-making involving them. This principle requires stakeholders, including parents, courts, social workers, and relevant agencies, to consider the impact of each decision on the child and to take the best action to meet their needs and rights. The principle of the best interests of the child is relative and may vary depending on the specific cultural, social, and legal context. This principle guides the author to prioritize the interests and welfare of children in all decisions that affect them and to always take an approach that is responsive to children's rights.

In relation to the reform of the juvenile criminal justice system, the diversion policy is one of the state's efforts to realize justice and meet the needs of society, especially the needs of children in conflict with the law. Diversion is an effort to transfer cases of children in conflict with the law outside the criminal court to protect children from the negative impacts of criminal justice. Therefore, the state must provide protection for children and fulfill their rights by considering their best interests. The explanation of

Article 2 of the Child Protection Law states that the principle of the best interests of the child means that in all actions concerning children taken by the government, society, the legislature, and the judiciary, the best interests of the child must be the primary consideration. The diversion policy in the juvenile criminal justice system is part of the actions concerning children taken by the state, so that the best interests of children in conflict with the law must be the primary and fundamental consideration.

As a country that has ratified the CRC, Indonesia has an obligation to formulate a juvenile criminal justice system policy that is also guided by international instruments, in addition to continuing to use the laws that exist in society as part of the sources of law. Restorative justice in the juvenile criminal justice system is the resolution of criminal cases by involving the perpetrator, victim, families of the perpetrator/victim, and other related parties to jointly seek a fair resolution with an approach of restoration to the original state rather than retribution.

Communities have their own ways of resolving cases, including criminal cases involving children, through agreements or decisions made by community leaders or traditional leaders to impose customary punishments. Resolution through family deliberation with the parties involved is a peaceful method commonly used by some communities in Indonesia to reach an agreement, so that the perpetrator takes responsibility for the victim and the community whose balance has been disturbed by a criminal or reprehensible act. The perpetrator's responsibility begins with an apology to the victim, followed by a willingness to provide compensation for the criminal act committed. In a scientific context, the process of resolving criminal cases through family consultation, which involves reconciliation between the two parties with the main focus being forgiveness from the victim to the perpetrator of the crime, is called restorative justice. (Surbakti, 2015)

Criminal acts basically cause discomfort or an imbalance of norms in society, especially if the criminal act committed is a serious or grave crime and the customary reaction in the form of customary criminal law is a resolution by the customary leader or community leader. The imbalance that occurs is not only material but also immaterial. For example, in Balinese society, customary law plays an important role in restoring balance. If a violation occurs, the perpetrator is required to take certain measures, such as performing a purification ceremony at a sacred site and/or place of worship, with the aim

of restoring balance and restoring the magical powers that are felt to have been disturbed or violated.

4.5 Reformulation of diversion regulations to meet the best interests of the child principle in the juvenile criminal justice system in Indonesia

First, The interview was conducted by the researcher on August 20, 2025. The source currently serves as a Commissioner at the Indonesian Child Protection Commission (KPAI) in charge of the Cluster of Children in Conflict with the Law, Children Victims of Sexual Violence, Minority and Isolated Children, and the Complaints Sub-Commission. The source stated that the fundamental basis of the Juvenile Criminal Justice System is restorative justice, whereby criminal cases are resolved by involving the perpetrator, victim, families of the perpetrator/victim, and other related parties to jointly seek a fair resolution that emphasizes restoration to the original state rather than retribution (vide Article 1 point 6 of the SPPA Law). (Wilson et al., 2017) However, in practice, the implementation of restorative justice is not as envisioned by the legislators. In carrying out its supervisory function, KPAI has noted several concrete problems in the field, particularly regarding the implementation of diversion with a restorative justice approach. In essence, KPAI has made the following observations:

- 1) Regulations & Policies
 - a) The provisions regarding the requirements for diversion are quite limited in their implementation in the field.
 - b) Diversion is still constrained for cases with a criminal penalty of less than 7 (seven) years. Therefore, it is not possible to obtain a diversion decision from the District Court through e-berpadu (electronic decision) for criminal offenses with a sentence of more than seven (7) years that can in fact be settled through diversion at the investigation and prosecution stages.
 - c) Law enforcement officials do not yet understand the philosophy of handling cases involving children in conflict with the law, especially child offenders.
- 2) In terms of human resources
 - a) SPPA-trained investigators are not always available in every police station.

- b) Child psychologists are very limited, especially outside Java, where there are very few child psychologists in each province.
- 3) Facilities and Infrastructure
 - a) UPTD/P2TP2A are not yet available in every district, which means that children in conflict with the law do not always receive assistance from social workers.
 - b) Safe houses for victims are still minimal.
- 4) Budget; The budget ceiling for child protection in each agency is only 100-300 million rupiah per year for case handling and other programs.

Specifically regarding the issue raised by the author related to the conditions for diversion, the source believes that ideally, diversion should not be limited by restrictive conditions as is currently the case. However, peace efforts in diversion should emphasize a social, cultural, and psychological approach based on restorative justice. This way, diversion regulations will not prevent the parties from reaching peace, and the restoration of the original situation for the perpetrator, victim, witnesses, and surrounding environment will embody the principle of the best interests of the child. With the existence of a diversion agreement, children who are in conflict with the law are psychologically spared from the negative stigma of the criminal justice process so that their growth and development are not disrupted. This opinion is based on data and research compiled by the KPAI, which shows that punishing children does not have a deterrent effect but instead has many negative impacts on child offenders.

The source emphasized that all elements of society and policy makers should ensure that every regulation/rule implementing the law does not reduce the rights of children in conflict with the law. In addition, current laws and regulations that are considered unfriendly/unresponsive to children should be improved and/or adjusted by returning to the philosophy of children as legal subjects who are physically and mentally immature and therefore need protection from their surroundings (the state).

Second, the interview was conducted by the researcher on July 18, 2025. The source is a senior prosecutor who previously served for a long time at the Deputy Attorney General for General Crimes (JAMPIDUM), (Pakpahan, 2023) who has expertise and often represents the PIDUM in several discussions and seminars related to the protection of children and women. However, the source is currently assigned to the Coordinating Ministry for Political and Security Affairs. The source said that after approximately 12

(twelve) years of implementation, many problems had been found in the field, so that those of us in the law enforcement community, especially those concerned with protection, shared the same view that the SPPA law needed to be revised. Diversion is only one small part of several problems in the current SPPA law. The source started from the philosophical understanding that children are like blank sheets of paper, which can be filled from outside the child, so children must be viewed as not having independent will within themselves. In addition, according to scientific research on human anatomy, there is a part of the brain called the *prefrontal cortex* (PFC), sometimes also referred to as the *frontal lobe*. The Prefrontal Cortex is an area of the brain that plays an important role in:

- 1) Exclusive Control (planning, decision making, and impulse control)
- 2) Controlling emotional regulation and empathy
- 3) The function of will, which integrates information from emotions.

Considering this human anatomy, children are scientifically not yet mature in terms of their Prefrontal Cortex (PFC) development, so in their lives, children have unstable willpower, their decision-making is not yet rational, and their self-control is still weak. Because children literally and physically need special protection, the implementation of the SPPA Law should provide optimal and responsive protection for child perpetrators, child witnesses, and child victims. (Nascimento et al., 2022) However, in practice, law enforcement officials lack an understanding of this basic philosophy, so that on average they view and treat children in the same way as adults who commit crimes, but in the form of children (miniature adults). Thus, in applying articles to child perpetrators, law enforcement officials are less responsive to their specific legal subject, namely children. A concrete example of this can be found in Greater Jakarta, where a large number of child cases are charged under Article 170 of the Criminal Code, which is intended to protect public order and is ideally applied to adults because the purpose of the offense is clearly to disturb public order. In addition, in cases where diversion has been attempted, the source believes and notes that the facilitators generally lack the necessary skills. This is because, in reality, law enforcement officials do not have professional mediation skills (certification), so the implementation of diversion tends to be an evaluative process of the perpetrator's actions, which is strictly prohibited in mediation as a facilitator is not allowed to evaluate the actions of the parties in order to achieve peace through mediation. (Fulham et al., 2025)

Another obstacle in the implementation of diversion, according to the source, is the consent of the victim and/or the victim's family to reconcile. This is because the child's wishes are not sufficiently heard in the diversion process. According to the source, it is inappropriate for facilitators to tend to ask the opinions of the victim's family. Such practices contradict one of the principles of child protection, namely the protection of the child's opinion. The principle of non-discrimination is explicitly stated in Article 2 letter c of the SPPA Law, but the source argues that in the subsequent articles, the drafters of the SPPA Law did not reflect this principle of non-discrimination.(van Delft et al., 2025) This is clearly evident from the different treatment and/or mechanisms of the process for children in conflict with the law, where on the one hand there is a corridor for resolution through diversion as an effort to avoid the negative stigma of the formal judicial process, but on the other hand, there are also child offenders who must go through the formal judicial process because diversion cannot be attempted due to unfulfilled requirements based on Article 7 paragraph (2) of the SPPA Law.

Finally, the source argued that in viewing a crime committed by a child, law enforcement officials must see the basic philosophy that children are like blank sheets of paper and do not have independent will within themselves, so that child offenders must still be viewed as child victims. The implication of this understanding and view is that, regardless of the severity of the crime committed by the child, law enforcement officials should ideally take the view that the child should be given guidance that is more severe than usual, rather than being correlated with a heavier (criminal) punishment. The meaning of this principle is the concrete implementation of the mandate of Article 5 paragraph (1) of the SPPA Law, whereby the SPPA must prioritize a restorative justice approach.(McCold, 2012) Thus, the orientation of law enforcement agencies in viewing child cases is how to restore the relationship between the perpetrator and the victim, between the perpetrator and the community, within a framework of harmony, peace, and justice, rather than the orientation of punishing the child perpetrator.

Third, the interview was conducted by the researcher on July 29, 2025. The source serves as an Associate Policy Analyst to the Assistant Deputy for Policy Formulation, Deputy for Special Protection of Children, Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia (“Ministry of PPPA”). The Ministry of PPPA is a ministry tasked with coordinating and formulating policies related to women and

children. In addition to this coordination, the Ministry of PPPA also has the function of providing assistance in cases of violence against women and children that are of public concern. In carrying out these coordination and assistance functions, every year the Ministry of PPPA is required to prepare a report on the implementation of the SPPA Law, which is reported directly to the President in the form of an Annual Report on the Implementation of the Juvenile Criminal Justice System.

Regarding the research topic, the Resource Person is in line with the researcher's thinking regarding the proposal to reformulate the diversion policy in the SPPA Law. This is because, based on the SPPA implementation report prepared by the Ministry of Women's Empowerment and Child Protection, the percentage of diversion efforts each year is not very encouraging. This is because, based on the statistics received by the source, the majority of children involved in cases undergo the criminal justice process until a final decision is reached in court. This reality is far from the main objective of the SPPA Law in 2012, where the drafters of the SPPA Law at that time had high hopes that with the enactment of the SPPA Law, the number of children undergoing prosecution, even to the court level, could be significantly reduced or even eliminated. The Ministry of Women's Empowerment and Child Protection is aware of this reality, and therefore the Ministry has conducted an academic study proposing revisions to the SPPA Law. Currently, the revision of the SPPA Law has been included in the National Legislation Program agenda, but it is not a priority. Specifically regarding the provisions on diversion, based on the results of an academic study by the Ministry of Women's Empowerment and Child Protection, which was compiled in the form of a list of issues per article of the SPPA Law, a field study was conducted which found that there were legal issues related to the provisions of Article 7 paragraph (2) of the SPPA Law, whereby one of the conditions for diversion, namely a criminal penalty of less than 7 (seven) years, was no longer relevant in terms of implementation in the field.(Ambarwati, 2024)

Based on input and cross-institutional studies, the Ministry of Women's Empowerment and Child Protection has submitted a proposal to revise the provisions of Article 7 paragraph (2) of the SPPA Law to be more responsive in seeking protection for children, especially child offenders, with the main considerations being the avoidance of negative stigma as a result of legal proceedings and the best interests of the child. The

following are proposals and/or academic studies for the revision of the SPPA Law, particularly regarding the provisions on diversion:

Table 4

Proposals and/or Academic Studies for the Revision of the SPPA Law

Law Number 11 of 2012 on The Juvenile Criminal Justice System	Proposed Amendment / Revision	Explanation
<p>Article 7 Paragraph (2) Diversion as referred to in paragraph (1) shall be implemented in cases where the offense committed: a. is punishable by imprisonment of less than 7 (seven) years; and b. does not constitute a repeat offense.</p>	<p>Article 7 Paragraph (2) Diversion as referred to in paragraph (1) shall be implemented in cases where the offense committed: a. is punishable by imprisonment of up to 10 (ten) years as stipulated by law; and b. does not constitute a repeat offense, except when the repetition of the offense is committed out of necessity to meet basic living needs.</p>	<p>a. The consideration for extending the threshold to 10 years is intended to accommodate offenses committed by children that, in substance, should still allow for diversion because they do not cause harm or danger to others, for example, a case where a child carries a knife, which under the Penal Code carries a 10-year sentence, thereby excluding diversion under the current rule. b. The amendment also aims to enable diversion for children who commit crimes under the following considerations: 1) The child does not understand or realize the nature of their actions; and 2) There is no intent or purpose to commit a criminal act.</p>

Considering the proposed revision to Article 7 paragraph (2), which increases the criminal penalty to 10 years, the aim is to ensure that diversion can accommodate and/or cover crimes committed by children which, according to the law, are eligible for diversion because they do not cause harm or impact on others, such as in the case of a child carrying a knife, which according to the provisions of Emergency Law Emergency Law Number 12 of 1951, is punishable by 10 years' imprisonment and therefore cannot be subject to diversion. In addition, there are also several articles in the Criminal Code that should still be subject to rehabilitation because they do not cause significant danger or impact to others, but in practice, law enforcement agencies cannot seek diversion because the threat is above 7 (seven) years, such as the offense of aggravated theft and the offense of aggravated abuse. The ongoing revision of the SPPA Law is no longer under the authority of the Ministry of Women's Empowerment and Child Protection, because in the last coordination meeting with the Indonesian House of Representatives, Commission 8 took over the agenda for revising the SPPA Law, so that currently the leading sector for

revising the SPPA Law is carried out by Commission 8 of the Indonesian House of Representatives.(Wicaksono & Pujiyono, 2015)

4.6 Comparison of diversion regulations and implementation in several countries

This section outlines a comparison of the implementation of diversion in several countries as a basis for legal reform and the reformulation of diversion policies in the revision of the SPPA Law. This comparison is important to see how other countries implement the principle of restorative justice in their juvenile justice systems.

4.6.1 Philippines

Diversion is regulated in the Juvenile Justice and Welfare Act of 2006 (RA No. 9344), which was reinforced by RA No. 10630 (2013 Amendment). This law defines *diversi* as “an alternative measure for dealing with a child in conflict with the law based on social, cultural, economic, and educational background without resorting to formal court proceedings.” Thus, *diversi* in the Philippines is not limited by criminal penalties as it is in Indonesia.(Fulham, 2018) In fact, for crimes carrying a sentence of more than 6 years, diversion is still possible at the court level (Section 23(e)). This policy has succeeded in reducing the caseload in courts by around 50% since the enactment of RA 9344, as well as increasing the involvement of victims and perpetrators in restorative resolutions.

4.6.2 Australia

Australia has implemented diversion since the 1970s, with two main models:

- (1) Police diversion, in the form of verbal or written warnings without court proceedings; and
- (2) Meeting-based diversion, involving juvenile offenders, parents, police, and social workers.

This policy is regulated in the Young Offenders Act 1997 (NSW), which authorizes the police to conduct diversion through warnings, juvenile justice conferences,

or compensation to victims. The aim is to avoid stigmatization of children and restore social relationships.(G. Bazemore & Boba, 2007) As a result, the number of children imprisoned in Australia has decreased dramatically, and the system emphasizes social responsibility over punishment.

4.6.3 The Netherlands

The Netherlands promotes out-of-court settlements through a restorative justice principle called the expediency principle. Diversion can be carried out from the investigation stage through: Police transactions, investigators can terminate cases with certain agreements (Article 74c of the Dutch Criminal Code). HALT (Het ALternatief) program, children are directed to participate in social activities or training as a form of responsibility.(Javed, 2013)

Prosecutor's transaction, public prosecutors can drop charges if the child meets certain conditions, such as paying compensation or performing community service. This approach places the best interests of the child and the recovery of the victim above the interests of punishment.

Table 5

Comparison of Differences in Diversion Arrangements in Indonesia and Several Other Countries

Indonesia	Philippines	Australia	Netherlands
Diversion is mandatory at every stage of investigation, prosecution, and court proceedings under the following conditions: a) The offense carries a penalty of imprisonment of less than 7 (seven) years; and b) It is not a repeated offense. (Article 7 paragraph (2) of	Unlike Indonesia, the Philippines has implemented a diversion program for children below 18 years old by taking into account their social, cultural, economic, and psychological background, without using the formal justice system and without imposing specific conditions prior to the implementation of diversion. Diversion may still be applied even for offenses punishable by more than 6 years of imprisonment, provided that it is conducted in court. (Juvenile Justice	In Australia, the implementation of diversion is indeed designated for certain types of criminal acts. However, there are no rigid limitations regarding specific offenses eligible for diversion. The police serve as the frontline in preventing negative labeling or stigma resulting from the criminal justice system. The wide discretionary authority granted to the police allows flexibility in applying diversion at the early stages of the criminal justice	The police may formulate certain conditions for the offender, and by fulfilling these conditions, criminal prosecution can be avoided. Such police authority is a delegated power from the public prosecutor. This authority applies to offenders aged between 12 and under 18 years. (Article 74c

<i>Law No. 11 of 2012)</i>	<i>and Welfare Act of 2006, Republic Act No. 9344 of the Philippines)</i>	<i>process. (See The Young Offenders Act 1997)</i>	<i>paragraphs (2) and (3) of the Criminal Code, Sr)</i>
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Based on the implementation of diversion in the Philippines, Australia, and the Netherlands, appropriate provisions can be adopted and used as a reference in reformulating diversion policies in the Indonesian criminal justice system. The method of discontinuing cases at any stage, while prioritizing the expansion of police authority in the best interests of the child and the public interest, is more effective than imposing criminal penalties on child offenders. Imposing criminal penalties on children in conflict with the law can have a negative impact on children, including stigmatizing them as children and exposing them to a criminogenic environment. As a form of social structure and a sub-process of society, the criminal justice system can be criminogenic when there are practices that are inconsistent with values and norms, especially regulatory norms.

The settlement of cases at every stage through flexible diversion mechanisms that are oriented towards the best interests of the child, rather than solely the interests of the state, can provide a sense of proportional justice in relation to the nature of the offense, whether minor or serious, under certain conditions, without victims or without causing harm or compensation.

5 CONCLUSIONS

Based on the results of the study, it can be concluded that the implementation of restorative justice and diversion in the juvenile criminal justice system in Indonesia is still not optimal, even though normatively it has a strong legal basis in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). The spirit of restorative justice, which should be oriented towards the best interests of the child, is often reduced by law enforcement practices that are still formalistic, rigid, and retributive. Empirical findings show that diversion efforts, especially at the investigation and trial stages, still cover a small percentage of all juvenile cases, reflecting a lack of understanding and consistency in implementation among law enforcement officials. These empirical findings were drawn from interviews with respondents selected purposively based on their direct institutional involvement and practical experience in handling juvenile cases

and diversion/restorative justice mechanisms within the SPPA framework, including law enforcement officials at the investigation and adjudication stages and practitioners in child-related assistance institutions; selection criteria emphasized (i) role relevance to the juvenile justice process, (ii) demonstrated experience in juvenile case handling, and (iii) ability to provide substantive information regarding constraints and implementation practices.

Philosophically, diversion, as emphasized in The Beijing Rules (1985), is not intended to be limited to minor offenses, but is an important instrument to protect children from the negative impacts of formal judicial proceedings. However, the provisions of Article 7 paragraph (2) of the SPPA, which limits diversion to crimes with a maximum penalty of seven years, is an obstacle to achieving this goal. Comparative studies with the Philippines, Australia, and the Netherlands show that granting broader authority to law enforcement officials in the implementation of diversion can be applied effectively without neglecting a sense of justice, as long as it continues to guarantee the protection of victims' rights and community participation.

The principle of the best interests of the child must be used as the philosophical and operational basis for every juvenile criminal justice policy in Indonesia. Children in conflict with the law should not be treated as adult offenders, but rather as individuals who are in the process of growing and developing and who need guidance, rehabilitation, and social reintegration. A punitive approach has proven to be ineffective in deterring crime, and even causes stigma and the risk of recidivism among children. Therefore, it is necessary to reformulate the SPPA Law, particularly to revise Article 7 paragraph (2), by expanding the criteria for diversion to include criminal acts punishable by a maximum of ten years' imprisonment, as well as opening up the possibility of diversion for repeat offenses committed to fulfill basic needs. This reformulation needs to be followed by increasing the capacity of law enforcement officials, strengthening coordination between law enforcement agencies, and improving supporting facilities such as correctional centers, special child guidance institutions, and child assistance service centers. Ultimately, restorative justice must be positioned not merely as a procedural alternative, but as the main paradigm in the juvenile criminal justice system in Indonesia. By aligning legal substance, institutional structure, and legal culture with the principle of the best interests of the child, Indonesia can realize a more humane, participatory, and socially

just juvenile criminal justice system, namely a legal system that not only upholds legal certainty but also restores social harmony and prepares a generation of young people with integrity.

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Authors' Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

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