

# Child Criminal Justice System Diversion Policy and Child Psychological Health

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**Child Criminal Justice System Diversion Policy And Child Psychological Health**Sulistya Eviningrum<sup>1</sup><sup>1</sup>Faculty of Law, University of PGRI Madiun, Indonesia ([sulistya@unipma.ac.id](mailto:sulistya@unipma.ac.id))

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**ABSTRACT**

Children are the next generation whose roles are crucial for the development and the livelihood of the nation and the state. The establishment of the juvenile criminal court system is in fact still inadequate. This is because most implementations carried out by law officials still bring negative impacts to the children's mental condition. Most juvenile prisons result in a decrease in the children's mental development in the future. This juridical-empirical research was legal research on the in-action implementation of normative laws in certain legal norms that happen in society. The analysis on the issues of the implementation of diversions in the renewal of the juvenile criminal court system in Indonesia and the ideal implementation of the diversion policy that are according to the law, and the implementation of the juvenile criminal court system in Indonesia are not yet optimum. Concluding a diversion that is ideal for implementation will result in the renewal of juvenile criminal law in the juvenile criminal court system, as it is synchronized juridically, sociologically, philosophically, theoretically, and comparatively. The implementation of the diversion harmonizes the juvenile criminal court system in Indonesia, namely the Law on Child Welfare, the Law on Human Rights, the Law on Child Protection, and the Convention on Children's Rights.

**Keywords:** Diversion Optimization; Law Renewal; Juvenile Criminal Court System

**INTRODUCTION**

*"Wealth and children are adornments of the life of this world, but eternal and pious deeds are better in reward with your Lord and better for hope"* (Qur'an, Surah Al-Kahf: 46). Humans want peace and a healthy environment without acts of violence and crime, cultural clashes, impacting the younger generation, is expected to be the successor to the ideals of the Indonesian nation, without human rights violations, and children become objects of intimidation by the perpetrators of crime(1). Vulnerable children are certain groups of children who experience cultural and structural pressures in society which result in their rights being not fulfilled and violated, in this situation vulnerable children tend to be inferior, vulnerable, and marginal(2).

The survival of the nation cannot be separated from the role of children, the rights of children are expressly stated in the constitution. As stated in the Amendment to the 1945 Constitution Article 28B paragraph [2], the state guarantees that every child has the right to survival, growth and development and the right to protection from violence and discrimination.(3) The rights of children in the convention, including the right to survival, the right to develop, the right to protection, and the right to participation(4). The purpose of administering the justice system is not only as a criminal imposition on the child as a perpetrator of a crime, but as a thought that the imposition of a criminal is a means of realizing the welfare of children who commit crimes. The use of the juvenile criminal justice system currently relies on the Juvenile Court Act, namely Law Number 11 of 2012. The "weighing" considerations in the Juvenile Court Law, Law no. 3 of 1997 states that the purpose of implementing the juvenile criminal justice system in Indonesia is to foster and provide protection for children, namely so that children are guaranteed physical, mental and social growth and development as a whole, harmonious, harmonious and balanced. The audience stated that the implementation of the juvenile criminal justice system is in fact still not appropriate, because the majority of what is carried out in the field by legal officials still has a negative impact on the soul of the child. Especially for children who are sentenced to prison. The majority of imprisonment for

children shows a decline in the mental development of children in the future. Especially those brought to the criminal justice system, the judge still sentenced the criminal to deprivation of liberty. If the child is taken to prison, their rights guaranteed by the Child Protection Act are not fulfilled. The fact is that there are limited numbers of detention centers and Child Correctional Institutions (Lapas), which are eventually merged with adult prisoners. The negative effect is not only when they are serving a crime, but before the judicial process, during the trial and after the trial. The involvement of children in the judicial process has a negative effect, the child feels physical and mental suffering. There are sources of stress that arise when bombarded with unsympathetic questions, having to repeat or retell unpleasant events to separation from family. When entering the trial, there is also a spatial arrangement, where the child will be met with victims, witnesses, speaking in front of court officials.

Officials or law enforcement officers are given the authority to take policies related to child crimes, resolve the problem of child violations by not taking formal steps, can also stop or not continue / release from the juvenile criminal justice process or return to the community and other forms of social service activities, called with "Diversion"(5). To give authority to judges, namely the possibility of the judge stopping or diverting or not continuing the examination of cases and examination of children during the examination process before the trial(6). The implementation of the juvenile criminal justice system in Indonesia currently relies on Law Number 11 of 2012 concerning Juvenile Court. In the Draft Law on the Criminal Code (RUU KUHP) and the Draft Renewal of the Juvenile Court Law, it contains provisions for diversion which will be included in the formulation policy of the law reform, which is regulated in Article 114 of the Draft Criminal Code as well as Article 1 and Article 40 Draft Juvenile Court Law(7). It is necessary to study and examine whether the diversion originating from the UN Resolution can be accepted, implemented as a renewal of the juvenile criminal justice system in Indonesia. Criminal law reform as an effort to combat crime, must pay attention to value aspects and policy aspects in criminal law reform. The value aspect is the content in the legal substance that will be formulated in legal reform, does not contradict or can be accepted by the socio-philosophical, socio-political, and socio-cultural values of the Indonesian people. Policy aspects, namely the legal substance formulated in legal reform, as a means of supporting policies, such as social policies, criminal policies and law enforcement policies.(8)

## METHODS

This research is a type of empirical juridical research, examining applicable legal provisions and what happens in reality in society(9). Empirical juridical research is legal research regarding the enforcement or implementation of normative legal provisions in action on every particular legal event that occurs in society(10). Research carried out on the actual situation or real conditions that occur in the community with the intention of knowing and finding facts and data(11) required, in accordance with the signs of the legislation(12). After the data needed is collected then it goes to problem identification which ultimately leads to problem solving(13).

## RESULTS

Diversion is a process that is internationally recognized as the best and most effective way of dealing with children in conflict with the law. Interventions with children in conflict with the law are broad and varied, but most emphasize detention and punishment, regardless of how minor the offense is or how young the child is. Children who violate the law or commit criminal acts are strongly influenced by several other factors outside of the child such as association, education, playmates and so on.

To protect children, the formal rules for removing (removing) a child who violates the law or commits a crime from the criminal justice process by providing other alternatives that are considered better for the child. Diversion has been declared and has become an international standard, it is desired to be implemented in UN member countries, and should also be in the juvenile criminal justice system in Indonesia.(6) If the renewal of juvenile criminal justice can embed diversion in its system, it is necessary to study the relevance or suitability of diversion as material for reforming the formulation of the juvenile criminal justice system in Indonesia. Law is considered relevant to be adopted as a legal reform idea if it meets several relevant measures, namely juridically, sociologically, philosophically, and theoretically.(14) The law is considered relevant and then adopted in legal reform if it meets the elements, namely juridical, sociological, philosophical, theoretical relevance(14) and comparative, as presented by Rene David and Brierley(15). Criminal law reform is essentially an effort to review and reevaluate (reorient and reevaluate) the socio-political, socio-philosophical, socio-cultural values that underlie and provide content for the normative and substantive content of the aspired criminal law.”(8)

In the context of reforming criminal law *ius constituendum*: 1) criminal law is formed not only for sociological, political and practical reasons but is consciously arranged within the framework of the Pancasila ideology as a national ideology. 2) Criminal law in the future must not ignore aspects related to humans, nature and the customs or traditions of the Indonesian nation. 3) criminal law in the future must be responsive to the development of technological science in order to increase the effectiveness of its functions in society(16). The implementation of diversion by law enforcement officers is based on the authority of law enforcement officers which is called discretion. Based on Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia, Article 18, discretion is the authority of law enforcement officers who have discretion to handle criminal cases to take action to continue the case or stop the case, take certain actions in accordance with their policies. With the aim of discretion: a). Avoid detention of children; b). Avoid being labeled as criminals; c). Improve children's life skills; d). Increase children's sense of responsibility; e). Preventing the prevention of criminal acts; f). Increase intervention in the interests of victims without a formal process; g). Preventing children from participating in the juvenile criminal justice system (SPPA) process; h). Keeping children away from the influence and negative implications of the judicial process.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, regulates the settlement of criminal cases by children from the investigation process to the examination of cases in court, as well as being the legal umbrella for diversion in the process of resolving criminal cases committed by children, according to law This diversion must be carried out and sought at the level of investigation, prosecution and court examination. The law order related to diversion is the result of philosophical and sociological thinking that the application of criminal sanctions for child suspects actually has a negative effect on the mental and child development later, a child is burdened with the obligation to be legally responsible for his actions causing the child to be labeled as a criminal.

From this situation, the Indonesian National Police gave instructions to the police in their area to use a model for resolving child criminal cases through out-of-court channels in the form of mediation as a form of diversion, namely the transfer of settlement of children's cases from the criminal justice process to a process outside the criminal justice system (Art. 1 point 7 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System) or the transfer of the handling of cases of children suspected of having committed criminal acts from a formal process with or without conditions which will result in legal cessation of investigation by investigators if there is success in the mediation process.

Diversion program in the case of children can be done in various ways. Examples of diversion programs that can be done in handling cases involving children, as for examples of how to do it are as follows:

Non-intervention is the best effort because diversion without going through a formal process is the optimal effort, especially for non-serious crimes where families, schools, or informal social monitoring institutions can play a role in a proper and constructive way. Non-Intervention Methods can be divided into:

- a. Informal warning: involves the police telling the child that what he did was wrong and warning him not to do it again. There's no news for that.
- b. Formal Warning: the police must take the child home and give a warning to the parent or guardian. The police recorded the warning in a diversion record kept at the police station.
- c. Replace wrongdoing with kindness/restitution: the child is asked to replace the wrong with kindness, for example by paying compensation to the victim according to the child's ability.
- d. Community service: the child is asked to do community service or fulfill certain tasks for a few hours. This serves for the psychological development and education of children.
- e. Involving children in skills programs: involving children in skills programs managed by social service institutions, NGOs, both child offenders and children in general.
- f. Organize activities in which the police, children, and families together discuss things that must be done, for example, replace wrongdoing with kindness for the victim and the community, strengthen family ties and support other children, and prevent further crime prevention.
- g. Plans decided by traditional adat institutions: child cases can also be delegated to traditional institutions
- h. The plan is based on the results of family group meetings: meetings between family groups involve all parties affected by child crimes.

The implementation of the diversion program in the juvenile criminal justice system aims to place more emphasis on child protection in the juvenile criminal justice system. The implementation of diversion is an effort to avoid the negative effects of the juvenile justice system on the soul and psychology of children. With the implementation of diversion, there is no stigma that states a criminal child or a naughty child, then the person concerned does not bear the badge label as a result of the court's decision. There is a bad influence on the criminal justice process against children, it can be caused by the influence of the provisions of the Court Law or other factors(17).

By doing diversion (diversion) the bad influence can be avoided. Diversion can be implemented as a means of improvement, here children are avoided from the formal justice process and there is no recording of crimes against children. Children who commit crimes are treated with a sense of humanity. Diversion can be used as a



means of crime prevention. The purpose of implementing diversion is to avoid stigma in children. The implementation of diversion can avoid stigma because the police do not record data as juvenile delinquents, the public prosecutor does not prosecute, does not make indictments, then the prosecutor does not delegate it to the court. If the case has entered the court, the judge selects the cases that are continued for examination or are stopped. If the judge stops the examination to implement diversion, then the judge does not make a sentencing decision.

In accordance with the provisions of the Convention on the Rights of the Child which was ratified by the Indonesian government through Presidential Decree Number 36 of 1990, then also stated in Law Number 4 of 1979 concerning Child Welfare and Law Number 23 of 2002 concerning Child Protection and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, all of which state the general principles of child protection, namely non-discrimination, best interests of children, survival and growth and development and respect for children's participation.

The Chief Justice of the Supreme Court of the Republic of Indonesia Muhammad Hatta Ali signed the Supreme Court Regulation (PERMA) Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System even before the Government Regulation which was a derivative of the Juvenile Criminal Justice System Act was issued. The important point of PERMA is that judges are obliged to resolve children's problems with the law with the Diversion program, which is a legal procedure that is still very new in the system and reform of criminal law in Indonesia. In addition, this PERMA contains procedures for implementing diversion which become the guideline for judges in the settlement of juvenile crimes, considering that there are no regulations that contain special procedural laws for diversion of the juvenile criminal justice system<sup>(18)</sup>. Diversion is the transfer of the process from a long and very rigid child case settlement system to a non-trial. Mediation or dialogue or deliberation as an integral part of diversion to achieve restorative justice. Punishment for perpetrators of child crimes does not then achieve justice for the victims, considering that from the other side it still leaves its own problems that are not resolved even though the perpetrators have been punished. Seeing the principles on child protection, especially the principle of prioritizing the best interests of the child, a process for resolving child cases is needed outside the criminal mechanism or commonly called diversion.

Regarding the detention of children. Diversion is only carried out in the event that the crime committed is punishable by imprisonment of under 7 (seven) years and is not a repetition of the crime. Meanwhile, detention of a child is only carried out if the child is 14 (fourteen) years old or more and is suspected of committing a crime with a threat of imprisonment for 7 (seven) years or more. This means, referring to the requirements regarding criminal threats in the implementation of diversion and detention, for children for whom diversion is carried out, for whom no detention is carried out, for children in the judicial process.

This diversion aims at Article 6 of the Juvenile Criminal Justice System Act: achieving peace between victims and children; resolve child cases outside the judicial process; prevent children from deprivation of liberty; encourage people to participate; and instill a sense of responsibility in children. It is true that at the level of investigation, prosecution, and examination of children's cases in district courts, diversion must be sought as referred to in Article 7 paragraph (1) of the Law on the Juvenile Criminal Justice System. The diversion is only carried out in the case of a criminal act committed (Article 7 paragraph (2) of the Juvenile Criminal Justice System Law): Is punishable by imprisonment for under 7 (seven) years; and is not a repetition of a crime.

## DISCUSSION

One of the rights of children in a criminal justice process is not to be arrested, detained or imprisoned, except as a last resort and in the shortest time as referred to in Article 3 letter g of the SPPA Law. So, it is the right of every child who is in a criminal justice process not to be detained unless the detention is a last resort. The concept of detention of children. Detention of a child may not be carried out in the event that the child receives a guarantee from the parent/guardian and/or institution that the child will not escape, will not lose or damage evidence, and/or will not repeat the crime. This is what is stated in Article 32 paragraph (1) of the SPPA Law. Still related to the detention of children, Article 32 paragraph (2) of the SPPA Law provides for the arrest of children as follows: "Detention of a child can only be carried out with the following conditions: a) the child is 14 (fourteen) years old or older ; and b) is suspected of committing a crime with a threat of imprisonment of 7 (seven) years or more."

Referring to the two concepts above, namely the concept of diversion and the concept of detention, it is necessary to first look at the age of the child at that time. Then referring to the terms of diversion and the terms of detention of children, it can be seen that diversion is carried out if the crime committed by the child is punishable by imprisonment of under seven years.

Imprisonment received criticism, because it has a negative impact or effect. Children's freedom is deprived. The modern view that is humanitarian in nature and emphasizes the elements of improving the offender (reformation, rehabilitation and resocialization), clearly criticizes the existence of imprisonment.<sup>(17)</sup> It is hoped that non-deprivation of liberty measures will be applied at all stages of the court, starting before the examination, during the examination, until after the court decision. Judges in making decisions need to consider the interests of fostering the perpetrators, protecting the community and the interests of victims. The judge can decide on the case being examined in several forms, namely: 1). Verbal sanctions such as advice, reprimand, and threats; 2). Conditional punishment; 3). Criminal status; 3). Economic sanctions and fines; 4). Foreclosure; 5). Compensation or compensation for victims; 6). Suspension or postponement; 7). Probation and supervision; 8). Social work; 9). Must report/come; 10). House arrest; 11). Various types of non-institutional crimes; 12). The combination of the types of crimes above, as explained by Barda Nawawi Arief.

The implementation of diversion is in accordance with the restorative justice paradigm, there are similarities between the diversion program and the form of sanctions in the judiciary with the paradigm of restorative justice. The forms of sanctions in this case are: restitution, mediation of perpetrators and victims, victim services; Community restoration; Direct services to victims; Restorative fines. The purpose of enforcing the juvenile criminal justice system is relevant to a progressive approach aimed at the welfare and happiness of children, therefore the juvenile criminal justice system with the implementation of diversion will always pay attention to the objectives of the Child SPP. This diversion basically aims to guarantee the rule of law by providing protection, protection and community services and to accommodate legal needs whose settlement so far has not guaranteed a more humane recovery than the stigmatization process through the transition from the formal criminal process to an alternative where this process gives the best results for the perpetrators. the parties by outlining the rights or authorities of members of the Indonesian National Police to Diversion is appropriate to be implemented in the

renewal of juvenile criminal law in the juvenile criminal justice system, because there is compatibility in juridical, sociological, philosophical, theoretical and comparative compatibility. The diversion process begins when the status of a child who is in trouble with the law increases to a suspect so that diversion is carried out at the investigation level which begins with mediation, the Penitentiary Research Center to provide recommendations for diversion to be carried out or not, then when the Penitentiary recommends that diversion be carried out, diversion is carried out by inviting the family relatives, the victim's family, community leaders, the Community Center as a community advisor and POLRI investigators as diversion implementers.

The implementation of diversion in the formulation of policies on the criminal law system for children in Indonesia can also use regulations, namely the Child Welfare Act, the Human Rights Act, the Child Protection Act, and the Convention on the Rights of the Child.

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