

The Urgency of Reformulating Just and Humane Diversion Arrangements in Juvenile Criminal Law

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Abstract

The diversion provisions in the Juvenile Criminal Justice System Law urgently require re-examination following as the requirement limiting diversion to offenses carrying a maximum threat under seven years in Article 7 differs from Article 2 of the SPPA Law. When evaluated against the fundamental principles of juvenile justice, this regulatory disparity creates legal inconsistency and potential injustice toward children in conflict with the law. Through philosophical, juridical, sociological, penological analyses and comparative law, this study highlights the urgency of reformulating these diversion arrangements to ensure that the best interests of the child are prioritized through equitable access to diversion at every stage of legal proceedings. Ultimately, realizing restorative and rehabilitative justice rather than retributive punishment is an imperative duty for law enforcement officers, making regulatory harmonization essential to guarantee legal certainty and judicial consistency in line with national criminal law reform. This study employs an empirical juridical research method and draws upon both primary and secondary data. The statutory

requirement limiting diversion to offenses threatened with under seven years of imprisonment should be eliminated. Instead, diversion should be established as a legal right available to every child in conflict with the law at all stages of the criminal justice process investigation, prosecution, and trial. The decision to grant diversion should be based on case-by-case guidelines evaluating the motive, the degree of harm, and the victim-offender dynamic, rather than abstract statutory penalty caps.

Keywords

Diversion, Reform of the Criminal Code, Reformulation.

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Introduction

Children, as the nation's future generation, hold a special status under the law. All actions concerning children must prioritize the best interests of the child. This principle is consistent with the mandate of the 1989 Convention on the Rights of the Child and Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which stipulates that every child has the right to live, grow, and develop and is entitled to protection from violence and discrimination. Therefore, when children come into conflict with the law, the state must not rely solely on a retributive approach oriented toward punishment.¹ The state's response to this issue is reflected in Law Number 11 of 2012 on the Juvenile Criminal Justice System, hereinafter referred to as the Juvenile Criminal Justice System Law or the SPPA Law. One of the principal mechanisms regulated under the SPPA Law is diversion, namely the transfer of the settlement of a juvenile criminal case from the formal criminal justice process to a process outside the criminal justice system, with an emphasis on restorative justice.²

Diversion is regulated under Article 7 paragraph (2) of the SPPA Law, which provides that diversion may be implemented where the criminal offence committed is punishable by imprisonment of less than seven years and does not constitute a repeat offence.

The primary objectives of diversion are to prevent the stigmatization of children, avoid placing children in correctional institutions, and restore relationships among the child, the victim, and the community. However, since the enactment of the SPPA Law, diversion has become a crucial issue within Indonesia's juvenile criminal justice system. There is an apparent conflict between the concept of diversion based on restorative justice and the principles of justice, non-discrimination, and the best interests of the child as stipulated in Article 2 of the SPPA Law. The limitation of diversion to offences punishable

¹ Iwan Rasiwan et al., "The Implementation of Restorative Justice Principles in Handling Cases of Children in Conflict With the Law" 15, no. 02 (2025): 327–37, <https://doi.org/10.58471/justi.v15i02>.

² A Rifai, Gamlang Dagani, and Wahyuddin Wahyuddin, "Implementation of Diversion in the Juvenile Justice System at Kendari District Court," *Al-'Adl* 18, no. 1 (2025): 49–60.

by imprisonment of less than seven years means that not all children are afforded an equal opportunity to undergo diversion. The principle of non-discrimination appears to have been undermined by this restriction. Consequently, the objective of establishing a non-discriminatory, equitable, and humane diversion system within the juvenile criminal justice system has not yet been fully achieved.

Data from the Supreme Court of the Republic of Indonesia's infographic on children in conflict with the law show that the number of children recorded as perpetrators of criminal offences from 2022 to 2024 was as follows: 4,314 children in 2022, 5,006 children in 2023, and 4,823 children in 2024.

The number of juvenile criminal cases filed with District Courts throughout Indonesia during the same period was 4,970 cases in 2022, 5,192 cases in 2023, and 4,960 cases in 2024. Meanwhile, the number of juvenile cases resolved through diversion in District Courts throughout Indonesia was 393 cases in 2022, 459 cases in 2023, and 442 cases in 2024.³ The data indicate that fewer than 9% of juvenile cases before District Courts were resolved through diversion.

This fact demonstrates that diversion based on restorative justice has not become the primary means of resolving cases within the juvenile criminal justice system.⁴ The differential treatment of children resulting from the limitation on the maximum term of imprisonment as a requirement for diversion may subject children to unfavorable treatment that is inconsistent with the principle of the best interests of the child.⁵ Differentiating children based on the prescribed criminal penalty as a requirement for diversion is inhumane because not all children are afforded equal rights and opportunities.

This issue has become increasingly significant following the enactment of the Criminal Procedure Code, which regulates restorative justice under Article 80. This provision stipulates that restorative justice

³ Mahkamah Agung, "Infografis Anak Berhadapan Dengan Hukum," n.d.

⁴ Yul Ernis, "Diversi Dan Keadilan Restoratif Dalam Penyelesaian Perkara Tindak Pidana Anak Di Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 10, no. 2 (1983).

⁵ Abdurrahman Alhakim, "Diversion As A Legal Concept That Is Equitable For Children In Indonesia," *Mizan: Jurnal Ilmu Hukum* 11 (December 14, 2022): 147, <https://doi.org/10.32503/mizan.v11i2.3102>.

may be applied to criminal offences punishable by a maximum term of imprisonment of five years.

The transformation of the Criminal Code from the *Wetboek van Strafrecht* into the National Criminal Code was accompanied by the reform of the Criminal Procedure Code through Law Number 20 of 2025, thereby introducing a new paradigm into Indonesia's criminal justice system. The Transformation of Indonesia's Criminal Law System: Comprehensive Comparison between the Old and New Penal Codes⁶ The shift from a retributive paradigm toward corrective, rehabilitative, and restorative approaches demonstrates that restorative justice has become a preferred mechanism in the resolution of criminal cases. However, the inclusion of restorative justice provisions in the Criminal Procedure Code has created disharmony between the restorative justice framework regulated under the SPPA Law and that regulated under the Criminal Procedure Code.

This policy formulation has created confusion among law enforcement officers in its practical implementation. An interview with a former Chief of the Pemalang District Police revealed that these differing legal provisions frequently constrain cases involving children in conflict with the law. This problem is particularly relevant because Indonesian National Police Regulation Number 8 of 2021 on the Handling of Criminal Offences Based on Restorative Justice remains applicable. Under this Police Regulation, restorative justice is limited to criminal offences punishable by a maximum term of imprisonment of five years. In practice, because the SPPA Law constitutes a *lex specialis* governing children, its provisions should prevail over the general provisions contained in the Criminal Procedure Code.⁷ Nevertheless, Police Regulation Number 8 of 2021 serves as the operational guideline for investigators and, under the applicable standard operating procedures, restorative justice may only be applied to offences

⁶ Roby Satya Nugraha et al., "The Transformation of Indonesia's Criminal Law System: Comprehensive Comparison between the Old and New Penal Codes," *Reformasi Hukum* 29, no. 1 (2025), <https://doi.org/10.46257/jrh.v29i1.1169>.

⁷ Abiandri Fikri Akbar, "Restorative Justice In Indonesian Criminal Code: Navigating Fragmentation And Lessons From Malaysia And The United States," *Pandecta Research Law Journal* 20, no. 2 (2025), <https://doi.org/10.15294/pandecta.v20i2.18605>.

punishable by a maximum term of five years. No significant difficulty arises where the offence is punishable by imprisonment of up to five years. However, uncertainty arises when a child commits an offence punishable by imprisonment of between five and seven years. Although diversion continues to be pursued in such cases, investigators are required to provide exceptionally comprehensive supporting documents. These documents include a peace agreement between the victim, the child offender, and the child's parents; recommendations from the Correctional Centre, social workers, and members of the community; and a justification based on the best interests of the child, particularly the need to prevent stigmatization. These measures are taken to avoid the risk of pretrial proceedings and supervisory review. According to the former Chief of the Pemalang District Police, the requirements for the application of restorative justice under the Criminal Procedure Code and the SPPA Law must therefore be harmonized.

In conducting this study, previous research cannot be separated from the analysis, as it serves as a foundation for ensuring the continuity and further development of scholarly inquiry. Several previous studies have focused on issues concerning children in conflict with the law.

First, a study conducted by Sella Marenata, Salwa Haniyyah, and Predi Alexander Sitorus entitled "The Application of Restorative Justice in Resolving Juvenile Criminal Cases in Bengkulu: A Family Deliberation Approach as a Legal Solution for Children".⁸ The similarity between the present study and the research conducted by Sella Marenata et al. lies in their shared analysis of the resolution of juvenile criminal cases through restorative justice. The distinction, which also constitutes the novelty of the present study, lies in its research focus. This study specifically examines the reformulation of regulations governing diversion, whereas the study by Sella Marenata et al. focuses on the implementation of restorative justice regulations.

Second, an article written by Abdul Gani and Fitriati entitled "The Role of Probation Officers in the Implementation of Diversion in

⁸ Predi Alexander Sitorus Sella Marenata, Salwa Haniyyah, "Penerapan Restorative Justice Dalam Penyelesaian Kasus Tindak Pidana Anak Di Bengkulu: Pendekatan Musyawarah Kekeluargaan Sebagai Solusi Hukum Anak," *Jurnal Kajian Hukum Dan Kebijakan Publik* 3, no. 1 (2025).

Resolving Criminal Assault Cases Committed by Children”.⁹ The similarity between the present study and the research conducted by Abdul Gani et al. lies in their shared focus on the implementation of diversion and the type of research employed. The difference between the present study and the previous research lies in the latter’s specific examination of the role of probation officers in the implementation of diversion. The present article does not merely analyze the regulation of diversion under positive law but also proposes a reformulation of the diversion framework in order to establish a more equitable and humane system that upholds the best interests of the child.

Third, an article written by Krismiyarsi and Rayno Dwi Adityo entitled “The Urgency of Imposing Community Service as a Punishment on Juvenile Delinquents: A Study of al-Shatibi’s Concept of Maqasid al-Shariah”.¹⁰ The similarity between the previous study and the present research lies in their shared discussion of non-custodial sentencing mechanisms for children. The distinction, however, lies in their different areas of focus. The previous study examined judicial decisions imposing community service on children who had committed criminal offences. In contrast, the present study addresses the need to reform juvenile criminal law concerning diversion in order to establish a fair and humane system.

Fourth, a study conducted by Lin Yan Che and Ade Adhari entitled “Reformulation of the Diversion Policy for All Criminal Offences Committed by Children”.¹¹ The similarity between the present study and the research conducted by Lin Yan Che and Ade Adhari lies in their shared examination of the limitation that diversion may only be applied to offences punishable by imprisonment of less than seven years as a requirement for children in conflict with the law. The difference is

⁹ Abdul Gani et al., “Peran Pembimbing Kemasyarakatan Dalam Pelaksanaan Diversi Pada Penyelesaian Tindak Pidana Penganiayaan Dengan Pelaku Anak” 2, no. 4 (2025): 312–19.

¹⁰ Krismiyarsi Krismiyarsi, “The Urgency of Community Service Imposed as Punishment on Juvenile Delinquents : A Study of Al- Shatibi ‘ s Maqhasid Al- Syariah Concept” 17, no. 1 (2025): 132–48.

¹¹ Lin Yan Che, “REFORMULASI KEBIJAKAN DIVERSI TERHADAP SELURUH TINDAK PIDANA YANG DILAKUKAN OLEH ANAK” 4 (2021): 3403–23.

that the study by Lin Yan Che and Ade Adhari neither reformulates the regulatory framework governing diversion for children nor examines the urgency of reformulating diversion provisions to establish a fair and humane system.

The strength of the present study lies in the fact that it does not merely examine positive criminal law as *ius constitutum*, but also integrates the perspective of criminal law reform as *ius constituendum*, particularly with regard to the need to reformulate diversion provisions fairly and humanely. The limitation of this study lies in its specific objective, namely to examine the urgency of reformulating diversion provisions within juvenile criminal law in order to establish a fair and humane system.

The findings of this study are expected to contribute ideas and perspectives to future researchers and legal practitioners concerned with issues involving children in conflict with the law. They are also expected to serve as a reference for law enforcement officers when imposing sanctions on children who have committed criminal offences, so that custodial sentences may be avoided to the greatest possible extent.

Based on these issues, there is an urgent need to reformulate the diversion provisions in the SPPA Law in order to establish a fair and humane system consistent with Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia and the spirit of national criminal law reform. Such reform is urgently required to achieve legislative harmonization and ensure legal certainty in its implementation.

This study employs an empirical juridical research method and draws upon both primary and secondary data. Primary data were obtained through interviews with legal practitioners, including police officers and advocates, as well as academics, particularly university lecturers and criminal law experts. The secondary data consist of primary legal materials, including laws and regulations such as Law Number 11 of 2012 on the Juvenile Criminal Justice System, Law Number 1 of 2023 on the Indonesian Criminal Code, Law Number 20 of 2025 on the Indonesian Criminal Procedure Code, and other relevant laws and regulations. The secondary legal materials include books and other literature relevant to the focus of this study, academic journal articles, and website sources. This study employs a conceptual approach to

restorative justice, diversion, theories of punishment, and criminal law policy within the framework of criminal law reform. In addition to the conceptual approach, this study applies statutory, case, and comparative approaches. The case approach is used to examine the implementation of diversion in the practice of juvenile criminal justice proceedings. The comparative approach involves several countries, including New Zealand, the Netherlands, Japan, and China. This approach is used to compare the regulation of restorative justice for children in conflict with the law in those countries with the regulatory framework applicable in Indonesia. All data are analyzed qualitatively through the collection and categorization of legal materials, systematic and teleological legal interpretation, comparative analysis with other jurisdictions, and the drawing of conclusions.

A. Legal Reformulation

Legal reformulation consists of 2 words, namely reformulation and law. According to the Great Dictionary of the Indonesian Language published by the Language Development and Development Agency of the Ministry of Education, Research, and Technology of the Republic of Indonesia, the meaning of the word formulation is formulation,¹² while the meaning of the word reformulation is reformulation.

Legal reformulation must also pay attention to the balance between legal *certainty*, justice, and *utility*. In practice, often laws that overemphasize certainty ignore substantive justice, so reformulation is important to correct these imbalances.¹³ In addition, legal reformulation must also consider the development of social practices that are not always accommodated in existing legal norms. This is where the importance of a responsive legal approach comes in, one that doesn't just stick to the text, but also to the context.

¹² Kamus besar Bahasa Indonesia, "Arti Kata Komunikasi - Kamus Besar Bahasa Indonesia (KBBI) Online," *Kbbi.Web.Id*, 2021.

¹³ Nanang Nurcahyo et al., "Reform of the Criminal Law System in Indonesia Which Prioritizes Substantive Justice," *Journal of Law, Environmental and Justice* 2, no. 1 (2024), <https://doi.org/10.62264/jlej.v2i1.91>.

Legal reformulation is not just a process of normative change, but an effort to reconstruct the law as a whole that aims to make the law more lively, adaptive, and able to respond to the needs of society. Legal reformulation ultimately becomes a strategic instrument in realizing a legal system that is not only normatively certain, but also substantively fair and effective in practice.

Legal reformulation is an integral part of legal reform that functions to improve, reformulate, and even reformulate legal norms to be more responsive, adaptive, and fair. Legal reformulation is not only oriented towards editorial change, but also touches on the philosophical, sociological, and juridical aspects of a legal regulation.¹⁴

In the context of juvenile criminal law reform, legal reformulation must not be viewed merely as an editorial change of statutory text, but as a holistic reconstruction touching upon philosophical, sociological, and juridical dimensions.¹⁵ A responsive legal approach demands that legal norms adapt to evolving social practices and legal frameworks—specifically the paradigm shift introduced by the new Criminal Code (Law No. 1/2023) and Criminal Procedure Code (Law No. 20/2025). Currently, the rigid application of Article 7 in the SPPA Law overemphasizes formal legal certainty at the expense of substantive justice for children in conflict with the law. By incorporating the principles of responsive law, reformulating diversion arrangements becomes a strategic instrument to resolve regulatory disharmony, ensuring that the legal system balances certainty, utility, and humanity while upholding the best interests of the child.

The reformulation proposed in this study is based on the disharmony between the limitation on the requirements for diversion for children in conflict with the law under Article 7 paragraph (2) of the SPPA Law and the principles stipulated in Article 2 of the same Law. This disharmony is unfair and inhumane because not all children are

¹⁴ Dwidja Priyatno, “Reorientasi Dan Reformulasi Sistem Pertanggungjawaban Pidana Korporasi Dalam Kebijakan Kriminal Dan Kebijakan Hukum Pidana,” *Syiar Hukum* 9, no. 3 (2007).

¹⁵ Ifahda Hapsari et al., “Reformulation of Juvenile Court: The Perspective of Judicial Amnesty in Indonesia and The Netherlands,” *SASI*, November 2025, 390–405, <https://doi.org/10.47268/sasi.v3i14.3282>.

afforded an equal opportunity to undergo diversion. Therefore, the relevant provisions need to be reformulated.

B. Diversion and Restorative Justice

According to Article 5 paragraph (3) of the Criminal Justice Act, juvenile criminal justice must prioritize diversion. Diversion, according to the Law on the Juvenile Criminal Justice System, is the transfer of the settlement of children's cases from the criminal justice process to the process outside the criminal court. Diversion is regulated in Article 7 paragraph (2), namely diversion is carried out in the event of a criminal act committed: (a) threatened with imprisonment of less than 7 (seven) years; and (b) does not constitute a repetition of a criminal act. Article 8 states that the diversion process is carried out through a restorative justice approach. The regulation of children who conflict with the law emphasizes the existence of a different approach from adults, namely prioritizing the protection and best interests of children.

In the Criminal Code, the diversion process through restorative justice is also regulated, namely in Article 112 of the Criminal Code, which states that if a child commits a criminal act with a criminal threat under 7 (seven) years and is not a repetition of the criminal act, then diversion must be sought. Diversion is the transfer of case settlement from the criminal justice process to an extrajudicial mechanism with a restorative justice approach.¹⁶ Such a provision is formulated in the same way as the formulation regulated in the Law on the Juvenile Criminal Justice System.

The definition of restorative justice according to Article 1 number 6 of the Law on the Juvenile Criminal Justice System is the settlement of criminal cases by involving the perpetrator, the victim, the family of the perpetrator/victim, and other related parties to jointly seek a fair

¹⁶ Rustam Rustam and Iskandar Wibawa, "Comparison of Diversion and Restorative Justice in Handling Juvenile Crimes within Indonesia's Criminal Justice System," *Jurnal Indonesia Sosial Sains* 6, no. 1 (2025), <https://doi.org/10.59141/jiss.v6i1.1582>.

settlement by emphasizing restoration to the original state, and not retribution.¹⁷

According to John Braithwaite in his book *Crime, Shame, and Reintegration*, crime not only damages individuals and victims, but also damages social and community relationships. Restorative justice aims to repair the damage through a process that involves all affected parties, such as perpetrators, victims, and communities.¹⁸

The Criminal Procedure Code (Law No. 20 of 2020), as a new criminal procedural law that replaces the old Criminal Procedure Code (Law No. 8 of 1981), also regulates Restorative Justice in Article 80 paragraph (1) of the Criminal Code, which states that the mechanism of restorative justice can be imposed on criminal acts that meet the following requirements:

- a. Criminal acts are threatened only with a maximum fine of category III or threatened with imprisonment for a maximum of 5 (five) years;
- b. The first criminal act committed, and/or
- c. It is not a repetition of a criminal act, except for a criminal act whose verdict is in the form of a fine or a criminal act committed because of what.

These provisions of the Criminal Procedure Code actually present an opportunity for children in conflict with the law to gain greater legal certainty regarding diversion, thereby further strengthening the Child Protection Act.

According to Umi Rozah, the SPPA Law stipulates that the eligibility period for diversion is 7 (seven) years longer than that for adults, which is 5 (five) years.¹⁹ This means that children are given more opportunities for diversion. The author agrees with Umi Rozah's point:

¹⁷ Ariyanda Tri Firanti and Siti Munawaroh, "THE CRIMINAL CASES SETTLEMENT WITH RESTORATIVE JUSTICE SYSTEM," *Journal of Social Sciences and Humanities* 1, no. 11 (2022): 39–46, <https://doi.org/10.56943/jssh.v1i3.106>.

¹⁸ Jennifer Johnston, "Encyclopedia of Prisons and Correctional Facilities," *Reference & User Services Quarterly* 45, no. 3 (2006): 256–57.

¹⁹ Imma Purnama Sari, "Legal Reform Regarding the Authority of Public Prosecutors in Implementing Diversion Programs for Children in Conflict with the Law," 2025, 2–5.

while the scope for diversion for children is indeed broader than that for restorative justice for adults, the rigid restriction of a 7-year (seven-year) threshold prevents children from receiving equal opportunities and fails to serve their best interests. Therefore, the 7 (seven)-year limit needs to be redefined, taking into account the urgency of this reformulation.

C. Basics of the Juvenile Criminal Justice System

Article 2 of Law No. 11 of 2012 reads that the juvenile criminal justice system is implemented based on the following principles: Protection; Justice; Non-discrimination; The best interests of the child; Respect for children's opinions; Child survival and growth and development; Child development and guidance; Proportionality; Deprivation of independence and criminalization as a last resort; and Avoidance of retaliation.²⁰ The principle stipulated in Article 2 should be a guide for the legislature in formulating the next articles after Article 2 so that the article does not overlap with the others. So that there is harmonization in the articles that regulate the implementation of the criminal justice system.

This Article 2 must also be the handle of law enforcement apparatus in the implementation stage of the criminal justice system. This is considering that legal concretization, functionally and operationally, takes place through three main stages.²¹ First, the formulation stage, which is the process of forming laws by the legislature (*law in abstracto*), which reflects the policy of legislation in responding to a problem. At this stage, the law is designed as a normative solution to growing social problems. Second, the application stage, which is the application of the law by judicial institutions or law enforcement officials, which reflects judicial policies in converting legal norms into real events. Third, the execution stage, which is the concrete implementation of the law by the implementing apparatus, which

²⁰ Abdul Ghoni Mujiono, Marliyati, Tomi Apra Santosa, Mira Nila Kusuma Dewi, "Juvenile Justice Reform and the Principle of Best Interests of the Child : A Global Legal Perspective" 4, no. 2 (2025): 5963–68.

²¹ Firman AMIR et al., "Implementation of the Legality Principle in the Criminal Justice System of Indonesia," *Journal of Political And Legal Sovereignty* 1, no. 4 (2024), <https://doi.org/10.38142/jpls.v1i4.139>.

reflects executive or administrative policies in ensuring that legal norms really work in society.

According to Barda Nawawi Arief, the legislative process or formulation is a very strategic initial planning stage of the “*in concreto*”²² law enforcement process. According to Roeslan Saleh, the Law is part of a certain policy; it is not only a tool to implement the policy, but also to determine, outline or design a policy.²³ Therefore, mistakes or weaknesses at the legislative policy or formulation stage are strategic mistakes that can be an obstacle in the enforcement of criminal law. It is said to be a strategic policy because it provides the foundation, direction, substance and limits of authority in law enforcement that will be carried out by the bearer of judicial and executive authority. This strategic position has the consequence that the weakness of the criminal law formulation policy will affect criminal law enforcement policies and crime prevention policies.²⁴

The rigid formulation of Article 7 constitutes a weakness at the legislative formulation stage and has implications for the application stage, particularly law enforcement. As a result, children in conflict with the law may be subjected to unfair and discriminatory treatment. They may not be afforded equal opportunities to undergo diversion under the SPPA Law. Therefore, in order to uphold the best interests of the child and prevent disharmony with the restorative justice provisions under the Criminal Procedure Code, it is urgently necessary to reformulate the regulation of diversion within juvenile criminal law so as to establish a far and humane legal framework.

²² Barda Nawawi Arief, “Kebijakan Formulasi Ketentuan Pidana Dalam Peraturan Perundang-Undangan,” *Semarang: Pustaka Magister*, 2012.

²³ Roeslan Saleh, *Segi Lain Hukum Pidana* (Ghalia Indonesia, 1984).

²⁴ S H Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan* (Prenada Media, 2018).

D. The Urgency of Reformulation of Diversion in Fair Juvenile Criminal Law After the Reform of the Criminal Code

According to the author, the reformulation of diversion in Children's Criminal Law needs to be carried out immediately based on the following philosophical, juridical, sociological, and comparative analyses of juvenile justice systems in other countries:

1. Philosophical Studies

According to Anthon F Susanto, Pancasila as a paradigm of legal development has at least four guiding principles that must be used as guidelines in the formation and enforcement of law in Indonesia.²⁵ First, the law must protect the entire nation and guarantee the integrity of the nation, and therefore there should be no laws that plant the seeds of disintegration. Second, the law must be able to guarantee social justice by providing special protection for the weak from being exploited in free competition against the powerful class. Third, the law must be built democratically while building democracy in line with the nomocracy (state of law). Fourth, the law must not be discriminatory based on any primordial bond and must encourage the creation of religious tolerance based on humanity and civilization.²⁶

Anthon F Susanto's opinion, if we use it as a reference to analyze the diversion arrangement, it clearly does not meet the second guiding method, which is not to protect the weak and also does not meet the fourth rule of the prosecutor, namely the law of not discriminating. If it has been discriminatory since it was promulgated, then its implementation will also be discriminatory, which will result in not protecting children who conflict with the law. The Law on the Juvenile Criminal Justice System should not limit the maximum criminal threat to 7 (seven) years. Still, every child has the right to diversion; it needs to

²⁵ Wawan Andriawan, "Pancasila Perspective on the Development of Legal Philosophy: Relation of Justice and Progressive Law," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 5 (June 2022): 1–11, <https://doi.org/10.24090/volksgeist.v5i1.6361>.

²⁶ Anthon Freddy Susanto, *Ilmu Hukum Non Sistematis: Fondasi Filsafat Pengembangan Ilmu Hukum Indonesia* (Genta Pub., 2010).

be added in the next paragraph regarding guidelines for law enforcement. This is necessary as a filter for the use of diversion at the level of investigation, prosecution and trial.²⁷ If it is only limited to the amount of criminal threat, there may be cases of theft with aggravation committed by some children who cannot be subject to diversion; it could be that what is stolen is only a helmet or an item of little value.

The provisions regarding the restriction of criminal threats, according to the author, are not appropriate; all children should get diversion. The level of loss of the victim, the purpose of committing the crime and the motive for committing these criminal acts are what the author thinks should be considered as conditions for diversion²⁸. For example: the theft of a helmet committed by a child, together with the value of the stolen goods not being so large, then the motive to do evil is caused or influenced/persuasive by others/friends. If the purpose is for an urgent or indispensable purpose, then it should be considered to be subject to diversion.

If we connect this with Pancasila, then the reformulation of the Criminal Justice System Law needs to be done immediately. This just and humanist legal reform can be interpreted as a legal reform based on the Pancasila paradigm. The reform of the law with the Pancasila paradigm means that changes to the existing law must contain and radiate the values of Pancasila. It must contain the divine value of the Almighty, the value of humanity, the value of unity to unite the Indonesian nation and the value of social justice.

According to A. Hamid S. Attamimi, the five precepts of Pancasila in their position as the legal ideal of the Indonesian people in the life of society, nation and state are positively “guiding stars” that provide guidelines and guidance in all activities to give content to each law and regulation, and negatively as a framework that limits the movement space of the content of these laws and regulations. Regarding the content of

²⁷ Wiwit Kristin Anggraeni, Arista Candra Irawati, and Universitas Ngudi Waluyo, “Implementation of Diversion Towards Children in Connection With The Law in The Juvenile Criminal Justice System” 2, no. 1 (2023): 246–51.

²⁸ Diandra Preludio Ramada and Indah Sri Utari, “Unveiling the Surge in Corruption: A Menacing Threat to Indonesia’s Stability in Anti-Corruption Law Reform,” *Journal of Law and Legal Reform* 5, no. 1 (2024), <https://doi.org/10.15294/jllr.vol5i1.2092>.

the laws and regulations, the precepts are either individually or together, both single and in pairs, as a legal principle.²⁹

The existence of diversion provisions in the Law on the Juvenile Criminal Justice System is an appreciation of human rights regulated in Article 28 B of the 1945 Constitution and the ratification of the Convention on the Rights of the Child in 1990, which adheres to the principle of legal protection of children. Likewise, in the consideration of the drafting of the Law on the Juvenile Criminal Justice System, it aims to realize a justice that truly guarantees the protection of the best interests of children in conflict with the law. Therefore, the limitation of criminal threats under 7 (seven) years as a condition for diversion is inappropriate because it is discriminatory, unjust and inhumane.

2. Juridical studies

The provisions of Article 7 paragraph (2) if connected with Article 2 point c regarding the principles of the juvenile criminal justice system adopted in the Law on the Juvenile Criminal Justice System, it is contrary because the requirement of a maximum criminal threat of 7 (seven) years causes children not to get the same opportunity, on the other hand the provisions of Article 2 point c require the juvenile criminal justice system to adhere to the principle of non-discrimination. Article 7 paragraph (2), according to the author, is discriminatory. This results in not all children getting the same rights in the juvenile criminal justice process.

The process of legal reformulation recognizes several principles that must be considered to ensure legal certainty. First, existing regulations that are irrelevant must be expressly repealed if replaced by new regulations. Second, if the new regulation changes part or all of the material of the old regulation, then the change must be explicitly stated. Third, the revocation of a regulation can only be carried out by regulations of the same level or higher. Fourth, the revocation of the regulation must be clearly formulated in the closing provision by stating that the regulation is repealed and invalid. Fifth, the repeal of the regulations does not automatically change other relevant regulations,

²⁹ A Hamid S Attamimi, *Peranan Keputusan Presiden Republik Indonesia Dalam Penyelenggaraan Pemerintahan Negara: Suatu Studi Analisis Mengenai Keputusan Presiden Yang Berfungsi Pengaturan Dalam Kurun Waktu Pelita I-Pelita IV* (Fakultas Pascasarjana, Universitas Indonesia, 1990).

unless expressly specified. Sixth, in order to ensure legal certainty, the repeal should not be formulated in general, but should specifically mention the repealed regulation.

3. Sociological Theory

Such juridical facts cause children who commit criminal acts with a criminal threat of 7 (seven) years cannot be diverted. For example: a child who jointly commits the crime of theft with aggravation. Even though the price of the stolen goods is not very high, because it is done together, it is a criminal act of theft with aggravation. Judges in sentencing cases like this often impose sentences of only a few months (short imprisonment). This short prison sentence is not beneficial for the development of the child. This short prison sentence causes children to be stigmatized or given evil labels that will harm the child's future, and this is not the best solution for children. Psychologically, it will be detrimental to the interests of the child, considering that not all children commit crimes because of their will; the environment can affect the occurrence of criminal acts.³⁰

According to Romli Atmasasmita, in this regard, there are two processes by which labeling affects a person who is labeled/stamped to deviate from his behavior. First, the stamp/label attracts the observer's attention and results in the observer always paying attention to it and then the stamp/label sticks to the person. Second, the label or stamp has been adopted by a person and has an influence on him so that he recognizes himself as the stamp/label is given to him by the observer. Either of the above two processes can magnify deviations in behavior (crime) and shape a person's criminal career. A person who has obtained a stamp/label by himself will be the attention of the people around him. Furthermore, the vigilance or attention of the people around him will affect the person in question so that the second and subsequent crimes will be possible again.³¹

The importance of guidelines for law enforcement officials before diversion needs to be added in the diversion arrangement, not just the

³⁰ Uche Nnawulezi et al., "Evaluating the Right to Life: Lessons from Nigeria, the African Charter, and Indonesian Regulations," *Jurnal Hukum Novelty* 16, no. 1 (2025), <https://doi.org/10.26555/jhn.v16i1.29985>.

³¹ Romli Atmasasmita, "Asa-Asas Perbandingan Hukum Pidana," 1989.

limitation of criminal threats, the impact of criminal acts must also be considered, for example in cases of sexual harassment where the victim and the perpetrator know each other and are both children who love each other where intercourse has occurred, of course, if the perpetrator is not converted, it results in punishment that not only harms the victim but also the family victims.³²

The provisions of the maximum limit of criminal threats for criminal acts that can be carried out in practice are also at risk of being violated by judges. For example:

1. A case of theft with aggravation committed jointly by several children.

Cases like this in practice often occur because of the social environment; the child's soul is labile, resulting in children liking to follow along with their friends. They do not know the consequences of their actions, which can result in criminalization. In dealing with cases, if it is in accordance with Article 7 of the Law on the Juvenile Criminal Justice System, diversion cannot be carried out, but considering the motive and amount of the goods are not much, the judge separates the case. They should be charged with theft with a penalty of 7 (seven) years in prison, to be subject to the criminal act of ordinary theft with a criminal threat of 5 years. This was done by the judge so that this case could be restored to justice. Can this be said to be the smuggling of the rule of law? In fact, it is in the best interest of the child. Therefore, so that this kind of thing does not happen in the future, it is necessary to harmonize the diversion arrangements in the Law on the Juvenile Criminal Justice System.

³² Indah Sri Utari et al., "A Criminological Perspective on Corruption as a Catalyst of Economic Breakdown: Socio-Legal Challenges in Indonesian Environmental Governance," *Jambe Law Journal* 9, no. 1 (2026): 205–47, <https://doi.org/10.22437/jmj4ac47>.

2. A case of persecution that resulted in the death of the victim.³³
 The perpetrator's 16-year-old son is a student at a high school in Jambi. He was involved in a fight after watching a futsal match. The perpetrator's son gathered with his friends and asked one of his friends to bring a machete that would be used as a tool to take revenge on the child victim who had triggered his anger while watching a futsal match. On the way, they met the Andika Victim Child and the Sahrul Victim. The perpetrator's son then slashed Andika's back with a machete and immediately fled to the resident's house. Meanwhile, the victim's son, Sahrul, fled on a motorbike and was chased from behind. The perpetrator's son stabbed the head of the victim's child, Sahrul, until he died. The decision of the Jambi District Court Judge stated that the Defendant's son was proven to have committed a criminal act "Deliberately participating in an attack or fight where several people were involved in the attack resulting in the death of another person"—public Prosecutor. The Public Prosecutor charged the child offender with 1) Article 355 paragraph (1), (2), 2) Article 351 paragraph (3) of the Criminal Code jo Article 56 paragraph (2) of the Criminal Code, and (3) Article 358 paragraph (2) of the Criminal Code, namely deliberately participating in an attack or fight that resulted in death. The criminal threat is above 7 (seven) years. The Public Prosecutor's demand was a prison sentence of 1 year and 6 months, while the decision of the District Court judge stated that the child was proven guilty and decided that the child should serve a prison sentence of 3 months. The judge's decision does not need to be followed, with general and specific conditions, namely: it is not allowed to leave the house at night from 19.00 to 06.00 WIB without parental permission. Children are required to participate in activities at mosques near home for 1 year, such as: reciting, listening to *tausiah*, and

³³ Efika Simatupang and Irwan Triadi, "Implementation of Restorative Justice in the Crime of Child Fighting with the Victim Resulting in Death: Penerapan Restorative Justice Tindak Pidana Perkelahian Anak Dengan Korban Meninggal Dunia," *JIC: Jurnal Hukum Dan Konstitusi* 1, no. 4 (2025): 184–97.

praying in congregation regularly. The perpetrator's child must be immediately released from custody. The Public Prosecutor appealed with an opinion in the verdict of the panel of judges of the Jambi State Court that there had not been justice for the victim even though there had been a peace agreement between the victim's family and the family of the child perpetrator. In addition, the goal of criminalization has not been achieved, which is to deter criminals as a preventive effort for the community. This is because the sentence handed down by the judge was too light. The appeal judge decided to apply restorative justice, with legal considerations; there is already peace between the perpetrator and the victim or family (restorative aspect) and the perpetrator's remorse. Although the Criminal Code requires a prison sentence if proven, in this case the judge chose to apply restorative justice even though the criminal threat exceeded the requirements for restorative justice. According to the judge, the retributive approach is not in line with the goals of child development.

From these two cases, it can be seen that the limit of criminal threats of 7 (seven) years as a condition for diversion in judicial practice is still deviated from a sense of justice and utility. Justice and utility take precedence over legal certainty. Therefore, so that there is no gap between rules and practices in the field, harmonization through reformulation is needed.

The diversion requirements must not be discriminatory. Some literature states that the formulation of criminal threats under 7 years old and not repetition can be considered to limit access to diversion in a discriminatory manner against children in some cases.³⁴

The findings reveal a critical divergence between formal statutory limits and judicial reality. While Article 7 of the SPPA Law rigidly restricts diversion to offenses carrying imprisonment of under seven years, practical cases demonstrate that judges frequently bypass or adapt this threshold to prevent the detrimental effects of juvenile labeling and

³⁴ Masden Kahfi, "Sinkronisasi Pelaksanaan Diversi Mengenai Persyaratan Diversi Dalam UU No. 11 Tahun 2012 Dan Peraturan Pelaksananya Tentang Sistem Peradilan Pidana Anak Di Indonesia" (Tesis, Universitas Brawijaya, 2016).

short-term incarceration. From a philosophical (Pancasila) and penological standpoint, limiting diversion based solely on statutory penalties, rather than the motive, degree of harm, and victim-offender dynamic, is inherently discriminatory and conflicts with the child's best interests.³⁵ Therefore, reformulating the SPPA Law to grant universal access to diversion across all stages of criminal proceedings is essential to align juvenile justice with the corrective, rehabilitative, and restorative mandate of the new national criminal law framework.

4. A Study from the Theory of Criminal Intent

The diversion provision, as an effort to overcome non-penal crimes that tend to be discriminatory, still leaves the purpose of retributive punishment. With the 7-year threat restriction, which is rigid in Articles 7 and 112 of the Criminal Code, the opportunity for children to get restorative justice is getting smaller and opens up the opportunity for children to be subject to prison sanctions. This is also not in accordance with the purpose of the punishment in Article 51, which is to resolve conflicts caused by criminal acts, restore balance, and bring a sense of harmony and peace in society, so the existence of the limitation of criminal threats as a condition for diversion results in this child having limited the achievement of the goal, namely restoring balance. Especially when juxtaposed with the purpose of diversion, namely achieving peace between the victim and the child, resolving the child's case outside the judicial process; preventing the child from being deprived of independence; encouraging the community to participate; and instilling a sense of responsibility to the child, then according to the author, the provisions of the diversion requirement in Article 7 need to be reviewed, so that every child gets the same opportunity to be diverted.³⁶ In connection with this, law enforcement is required to diversify at the level of investigation, prosecution and trial. Thus, it will be in line with the

³⁵ Ahmad Rizal Roby Ananta et al., "Criminal Limitations on Diversion of Children Against the Law Based on the Juvenile Criminal Justice System from a Comparative Perspective," *Jurnal Penegakan Hukum Dan Keadilan* 6, no. 2 (2025), <https://doi.org/10.18196/jphk.v6i2.26234>.

³⁶ Indah Sri Utari et al., "Illegal Nickel Mining in Protected Forests: Challenges in Whistleblower and Justice Collaborator Protection in Indonesia," *Indonesian Journal of Environmental Law and Sustainable Development* 4, no. 2 (2025): 341–74, <https://doi.org/10.15294/ijel.v4i2.38220>.

mission of criminal law reform, which is to realize corrective-rehabilitative-restorative justice.

Braithwaite states that restorative justice is more concerned with healing or restorative efforts than suffering, moral learning, community participation and community concern, respectful dialogue, forgiveness, responsibility, apology and reparations.³⁷ According to Muladi, a balanced approach to replace the punitive retributive approach is needed in the restorative justice system to meet the interests of perpetrators in the rehabilitation process and reintegration of victims' interests in restoration due to criminal acts and the community's need for increased security and safety.³⁸

According to the author, restorative justice is indeed needed by children, considering that the reasons why children commit criminal acts are sometimes not of the child's own volition: the influence of the environment, society, family, school, and the busyness of parents who do not pay attention to children, then criminal liability that only focuses on children with this individual criminal accountability system is not appropriate.³⁹ It is also necessary to involve the community, parents, and schools who structurally contribute to the cause of criminal acts.⁴⁰

Given the importance of diversion through restorative justice, seen from the theory of the purpose of punishment as an effort to heal or recover rather than suffering, moral learning, community participation and community concern, it should not be limited to criminal threats for a maximum of 7 (seven) years; all children who conflict with the law should have the same rights.

³⁷ John Braithwaite, *Restorative Justice and Responsive Regulation*, *Educacao e Sociedade*, vol. 1, 2002.

³⁸ Diah Sulistyani Muladi and Diah Sulistyani, "Catatan Empat Dekade Perjuangan Turut Mengawal Terwujudnya KUHP Nasional (Bagian I, 1980-2020)" (Semarang: Universitas Semarang Press, 2020).

³⁹ Putu Sekarwangi Saraswati, "RESTORATIVE JUSTICE BETWEEN CHILDREN AS VIOLATORS AND CHILDREN AS VICTIMS IN THE CHILD CRIMINAL JUSTICE SYSTEM IN INDONESIA," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 1 (2025).

⁴⁰ Krismiarsi, "The Importance of Structural Criminal Responsibility System in Juvenile Criminal Law in Indonesia," *European Research Studies Journal*, 2017, <https://doi.org/10.35808/ersj/891>.

Especially when associated with the types of principal crimes regulated in the Criminal Code where imprisonment is the last option in the criminal stelsel followed by the type of warning crime, conditional punishment with variations in the form of coaching outside the institution, community service, or supervision and criminal training of the profession, it seems that the order of this type of principal crime reflects a gradation that places prison as the ultimate remedium. Therefore, it appears that the national Criminal Code affirms the humanist principle of punishment.⁴¹ The Indonesian Criminal Code seeks to build a system that not only punishes, but also improves and educates children so that they can return to society. Increasingly moving towards child protection by balancing the interests of law enforcement, the need for rehabilitation and child protection is evident. Therefore, it is necessary to reformulate the Law on the Juvenile Justice System in a non-discriminatory direction, namely that diversion is the right of all children in conflict with the law. The success of restorative justice is determined in the field when it has been included in the process of investigation, prosecution and trial. Whether the parties agree to restorative justice or not, the opportunity to get diversion needs to be given to every child who is in conflict with the law.

5. Comparative law

In New Zealand, diversion is regulated under the Children, Young Persons, and Their Families Act 1989, wherein the Family Group Conference (FGC) serves as a core component of the juvenile justice system rather than merely an optional alternative.⁴² The Family Group Conference represents a revolutionary approach to youth justice and is globally recognized as a paramount model for the substantive implementation of restorative justice.⁴³ The FGC functions as an

⁴¹ Suhadi Suhadi et al., "Enhancing Nazir Capacity through Legal Literacy of Land Trust to Ensure Legal Certainty in Waqf Land Management," *Jurnal Pengabdian Hukum Indonesia* 7, no. 2 (2024), <https://doi.org/10.15294/jphi.v7i2.6693>.

⁴² DAVID SWAIN, "FAMILY GROUP CONFERENCES IN CHILD CARE AND PROTECTION AND IN YOUTH JUSTICE IN AOTEAROA/NEW ZEALAND," *"International Journal of Law, Policy and the Family"* 9, no. 2 (1995), <https://doi.org/10.1093/lawfam/9.2.155>.

⁴³ Kiki Febriansari and Irma Cahyaningtyas, "Ide Family Group Conference Dalam Sistem Peradilan Pidana Anak Di Indonesia," *Jurnal Pembangunan Hukum*

extensive pre-adjudication diversion mechanism, diverting the vast majority of youth offense cases away from formal criminal court proceedings into community- and family-based processes. This widespread diversion serves as the primary key to addressing overcrowding in juvenile correctional facilities by drastically reducing the number of youths subjected to custodial sentences.⁴⁴ The implementation of the FGC substantively realizes restorative justice through several key avenues, including:

1. The FGC serves as a significant pre-adjudication diversion mechanism. The vast majority of juvenile cases, with the exception of the most serious offenses (such as homicide), are diverted from the formal court system to the FGC, thereby drastically reducing the caseload of juvenile courts.
2. The FGC process brings together the juvenile offender, the victim (or their representative), the offender's extended family, and state representatives (such as law enforcement and social workers). Together, this group addresses the harm caused by the offense and formulates an FGC plan. This plan focuses on offender accountability, often materialized through apologies (oral or written), restitution (monetary compensation or direct work for the victim), or charitable donations chosen by the victim.
3. Victims are provided the opportunity to articulate the impact of the offense on their lives and actively participate in decision-making regarding how the harm can be repaired. This empowerment of the victim constitutes a central element of restorative justice.
4. Decisions are made collectively by the extended family, supported by social workers and other professionals, rather than solely dictated by the state justice system. This family

Indonesia 3 (September 2021): 370–83, <https://doi.org/10.14710/jphi.v3i3.370-383>.

⁴⁴ Medi Terania et al., "Pendekatan Family Group Conference Dalam Menangani Kasus Peradilan Anak: Studi Perbandingan Antara Indonesia Dan New Zealand," *El-Iqthisyah: Jurnal Hukum Ekonomi Syariah* 7, no. 2 (n.d.): 890–900.

involvement promotes the prevention of future offending and supports the overall well-being of the youth.

In the Netherlands, within the juvenile criminal justice system, provisions regarding diversion are regulated under Article 74c paragraph (1) of the Dutch Criminal Code (*Wetboek van Strafrecht / Sr*), which stipulates that certain offenses may, under specific circumstances, be resolved judiciously by investigating officers in accordance with statutory regulations.⁴⁵ This policy implies that the police may formulate specific conditions for the defendant, through which criminal prosecution can be averted. This police authority represents a delegation of powers originally vested in the public prosecutor. This discretionary power applies to offenders aged 12 to under 18 years.⁴⁶ Diversion is implemented by evaluating the nature of the offense, the offender's age, and whether the individual is a recidivist. First-time offenders and those involved in specific types of minor offenses are handled outside judicial channels, where juveniles are directed straight to assistance programs or managed through structured dialogues between the police, the child, and their parents.⁴⁷

In Japan, the criminal justice system adheres to the principle of protection priority (*Hogo Yuusen Shugi*) and embraces diversion. The majority of juvenile delinquents are kept away from institutional confinement. When measures are imposed, priority is given to non-institutional rehabilitation. Furthermore, not all cases investigated by the police are forwarded to the prosecution service for trial, based on grounds such as minor property offenses, genuine remorse shown by the suspect, restitution made by the suspect, and forgiveness granted by the victim.⁴⁸

⁴⁵ Ari Meilando, Mohamad Ismed, and Basuki Basuki, "Kepastian Hukum Terhadap Diversi Dalam Tindak Pidana Penyertaan (Deelneming) Pada Tingkat Penuntutan," *CENDEKIA: Jurnal Penelitian Dan Pengkajian Ilmiah* 2, no. 2 (2025): 262–73.

⁴⁶ Wang Yao, "Police Discretion: A Power That Can Be Abused and Should Be Regulated," in *Proceedings of the 2nd International Conference on Culture, Design and Social Development (CDSD 2022)*, 2023, https://doi.org/10.2991/978-2-38476-018-3_73.

⁴⁷ Setya Wahyudi, "Implementasi Ide Diversi Dalam Pembaruan Sistem Peradilan Pidana Anak Di Indonesia," *Yogyakarta: Genta Publishing*, 2011.

⁴⁸ *Ibid*, hlm. 263.

In China, law enforcement possesses the authority to issue formal warnings or impose administrative fines up to a maximum of two hundred yuan for minor offenses or infractions. This measure functions as a mechanism for public order and security management within law enforcement efforts. The issued warning or fine constitutes a final sanction imposed by the police, thereby obviating the need for public prosecution or court proceedings. This framework applies to various minor offenses, including theft, embezzlement, fraud, minor assault, gambling, traffic violations, and public nuisance.⁴⁹

A comparative evaluation of these jurisdictions demonstrates that a seven-year imprisonment restriction is not utilized as a prerequisite for diversion. Consequently, this empirical evidence provides a solid foundation for reformulating Article 7 of the SPPA Law to ensure it aligns more closely with the best interests of the child.

From a lawyer's perspective, the application of criminal penalties to children should not be determined by the severity of the potential sentence, but rather by the degree of the child's fault, the harm suffered by the victim, and the offender's remorse to determine whether the case is suitable for mediation. This is to protect the child's future, except in cases of murder, rape, or other serious crimes.

Beyond eliminating the seven-year imprisonment threshold, the researcher posits several vital guidelines or prerequisites for diversion: the offender's age, the lightness of the act, the form of culpability, the degree of seriousness of the crime, the motives and objectives, the subjective intent (*mens rea*), whether the offense was premeditated, the victim's interests, the child's confession or accountability, the forgiveness extended by the victim or their family, the child's life history, and their social and economic conditions (typically documented in the community research report) prepared by the Correctional Center (BAPAS).

Furthermore, assessments by the police, prosecutors, and juvenile judges, BAPAS recommendations, the prospective impact of sentencing on the child's future, the victim and their family, societal legal values and justice, and an evaluation of whether a restorative justice resolution is

⁴⁹ *Ibid*, hlm. 266

suitable for achieving rehabilitation and public protection must also be considered.

This view was subsequently confirmed through an interview with Sri Endah Wahyuningsih, a criminal law expert and lecturer at Sultan Agung Islamic University, Semarang, who agreed with the author's argument. She further emphasized that these criteria must serve as mandatory guidelines for law enforcement officers when implementing diversion for children in conflict with the law.⁵⁰ Ultimately, the reformulation of these diversion guidelines is expected to protect children from imprisonment.

Reinforcing the principle of imprisonment as a last resort (*ultimum remedium*) to realize a juvenile criminal justice system that is equitable, humane, and provides legal certainty.

Conclusion

The current diversion arrangements under Article 7 of the SPPA Law suffer from fundamental regulatory disharmony and inherent discrimination. By rigidly restricting diversion to offenses carrying a maximum sentence of under seven years, the law conflicts with its own foundational principles of non-discrimination and the best interests of the child enshrined in Article 2. Furthermore, this rigid threshold creates operational friction when juxtaposed with the restorative justice provisions of the new Criminal Code and Criminal Procedure Code, ultimately depriving many juvenile offenders of access to restorative alternatives. To resolve this issue, a comprehensive legal reformulation is urgently required. The statutory requirement limiting diversion to offenses threatened with under seven years of imprisonment should be eliminated. Instead, diversion should be established as a legal right available to every child in conflict with the law at all stages of the criminal justice process: investigation, prosecution, and trial. The decision to grant diversion should be based on case-by-case guidelines evaluating the

⁵⁰ Dani Muhtada, Suhadi Suhadi, and Rayyan Alkhair, "The Protection of Civil Rights for the Shi'ite Refugees of Sampang, East Java: A Systemic Governance Approach to Restore the Refugees' Rights," *Indonesian Journal of Islam and Muslim Societies* 12, no. 2 (2022): 231–56.

motive, the degree of harm, and the victim-offender dynamic, rather than abstract statutory penalty caps. Ultimately, harmonizing the SPPA Law with the corrective, rehabilitative, and restorative mandates of national criminal law reform serves a vital purpose beyond mere doctrinal consistency. From philosophical, juridical, sociological, and comparative perspectives, a flexible and non-discriminatory diversion framework provides law enforcement officers with a humane operational compass that ensures legal certainty, restores social balance, and safeguards the future of the nation's children.

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