

# When Diversion Fails: How the System Betrays the Best Interests of Children in Conflict with the Law

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## Abstract

This study critically examines the failure of diversion programs in fulfilling the best interests of children in conflict with the law. Diversion, which aims to redirect juvenile offenders from the formal justice system toward rehabilitation, has been a key principle in juvenile justice systems. However, its failure to achieve effective outcomes—particularly in safeguarding children's rights and welfare—remains a pressing concern. This research aims to identify the factors contributing to the failure of diversion, associating these with the broader endeavor to protect and promote the best interests of children. The study reveals several factors leading to the failure of diversion: the lack of consensus between victims



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and offenders or their families, the non-implementation of agreements, and differing interpretations of key legal provisions under Article 3 of Perma No. 4 of 2014 and Article 7 of the Juvenile Criminal Justice System Law (SPPA). These factors have contributed to inconsistencies in the application of diversion measures. Despite these failures, the study finds that the law still offers avenues for protecting the best interests of children, particularly when diversion is successful. Achieving effective diversion can lead to faster, simpler, and lower-case examinations, promoting rehabilitation and reintegration over punishment. The study contributes to the national and global discourse on juvenile justice by highlighting the challenges of implementing diversion programs and offering insights for reform.

**KEYWORDS** *Diversion, Children, Best Interests*

## I. Introduction

Juvenile justice systems around the world are designed to offer a more compassionate, rehabilitative approach to children in conflict with the law, with the ultimate goal of securing their best interests.<sup>1</sup> Central to this philosophy is the concept of diversion, which seeks to redirect young offenders away from the formal justice system and towards rehabilitation, education, or community-based solutions.<sup>2</sup> By offering alternatives to

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<sup>1</sup> Steinberg, Laurence. "Adolescent development and juvenile justice." *Annual Review of Clinical Psychology* 5, no. 1 (2009): 459-485; Jufri, Mahfud, Norbani Mohamed Nazeri, and Saroja Dhanapal. "Restorative justice: An alternative process for solving juvenile crimes in Indonesia." *Brawijaya Law Journal: Journal of Legal Studies* 6, no. 2 (2019): 157-169; Davies, Sharyn Graham, and Jazz Robson. "Juvenile (in) justice: children in conflict with the law in Indonesia." *Asia-Pacific Journal on Human Rights and the Law* 17, no. 1 (2016): 119-147.

<sup>2</sup> Wangi, Yosefin Dika Tyas. "Policy of Development for Juvenile Delinquency in the Perspective of Indonesian Criminal Justice System Reform (Study on Institute for Special Development Children LPKA Kutoarjo, Central Java, Indonesia)." *Journal of Indonesian Legal Studies* 2, no. 2 (2017): 85-100; Putri,

traditional punitive measures, diversion aims to prevent further criminalization and promote reintegration into society.

However, despite its idealistic foundations, diversion often fails to meet its objectives. In many jurisdictions, including Indonesia, the system intended to protect the best interests of children frequently betrays them. Inconsistent implementation, lack of proper training for law enforcement, insufficient support for families, and legal ambiguities contribute to the failure of diversion programs<sup>3</sup>. These shortcomings often leave children exposed to the full force of the justice system, where they face long-term consequences that could have been prevented.

This failure is particularly urgent, as the consequences of not adhering to the best interests of children are profound. Instead of offering rehabilitation, diversion's failure leads to the stigmatization, criminalization, and alienation of vulnerable children.<sup>4</sup> Rather than addressing the root causes of juvenile delinquency, the system often perpetuates cycles of disadvantage and crime. This study explores the factors behind the failure of diversion programs, the impact on children, and the urgent need for reform to ensure that the legal system truly serves the best interests of children in conflict with the law.

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Nadiyah Meyliana, et al. "Juvenile Delinquency in Semarang City: Aspects of Protection and Law Enforcement in Socio-Legal Approach." *Unnes Law Journal* 8, no. 2 (2022): 263-278; Aji, Wikan Sinatrio. "The Implementation of Diversion and Restorative Justice in the Juvenile Criminal Justice System in Indonesia." *Journal of Indonesian Legal Studies* 4, no. 1 (2019): 73-88.

<sup>3</sup> Pujiani, Resty Shelya, Mutia Azizah Aksan, and Maya Sinta. "Seeking Justice for Indonesian Children: The Juvenile Criminal Justice System in Indonesia in the Context of Criminal Justice Reform." *Indonesian Journal of Advocacy and Legal Services* 4, no. 2 (2022): 259-274; Rasdi, Rasdi, et al. "Reformulation of the Criminal Justice System for Children in Conflict Based on Pancasila Justice." *Lex Scientia Law Review* 6, no. 2 (2022): 479-518.

<sup>4</sup> Ye, Xinran. "Where does the Stigma of Prisoners' Children Come from: A Sociological Discussion Based on Criminal Genes." *Journal of Education, Humanities and Social Sciences* 8 (2023): 1593-1598. See also Moore, Kelly E., Jeffrey B. Stuewig, and June P. Tangney. "The effect of stigma on criminal offenders' functioning: A longitudinal mediational model." *Deviant Behavior* 37, no. 2 (2016): 196-218; Battle, Brittany Pearl. "'They Look at You like You're Nothing': Stigma and Shame in the Child Support System." *Symbolic Interaction* 42, no. 4 (2019): 640-668.

Furthermore, children are distinct from adults in fundamental ways and should not be regarded as miniature adults or semi-adults. Each child possesses unique characteristics that necessitate specialized treatment, and their rights must be respected and upheld accordingly. The principle of prioritizing the best interests of children is central to ensuring their well-being and development.<sup>5</sup> When children engage in behavior that may lead to legal consequences, the outcomes and responses must be tailored to their developmental stage, recognizing the differences between juvenile and adult offenders. As such, the approach to juvenile justice should account for these distinctions, and all parties involved must strive to provide the best possible care, protection, and opportunities for the child's rehabilitation and growth.

Typically, children's misbehavior is not inherently criminal in nature. The appropriate response to such behavior should be persuasive and educative, emphasizing a psychological or psychiatric approach rather than punitive measures. This expectation is grounded in the understanding that incarcerating children provides negative educational outcomes, which can exacerbate behavioral issues rather than address their underlying causes. Children's actions that are interpreted as criminal may often occur unconsciously, stemming from psychological vulnerabilities and environmental influences, which should be recognized in any response.

The legal framework surrounding children's behavior is rooted in their special legal status, which demands a distinct approach from that applied to adults. Children who are victims of crime are afforded legal protection under Law No. 23 of 2002, as amended by Law No. 35 of 2014 concerning Child Protection. Meanwhile, the Juvenile Criminal Justice System, governed by Law No. 11 of 2012 (SPPA Law), outlines the procedures and protections for children who are perpetrators of crimes. These laws underscore the importance of safeguarding children's rights, offering protection, and ensuring that interventions prioritize their rehabilitation and psychological well-being rather than punishment.

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<sup>5</sup> Sengi, Ernest. "Restorative Justice dalam Perkara anak Yang Berhadapan dengan Hukum di Pengadilan Negeri Tobelo." *Refleksi Hukum: Jurnal Ilmu Hukum* 2, no. 1 (2018): 153–166.

The hope that a child's misbehavior will not be equated with criminal behavior is addressed in the SPPA Law, which offers the opportunity for diversion. Diversion is intended to serve as a mechanism to prevent children from encountering the prison system, providing an alternative pathway that aims to safeguard their well-being and rehabilitation. However, the success of diversion is pivotal in turning this hope into reality. If diversion fails, the child's misbehavior is still classified as criminal, and they face conviction, continuing the cycle of criminalization. The primary motivation behind diversion is to protect children from the detrimental effects of conventional judicial processes and the associated stigma, often referred to as the "*evil label*."<sup>6</sup>

Importantly, the SPPA Law does not recognize Correctional Institutions (LP), instead only acknowledging Juvenile Special Development Institutions (LPKA), where children serve their sentences (Articles 1 to 20 of the SPPA Law). While the term "Development" may appear to imply rehabilitation, it remains closely tied to the concept of punishment. Both "*development*" and "*criminal*" connotations involve physical suffering as a consequence of committing an offense. As such, when a child is placed in an LPKA for "*guidance*," this essentially means the child is being subjected to a criminal sanction, even though the intention behind the facility is rehabilitation. This highlights the complexity of juvenile justice and the challenges of ensuring that rehabilitation truly serves the best interests of the child.<sup>7</sup>

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<sup>6</sup> See also Harris, Andrew J., and Kelly M. Socia. "What's in a name? Evaluating the effects of the "sex offender" label on public opinions and beliefs." *Sexual Abuse* 28, no. 7 (2016): 660-678; Besemer, Sytske, David P. Farrington, and Catrien CJH Bijleveld. "Labeling and intergenerational transmission of crime: The interaction between criminal justice intervention and a convicted parent." *PLoS One* 12, no. 3 (2017): e0172419; Mahoney, Anne Rankin. "The effect of labeling upon youths in the juvenile justice system: A review of the evidence." *Law & Society Review* 8, no. 4 (1974): 583-614.

<sup>7</sup> Darwanta, Agus. "Penerapan Prinsip Terbaik Untuk Anak (The Best Interest of The Child) dalam Pemenuhan Hak Anak di Lembaga Pembinaan Khusus Anak." *Reformasi Hukum* 24, no. 1 (2020): 60-76; Haryaningsih, Sri, and Titik Hariyati. "Resosialisasi di lembaga pemasyarakatan khusus anak." *Jurnal Konseling dan Pendidikan* 8, no. 3 (2020): 191-197.

If punishment is understood as suffering, then the restriction of physical freedom can be seen as either equivalent to or a key component of criminal punishment. This understanding is essential, as there is a common belief that an individual only experiences suffering after receiving a formal sentence. However, the legal process itself, particularly the restriction of physical freedom, inherently involves an element of suffering. The mere imposition of confinement or limitation on personal liberty is, in effect, a form of punishment that precedes the official sentencing. Therefore, even before a formal conviction, the individual has already endured a significant degree of suffering, as the deprivation of freedom itself inflicts psychological and emotional distress. This highlights the need to consider the effects of legal processes on individuals, particularly in the context of juvenile justice, where the balance between rehabilitation and punishment is crucial.<sup>8</sup>

Diversion, as a form of restorative justice, aims to redirect children away from the formal justice system, yet it may still involve suffering if it includes the "*restriction of physical freedom*" during the process.<sup>9</sup> For diversion to be effective, it serves as a means to exempt a child from the "Child Client" status and prevent them from becoming a resident of a Juvenile Special Development Institution (LPKA). A "*Child Client*" is defined as a child who is under the supervision, guidance, and assistance of a Community Supervisor, as outlined in Articles 1 to 23 of the SPPA Law. The success of diversion is contingent upon the willingness and capability of all parties involved, including the child, their family, and the relevant authorities.

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<sup>8</sup> See Ward, Cynthia V. "Punishing Children in the Criminal Law." *Notre Dame Law Review* 82, no. 1 (2006): 429; Dunlea, James P., and Larisa Heiphetz. "Children's and adults' understanding of punishment and the criminal justice system." *Journal of Experimental Social Psychology* 87 (2020): 103913; Fagan, Jeffrey. "The contradictions of juvenile crime & punishment." *Daedalus* 139, no. 3 (2010): 43-61.

<sup>9</sup> Arif, Ingrid Angelina Lukito, and Nynda Fatmawati. "Legal Protection of Children of Female Prisoners in the Women's Prison." *Journal of Law, Politic and Humanities* 5, no. 2 (2024): 870-878; Darmawan, Bryllian Erix, and M. Junaidi. "The Effectiveness of Fostering Children in The IIB Boyolali State Detention Center." *Proceeding International Conference Restructuring and Transforming Law*. Vol. 3. No. 1. 2024.



The potential failure of diversion, however, adds to the suffering of children in conflict with the law. If diversion fails, these children risk being subjected to punitive measures, which undermines the primary objective of rehabilitation. The SPPA Law recognizes children who commit offenses as being "*in conflict with the law*" rather than labelling them as "*criminals*." This distinction is crucial, as it emphasizes that children should not be penalized but rather provided with support to resolve their situations. According to the SPPA Law, a child in conflict with the law is defined as one who is between the ages of 12 and 18 and is suspected of committing a criminal offense (Articles 1 to 3 of the SPPA Law). This framework underscores the importance of addressing juvenile offenses through restorative measures that prioritize the child's development and reintegration into society, rather than focusing on punitive outcomes.

Diversion is the process of transferring the settlement of children's cases from the criminal justice system to a process that is not part of the criminal justice system. The objectives of diversion are as follows: a. achieve peace between victims and children; b. resolve children's cases outside the judicial process; c. prevent children from depriving themselves of independence; d. encourage community participation; and e. instill a sense of responsibility in children (Article 6 of the SPPA Law).<sup>10</sup>

In accordance with Article 8 paragraph (1) and paragraph (2) of the SPPA Law, the diversion process is conducted through deliberation, which involves the child and his/her parents/guardians, victims and/or parents/guardians, community counselors, and professional social workers. This process is based on a restorative justice approach and may also involve social welfare workers and/or the community.

According to Article 8 paragraph (3) of the SPPA Law, the diversion process must consider the following: a. the interests of the victim; b. the welfare and responsibility of the child; c. the avoidance of negative stigma; d. the avoidance of revenge; e. community harmony; and f. compliance, decency, and public order.

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<sup>10</sup> Alhakim, Abdurrahman. "Diversion As a Legal Concept That Is Equitable for Children In Indonesia." *Mizan: Jurnal Ilmu Hukum* 11, no. 2 (2022): 147-157; Darmika, Ika. "Diversion and Restorative Justice in the Criminal Justice System of Children in Indonesia." *Ijtimā' iyya Journal of Muslim Society Research* 3, no. 2 (2018): 180-211.

Criminal offenses that are punishable by a maximum of seven years and are not recidivists are eligible for diversion. This implies that the criminal offenses that can be diverted are exceedingly restricted compared to the unlimited criminal offenses that children may commit. In contrast to the constraints of this criminal offense, all parties involved in diversion must endeavor to ensure the success of diversion.<sup>11</sup>

The substance must still be studied, but the child's best interests must be normatively fulfilled for successful diversion. If the diversion is unsuccessful, the criminal law process will continue, indicating that the persuasive-educative criminal law process and the (psychiatric/psychological) approach have been unsuccessful. In addition, the issue in this study is the root cause of diversion failure, which is then associated with the child's best interests.

This research is crucial because the results must be in compliance with the law, as diversion is the primary objective prior to the formal prosecution of children under criminal law. Additionally, the results must be in accordance with the correct flow process. Diversion is a state policy that aims to ensure the highest level of protection for children who are in conflict with the law.

In this research approach, law is conceptualized as a judge's decision. The research approach is doctrinal. The data utilized are secondary as the primary data and primary data as the supplementary data. The data collection techniques employed were document studies and literature studies for secondary data, and interviews for primary data. The data was subsequently analyzed qualitatively and presented descriptively.

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<sup>11</sup> Hambali, Azwad Rachmat, and Zainuddin Zainuddin. "Implementation of Diversion for Children in Conflict with the Law by the National Police of Indonesia." *European Journal of Law and Political Science (EJ-POLITICS)* 2, no. 6 (2023): 15-21; Rahmawati, Dian, and Bambang Tri Bawono. "The Community Participation in the Implementation of Diversion at Investigation Level." *Law Development Journal* 3, no. 4 (2021): 808-818.



## II. Juvenile Diversion in Indonesia: Current Development and Challenges

Juvenile diversion in Indonesia has emerged as a crucial component of the country's juvenile justice system, aiming to provide alternatives to formal criminal proceedings for children in conflict with the law. Rooted in the principles of restorative justice, diversion seeks to redirect children away from the punitive measures of the traditional justice system and towards rehabilitation, reintegration, and social responsibility.<sup>12</sup> In line with the Child Protection Law (Law No. 23 of 2002) and the Juvenile Criminal Justice System Law (SPPA Law, Law No. 11 of 2012), diversion provides opportunities for children to resolve their cases outside of the formal courtroom, offering them a chance for rehabilitation without the stigma of a criminal record. The legal framework encourages restorative practices, such as mediation, family involvement, and community-based programs, to address the underlying causes of delinquent behavior and promote the child's best interests.<sup>13</sup>

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<sup>12</sup> See Nurqalbi, Vivi. "Analysis of Diversion Arrangements in the Beijing Rules and the Juvenile Criminal Justice System in Indonesia." *European Journal of Law and Political Science* 2, no. 1 (2023): 52-55; Tobing, Septy Juwita Agustin Br. "The Diversion Program Implementation Under the Juvenile Justice System Act in Indonesia: What Works, What Does Not?." *Restorative: Journal of Indonesian Probation and Parole System* 2, no. 1 (2024): 46-60.

<sup>13</sup> See Listyarini, Dyah. "Juvenile Justice System through Diversion and Restorative Justice Policy." *Diponegoro Law Review* 2, no. 1 (2017): 168-184. For further discussion also see and compare to Mustaffa, Aminuddin. "Diversion under Malaysian juvenile justice system: A case of too little too late?." *Asian Journal of Criminology* 11, no. 2 (2016): 135-153; Anatasia, Zulita. "Diversion Against Crime by Children Confronting the Law to Achieve Restorative Justice." *Pancasila and Law Review* 1, no. 2 (2020): 149-158; Ilmi, Jamiatul, M. Rahmat Hidayat, and Ika Maslyna. "The Diversion Completion Based on Law Number 11 of 2012 Concerning the Juvenile Criminal Justice System from the Perspective of Islamic Law." *ARRUS Journal of Social Sciences and Humanities* 3, no. 3 (2023): 327-334.

Despite its potential, the implementation of juvenile diversion in Indonesia faces significant challenges. The process is often hindered by gaps in legal understanding and inconsistent application across regions, leading to disparities in outcomes for children. Key obstacles include a lack of trained professionals, insufficient resources for diversion programs, and resistance from various stakeholders who may favor punitive measures over restorative approaches. Additionally, the failure of diversion can lead to detrimental consequences, including the criminalization of children and their placement in institutions like Juvenile Special Development Institutions (LPKA). These challenges underscore the need for comprehensive reform to strengthen diversion mechanisms and ensure that children are treated in accordance with their developmental needs and rights, ultimately achieving the goal of rehabilitation rather than punishment.<sup>14</sup>

From 2017 to 2022, there were 8 cases of juvenile diversion as shown on Table 1.

**TABLE 1.** Juvenile Diversion Cases (2017-2022)

Cases with diversion	Case type	Status: Successful/ unsuccessful
1/Pen.Div.2019/PN Cbn Jo. 1/Pid. Sus. Anak/PNCbn	Traffic	Successful
2/Pen.Div/2020/PN Cbn Jo. 10/Pid.Sus.Anak/2020/PN/ Cbn.	Child protection	Successful

<sup>14</sup> See Puteh, M. Jakfar, Amrullah Bustamam, and Nurainiah Nurainiah. "Child abuse development at Special Child Development Institute (LPKA) Banda Aceh and Darussaadah Aceh Social Institution." *Gender Equality: International Journal of Child and Gender Studies* 9, no. 1 (2023): 88-97; Nurjannah, Fitri Dwi, and Levina Yustitiantingtyas. "Pelaksanaan Hak Pendidikan Anak Di LPKA Ditinjau Dari UndangUndang Nomor 35 Tahun 2014 Tentang Perlindungan Anak." *Cakrawala Hukum: Majalah Ilmiah Fakultas Hukum Universitas Wijayakusuma* 22, no. 2 (2020): 119-125.

Cases with diversion	Case type	Status: Successful/ unsuccessful
1/Pen.Div.2021/PN.Cbn <i>Jo.</i> 14/Pid.Sus.Anak/2021/PN Cbn	Firearms offenses	Successful
1/Pen.Div/2021/PN Cbn <i>Jo.</i> 13/Pid.Sus.Anak/2021/PN Cbn	Crime	Successful
6/Pen.Div/2021/PNCbn <i>Jo.</i> 25/Pid.Sus.Anak/2021/PN Cbn.	Child Protection	Unsuccessful
5/Pen.Div/2021/PNCbn <i>Jo.</i> 24/Pid.Sus.Anak/2021/PNCbn	Theft	Unsuccessful

Based on the data provided, five juvenile cases that were brought before the Cirebon District Court (PN) resulted in successful diversion agreements, while three cases failed to reach such an agreement. Among the cases that successfully reached diversion agreements, three notable instances are: (a) Court Order number 6/Pen.Div/2021/PN Cbn in conjunction with 25/Pid.Sus.Anak/2021/PN Cbn, (b) Court Order number 5/Pen.Div/2021/PN Cbn in conjunction with 24/Pid.Sus.Anak/2021/PN Cbn, and (c) Court Order number 4/Pen.Div/2021/PN Cbn in conjunction with 23/Pid.Sus.Anak/2021/PN Cbn.

One example, Court Order number 6/Pen.Div/2021/PN Cbn in conjunction with Court Order number 25/Pid.Sus.Anak/2021/PN Cbn, concerns a case of maltreatment that resulted in severe injury. In this particular case, five children were identified as the perpetrators. Of these children, two were 16 years old, while the remaining three were 15 years old. The court's decision demonstrates the application of diversion principles, focusing on rehabilitation and reintegration for juvenile offenders, rather than subjecting them to the traditional criminal justice process. This case highlights the court's adherence to the legal framework set out by the Juvenile Criminal Justice System Law (SPPA Law) and the importance of considering the best interests of children in conflict with the law.

The children were accompanied by the parents of the children, as well as Community Supervision Officers (PK) of the Cirebon Class I

Correctional Center (BAPAS) and Social Workers (Peksos) of Cirebon City. The Juvenile Judge served as the facilitator for the diversion at the Cirebon District Court; however, the diversion was unsuccessful, as detailed in the Diversion Minutes. The juvenile criminal case was subsequently continued with the ordinary examination procedure in the first degree.

The Public Prosecutor (JPU) prosecuted the children, asserting that they were legally and convincingly proven guilty of the offense of "*placing, allowing, committing, ordering to commit, or participating in violence against children that causes serious injury*," as regulated and punishable in Article 80 paragraph (2) of Law No.35 of 2014 concerning Child Protection (as in the case file). The year 2014 on Child Protection (as in the First Alternative Indictment of the Public Prosecutor) resulted in the punishment of coaching the children in the Social Rehabilitation Center for Children Against the Law (PSR ABH) Cileungsi Bogor for two years and Job Training for three months each during the daytime that does not interfere with the children's study hours. The supervision and guidance from the Cirebon Correctional Center were reduced while the children were in detention, with the order that the children remain in detention. On the charges of the Public Prosecutor (JPU), the Legal Counsel submitted a written defense which basically requested the fairest possible verdict and the lightest possible sentence with the consideration that the Children admitted and regretted their actions so as not to complicate the examination of the case, the Children promised not to repeat their actions.

In this case, the Community Supervisor (PK) of the Correctional Center (BAPAS) recommended that the Children be given a decision in the form of treatment/rehabilitation at the Social Rehabilitation Center for Children in conflict with the Law (PSRABH) in Cileungsi Bogor. The judge handed down a decision for the children with Criminal Development in the Social Institutions for Rehabilitation of Children Against the Law (PSRABH) Cileungsi Bogor for 1 (one) month each.

Court Order Number 5/Pen.Div/2021/PN Cbn in conjunction with Court Order Number 24/Pid.Sus.Anak/2021/PN Cbn pertains to a juvenile case involving three child offenders, two of whom were 14 years old, and one who was 16 years old. The children were accompanied by Community Supervision Officers (PK) from the Cirebon Class I

Correctional Center (BAPAS), social workers (Peksos) from Cirebon City, and their parents during the proceedings. The case was presented before the juvenile judge at the Cirebon District Court, with the judge acting as the facilitator for the diversion process.

Despite efforts, the diversion in this case was unsuccessful. The details of the failed diversion were documented in the diversion minutes under Diversion Stipulation Number 5/Pen.Div/2021/PN Cbn in conjunction with Number 24/Pid.Sus.Anak/2021/PN Cbn. The failure was primarily due to a disagreement between the families of the child offenders and the parents of the child victim. The victim's parents did not accept the terms offered by the offender's family, which led to the inability to reach a consensus. As a result, the diversion process was declared unsuccessful, and the case did not proceed to a diversion agreement. This outcome underscores the challenges faced in juvenile diversion cases, particularly when parties involved are unable to reconcile differing interests and expectations.

The public prosecutor charged the children, who essentially stated that the children were guilty and had been legally and convincingly proven guilty of committing the crime of "placing, allowing, committing, ordering to commit, or participating in violence against children that causes serious injury" as regulated and punishable in Article 80 paragraph (2) of Law No.35 Year 2014 on Child Protection (as in the First Alternative Indictment of the Public Prosecutor). The punishment consists of coaching the children at the Social Rehabilitation Center for Children Against the Law (PSR ABH) Cileungsi Bogor for two years and Job Training for three months each during the daytime that does not interfere with the children's study hours, with supervision and guidance from Bapas Cirebon reduced while the children are in detention. The children are ordered to remain in detention.

The legal counsel submitted a written defense in response to the prosecutor's demands. The defense essentially requested the most equitable decision and the least severe sentence possible, taking into account that the children admitted and regretted their actions. In order to avoid complicating the case investigation, the children also pledged not to repeat their actions.

In this case, the Community Supervisor (PK) of the Correctional Center (BAPAS) recommended that the children be given a decision in the form of treatment/rehabilitation at the Social Rehabilitation Center for Children in Conflict with the Law (PSRABH) in Cileungsi, Bogor.

The parents of the children basically stated that they fully submitted to the Panel of Juvenile Judges to give the best decision for the children. The children were sentenced by the District Court judges to Criminal Development in the Social Rehabilitation Institution for Children Against the Law (PSRABH) in Cileungsi Bogor for 1 (one) month each.

Court Order Number 4/Pen.Div/2021/PN Cbn in Conjunction with Number 23/Pid.Sus.Anak/2021/PN Cbn. The child perpetrators in juvenile case number 23/Pid.Sus.Anak/2021/PN Cbn are three children, two of whom are 14 years old and one 16 years old. The case pertains to maltreatment that resulted in serious injury. The children were accompanied by the parents of the children, as well as Community Supervision Officers (PK) of the Cirebon Class I Correctional Center (BAPAS) and Social Workers (Peksos) of Cirebon City. The Juvenile Judge served as the facilitator for the diversion at the Cirebon District Court; however, the diversion was unsuccessful, as detailed in the Diversion Minutes. The parents of the child victim were not in agreement with the offer made by the child's family. The diversion was declared unsuccessful. The juvenile case was subsequently pursued using the juvenile criminal procedure, with the ordinary examination procedure implemented at the initial level.

The children were prosecuted by the Public Prosecutor (JPU), who essentially insisted that the children were guilty and had been legally and convincingly proven guilty of committing the crime of "placing, allowing, committing, ordering to commit, or participating in violence against children that causes serious injury" as regulated and punishable in Article 80 paragraph (2) of Law No.35 of 2014 concerning Child Protection (as in the Constitution of the Republic of Indonesia). The year 2014 on Child Protection (as in the First Alternative Indictment of the Public Prosecutor) resulted in the punishment of coaching the children at the Social Rehabilitation Center for Children Against the Law (PSRABH) Cileungsi Bogor for two years and job training for three months each during the daytime that does not interfere with the children's study hours. The



supervision and guidance from BAPAS Cirebon were reduced while the children were in detention, with the order that the children continue their detention.

On the charges of the Public Prosecutor (JPU), the legal counsel submitted a written defense which basically requested the fairest possible verdict and the lightest possible sentence with the consideration that the children admitted and regretted their actions so as not to complicate the examination of the case, the children promised not to repeat their actions. In this case, the Community Supervisory Officer (PK) of the Correctional Center (BAPAS) recommended that the Children be given a decision in the form of treatment/rehabilitation at the Social Rehabilitation Institution for Children dealing with the law (PSRABH) in Cileungsi Bogor. The judge sentenced the children to be treated in the Social Rehabilitation Center for Children Against the Law (PSRABH) in Cileungsi Bogor for 1 (one) month each.

### **III. Analysis of Juvenile Diversion Cases in Indonesia**

Reading the three judges' decisions, it can be seen that: (1) The children were charged by the public prosecutor with the punishment of guidance at the Social Rehabilitation Center for Children Against the Law (PSRABH) in Cileungsi Bogor for two years and Job Training for three months each during the daytime that does not interfere with children's study hours with supervision and guidance from BAPAS Cirebon reduced while the children are in detention; (2) The Community Supervisor (PK) of the Correctional Center (BAPAS) recommended that the children be given a decision in the form of treatment/rehabilitation at the Social Rehabilitation Center for Children Against the Law (PSRABH) in Cileungsi Bogor with the consideration of: a. The process of Diversion efforts has been carried out at the Cirebon City Police level and the Cirebon District Court level but did not reach an agreement, b. If the client currently returns to the two overseers, the child will be rehabilitated.

There is concern that the client may experience a lack of supervision, attention, and guidance if the client currently returns to both parents.

Consequently, the client may return to his friends' social environment, which may have a negative impact; and c. Seeing the potential and desire of the client to remain with the parents. Seeing the potential and desire of the client to continue his schooling, the client can follow the education program at the Social Rehabilitation Center for Children dealing with the law in Cileungsi Bogor; (3) The Legal Counsel submitted a written defense which basically requested a fair and lenient decision, because the child admitted and regretted his actions, did not complicate the examination of the case, the child promised not to repeat his actions; (4) The children fully surrendered the legal process to the judge; and (5) By the judge the children were sentenced to 1 month of guidance (which means imprisonment) and placed in the Social Rehabilitation Center for Children Against the Law/PSRABH (where the child is serving the sentence).

In terms of quantity, one month is not significantly long. The objective of diversion is not realized as a result of the child's continued conviction, which is indicative of the failure of diversion. Diversion, as is well-known, is designed to: a. establishes a peaceful relationship between the victim and the child; b. resolve the child's case outside of the judicial process; c. prevent the child from losing their independence; d. motivate the community to engage; and e. instill a sense of responsibility in the child (Article 6 of the SPPA Law).

The failure of diversion should not be interpreted as the conclusion of efforts to ensure that children in conflict with the law receive the best possible care. The judge's decision to impose a 1-month coaching sentence in response to the prosecutor's demand for two years of coaching and three months of vocational training is deemed sufficient to be considered the judge's decision to provide for the child.

The Diversion agreement may result in the following outcomes, among others: a. peace with or without compensation; b. return to parents/guardians; c. participation in education or training at educational institutions or LPKS for a maximum of three months; or d. community service (Article 11 of the SPPA Law).

In order to safeguard and enhance the conduct of children, it is essential to resolve their cases.<sup>15</sup> A settlement model that has not fully accounted for failed diversion has been criticized by certain individuals. The perpetrator or the perpetrator's family may harbor animosity toward the victim or his family for an indefinite duration if diversion fails. The victim or the victim's family does not receive the anticipated outcome when diversion fails, with the exception of the false satisfaction of having been able to imprison the child of another individual.

Disagreement between the victim or family and the perpetrator or the perpetrator's family is not the sole cause of the failure of diversion. The incompetence of the parties involved in the diversion deliberation is reflected in the failure of the diversion. Diversion deliberation is a process in which the parties involved in the case, including the child and their parents/guardians, the victim and their parents/guardians, community counselors, professional social workers, community representatives, and other relevant parties, engage in deliberation to establish a diversion agreement using a Restorative Justice approach (Article 1 (1) Perma No. 4 of 2014 and Article 8 paragraph (1) and paragraph (2) of the SPPA Law). Punishment is no longer intended solely to serve as a deterrent in a Transitional state. The imposition of punishment is designed to facilitate the social integration and development of correctional residents in a comprehensive manner.<sup>16</sup>

Diversion is a form of restorative justice implementation. The indicators are the roles of the perpetrator, victim, community, and juvenile justice professionals with their respective roles. The perpetrator actively restores the losses of the victim and the community. The victim mediates and determines sanctions for the perpetrator. Community as mediator. Juvenile justice professionals as facilitators.<sup>17</sup>

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<sup>15</sup> Rasdi, Rasdi, and Saru Arifin. "Efektifitas Metode Musyawarah Mufakat Diversi terhadap Penyelesaian Perkara Anak Berkonflik dengan Hukum." *Pandecta Research Law Journal* 15, no. 1 (2020): 44-52.

<sup>16</sup> Siddiq, Sofi Artnisa. "Pemenuhan Hak Narapidana Anak dalam Mendapatkan Pendidikan dan Pelatihan." *Pandecta Research Law Journal* 10, no. 1 (2015).

<sup>17</sup> Daud, Brian Septiadi, and Litya Surisdani Anggraeniko. "Kelemahan Penyelesaian Perkara Pidana Anak Melalui Restorative Justice Dalam Sistem Peradilan Pidana Anak." *Jurnal Pacta Sunt Servanda* 4, no. 1 (2023): 1-21.

The positive values of diversion as an implementation of restorative justice<sup>18</sup> are 1. The child is encouraged to take responsibility for his actions; 2. The perpetrator has the opportunity to do good to the victim as a substitute for the wrong he has done; 3. The victim has the opportunity to play a role in the process; 5. The child has the opportunity to maintain a relationship with the family. 6. There is reconciliation and recovery from the criminal offense.

The ideal diversion is a successful diversion. Conversely, a diversion that is not ideal is a diversion that fails. Although not necessarily eaten, failed diversion means failed protection for children in conflict with the law. After a failed diversion, the examination will continue with a regular examination and the SPPA Law will oversee to realize the judge's decision in favor of the child.

Failure factors in the Implementation of Diversion in the Cirebon District Court based on interviews with Juvenile Judges who handle juvenile cases include: (1) Requests for reimbursement of losses by the victim to the perpetrator; (2) Legal culture, namely the way of thinking and acting both from Law Enforcers / Society in resolving cases; (3) Legal awareness, namely from the community/family of the child perpetrator/guardian, there is an admission of guilt so that a Diversion agreement occurs; (4) Legal Subject Factors, namely rights and obligations, judges and the community in their perspective on justice, there are differences in perspectives on justice for the parties; and (5) Facilities and Infrastructure, namely both tools and places must be able to support the smooth implementation of diversion.

According to Mohamad Rifky<sup>19</sup> research on the implementation of diversion at the prosecution level in Palu City, law enforcement

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<sup>18</sup> Pangemanan, Jefferson B. "Pertanggungjawaban Pidana Anak dalam Sistem Peradilan Pidana Indonesia." *Lex et Societatis* 3, no. 1 (2015); Ariani, Nevey Varida. "Implementasi Undang-Undang Nomor 11 Tahun 2012 tentang sistem peradilan pidana anak dalam upaya melindungi kepentingan anak." *Jurnal Media Hukum* 21, no. 1 (2014): 16.

<sup>19</sup> Rifky, Mohamad, and Umar Anwar. "Analisis Faktor Penyebab Kegagalan Diversi Tingkat Penuntutan Pada Tindak Pidana Penganiyaan (Studi Kasus Klien Anak Bapas Kelas II Palu)." *dalam Jurnal Justitia: Jurnal Ilmu Hukum dan Humaniora* 9, no. 6 (2022).

factors, among others, were the cause of the diversion's failure. According to him, law enforcement is critical. He stated that even if the rules are well written, if the officers are of poor quality, the law will not be effective. Mohamad Rifky and Umar Anwar further argue that in order to overcome this, law enforcement officials must be able to provide the victim's family with understanding, input, and guidance. Restika Prahela, Hari Purwadi, and Hartiwiningsih agreed that law enforcement factors contributed to the failure of the Karang Anyar district attorney's diversion. They believe that legal functions, as well as the mentality and personality of law officers, are essential. If the regulations are good but the officers are subpar, there is a problem. As a result, one of the keys to success in law enforcement is the mentality or personality of the officers.<sup>20</sup>

In Bitar District Court, barriers to the success of Diversion include community and law enforcement factors. There are still discrepancies in the rules that govern law enforcement. Some are governed by the Juvenile Criminal Justice System Law (UUSPPA), while others are governed by the Supreme Court Regulation (PERMA). In addition, the community has the potential to impact law enforcement. Individuals continue to believe that the most equitable approach is to penalize the perpetrator. The authors also inform judges, public prosecutors, and investigators that Diversions are an alternative and not a requirement. If it is unsuccessful, the case can only be continued.<sup>21</sup>

In Magelang District Court, factors inhibiting diversion include differences in perceptions about the meaning of justice in diversion between diversion actors, victims and/or their families, perpetrators or their families, law enforcement officials, correctional centers, social workers, community leaders, psychologists, educators and non-governmental organizations.<sup>22</sup>

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<sup>20</sup> Prahanela, Restika, and Hari Purwadi. "Kegagalan Implementasi Diversi Pada Tahap Penuntutan." *Jurnal Hukum dan Pembangunan Ekonomi* 5, no. 1 (2016).

<sup>21</sup> Putri, Erwinda Dekaria Agustiana, and Pudji Astuti. "Faktor Penghambat Diversi Bagi Anak Yang Berkonflik Dengan Hukum Di Pengadilan Negeri Blitar." *Novum: Jurnal Hukum* 7, no. 1 (2020).

<sup>22</sup> Kurniaty, Yulia, Johny Krisnan, and Heni Hendrawati, "Hambatan Pelaksanaan Diversi Dalam Penyelesaian Tindak Pidana Anak Di Tingkat Pengadilan," *The 4th University Research Coloquium*, 2016.

At the Masohi District Court, Natalisya Telepta, et al. have observed that victims continue to exhibit a negligible response to diversion. Victims believe that criminal perpetrators must be penalized. Additionally, it was declared that the Masohi District Court's implementation of diversion continues to encounter numerous challenges, such as legal substance issues in the form of limitations on criminal threats that may be pursued for diversion and recidivism.<sup>23</sup>

As stated by several authors above, blaming law enforcement (prosecutors and judges) for diversion failures is not excessive. The consideration is that these two law enforcement officials facilitate the implementation of diversion. The facilitator's role should not be limited to facilitating the perpetrator's or his family's willingness, as well as the victim's or his family's willingness, to engage in diversion. It is important to recognize that law enforcement officials (prosecutors and judges) understand diversion. The sentence "Diversion and successful diversion is an option and not an obligation" is correct, but striving for diversion and success is legally required.

True, the failure of diversion does not imply that providing the best for the child is impossible. Nonetheless, successful diversion at the court level can break the cycle of justice experienced by children who have failed diversion at the investigation and prosecution levels. The legal process in the police and prosecutor's offices has undoubtedly resulted in a negative record for children, and the court should put an end to it. The success of diversion is evidence of the implementation of a low-cost, quick, and simple criminal law process.

Every child has the right to protective measures. Their status as a minor should serve as a legal basis for the judge to dismiss the child's case. Such decisions are legitimately made by the judge. When dealing with juvenile cases, the judge can use the Restorative Justice model to transition

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<sup>23</sup> Tetelepta, Natalisya, Julianus Edwin Latupeirissa, and Anna Maria Salamor. "Penerapan Diversi Oleh Hakim Dalam Penyelesaian Perkara Pidana Anak Ditingkat Pengadilan (Studi Pengadilan Negeri Masohi)." *PATTIMURA Law Study Review* 2, no. 1 (2024): 156-168.



from a formal legal process to a nonformal resolution. Restorative justice can be used as a reference for judges to resolve juvenile cases.<sup>24</sup>

According to Bahtera Perangin-Angin et al., Bismar Siregar once stated, "I do not avoid the scorn, reviling, and reproach of others. As long as my conscience tells me it is right, I can make that decision. I am accountable to God rather than others for my decisions."<sup>25</sup> Bismar Siregar was not a judge when the diversion program was implemented. Legal justice/social justice, moral justice/moral justice, and faith in God's accountability, as proposed by Bismar, can inspire law enforcement to resolve criminal cases involving children as perpetrators.

In addition, the opinion of the judges of the Cirebon District Court, which is sourced from judges in several District Courts handling diversion (judges A, B, C, D, E, F, and Judge G), in general, the cause of the failure of diversion is then related to the fulfillment of the best interests of the child is quoted as follows:

#### A. Judge A

Judge A categorizes diversion into the following: Diversion does not lead to an agreement, which implies that the child/family of the child and the child victim/family of the victim were unable to establish an agreement that would be detailed in the diversion agreement from the outset. Contrary to this, the Child Victim / Family of the Child Victim requests compensation, despite the fact that it is permissible under Article 11 of Law Number 11 of 2012. However, the family of the Child Offender is unable to accommodate the compensation that is occasionally included in the diversion deliberation. This indicates that there is a substantial amount of financial compensation or medical reimbursement available for cases that result in injuries that have a long-term effect on the child victim.

<sup>24</sup> Simanjuntak, Esther Wita, et al. "Peran Hakim Terhadap Penerapan Diversi Sebagai Upaya Menciptakan Restoratif Justice Dalam Tindak Pidana Anak." *Iuris Studia: Jurnal Kajian Hukum* 2, no. 2 (2021): 310-321.

<sup>25</sup> Perangin-Angin, Bahtera, Bunyamin Alamsyah, and M. Zen Abdullah. "Peranan Hakim dalam Penegakan Hukum terhadap Tindak Pidana yang Dilakukan oleh Anak Menurut Undang Undang Nomor 12 Tahun 2012 di Wilayah Pengadilan Negeri Jambi." *Legalitas: Jurnal Hukum* 6, no. 2 (2017): 206-250.

Consequently, the family of the child offender may be unable to afford it. Furthermore, there is occasionally a revenge factor from the family of the child victim, who are unwilling to forgive the actions of the child perpetrator.

In the event that the diversion agreement is not implemented, the minutes of the diversion agreement are prepared and submitted to the President of the Court for determination after an agreement is reached during the diversion deliberation. The diversion agreement's minutes contain an agreement that in the event of compensation with time, the family of the Child Victim is to execute it at the designated time. Nevertheless, the case will be remanded to the Court for further examination, and the hearing date will be determined if the compensation is not implemented within the time frame specified in the diversion agreement.

Nevertheless, Judge A maintains that the best interest in diversion is not successfully achieved, and in fact, it is not fulfilled. The final option is to punish children as perpetrators under Law Number 11 of 2012, which pertains to the juvenile criminal justice system. Children are subject to a maximum imprisonment of 1/2 (one-half) of the maximum imprisonment for adults. The Special Development Institute for Children (LPKA) is the destination for children who have been sentenced to imprisonment. The child is provided with guidance in LPKA until the age of 18 (eighteen). Children who have not yet completed their sentence in LPKA and have reached the age of 18 (eighteen) are transferred to a youth correctional institution. In the event that the child has reached the age of 21 (twenty-one) years but has not yet completed the sentence, the child is transferred to an adult correctional institution in addition to the criminal requirements, job training, or coaching within the institution.

The correctional institution must also serve as a facility for rehabilitating prisoners through various coaching activities. The Child Special Development Institution (LPKA) is an institution in which children are housed while serving their sentences, as explained by Alexius. This implies that an individual may serve a criminal sentence in the LPKA until the age of 18. Guidance, mentoring, supervision, assistance, education, and training are all entitlements of children who are serving a

criminal sentence in LPKA.<sup>26</sup> Judge A also stated that diversion should be considered as one of the methods for determining the most appropriate decision. Nevertheless, it is feasible to administer conditional punishment or vocational training to juvenile offenders in order to achieve the most optimal outcome of diversion without compensation. This is because, occasionally, the families of juvenile victims request compensation, while the families of juvenile offenders are compelled to raise funds to compensate for their losses. Consequently, the diversion agreement may not be feasible.

#### B. Judge B

Judge B concluded that the diversion was unsuccessful due to the perpetrator's failure to adhere to the agreement's terms within the designated time frame. For instance, the victim and perpetrator have not yet established the agreement that will be detailed in the diversion agreement until the time limit for conducting the diversion has expired.

The victim and perpetrator's inability to reach a diversion agreement within the allotted diversion period, as per Judge B, was because one of the parties declined to accept the agreement offer. Additionally, Judge B contends that disputes regarding diversion are frequently precipitated by requests from the victim that are cumbersome for the perpetrator to satisfy. Another example, which is more specific to the victim's request, is the request for a specific amount of compensation or compensation for the losses the victim has experienced, but the perpetrator is unable to fulfill it. The community's comprehension of the law is actually restricted by the occurrence of disagreements in diversion deliberations, which also encompasses discrepancies in the comprehension of diversion among law enforcers.

The agreement between the victim and the perpetrator is not implemented correctly due to a lack of comprehension regarding law enforcement. Individuals who lack comprehension of the law prioritize the

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<sup>26</sup> Samar, Samar, et al. "Pemenuhan Hak Narapidana Anak Dalam Hal Mendapatkan Pendidikan dan Pelatihan di Lembaga Permayarakatan Kabupaten Polewali Mandar." *Journal Governance and Politics (JGP)* 3, no. 1 (2023): 116-132.

imposition of criminal sanctions in accordance with the offense committed by the perpetrator, which includes children as lawbreakers. According to Abdurrahman Alhakim, Bonita Maharani Siahaan, and Emilliya Febriyani,<sup>27</sup> disputes arise during the diversion process due to the belief that the judge's sole responsibility is to prosecute, rather than to reconcile.

Judge B also stated that diversion is a forum or domain established to serve children's best interests to achieve restorative justice. The judge in the diversion process only functions as a diversion facilitator and reports to the Chief Justice if the diversion is successful. The Chief Justice then makes a Diversion Determination. If diversion is declared unsuccessful, it does not imply that the principle of the child's best interests is not fulfilled. The legal considerations of the judge who decides the case must be applied later to determine the child's case, as outlined in the principle of the child's best interests.

Additionally, Judge B stated that the judge issued a decision to release the child from detention if the child was detained during the diversion process, before establishing a diversion date. The judge will no longer issue a detention order if the child has been detained since the investigation and prosecution stages. Instead, the judge will issue a decision to remove the child from detention for the purposes of diversion after the file is submitted to the court and the child's case file meets the requirements for diversion.

Judge B also stated that the facts at trial inform the most appropriate decision for the child, is connected to the recommendations of the community research report and hears testimony from the child's parents. The decision is then associated with the aggravating and mitigating circumstances of the child, and the judge uses his intuition to impose a proportional type of punishment.

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<sup>27</sup> Chandra, Arie, Hamza Baharuddin, and Hardianto Djanggih. "Pelaksanaan Fungsi Kejaksaan Dalam Penerapan Diversi Terhadap Anak Yang Berkonflik Dengan Hukum." *Journal of Lex Generalis (JLG)* 1, no. 1 (2020): 88-100; Ghoni, Mahendra Ridwanul, and Pujiyono Pujiyono. "Perlindungan hukum terhadap anak yang berhadapan dengan hukum melalui implementasi diversi di Indonesia." *Jurnal Pembangunan Hukum Indonesia* 2, no. 3 (2020): 331-342.

### C. Judge C

According to Judge C, the cause of the failure of diversion was the absence of an amicable agreement between the victim and the child in conflict with the law. Nevertheless, Judge C maintains that the rights of children in conflict with the law are still fulfilled, despite the failure of diversion. The case is settled in accordance with the child's trial until it is finalized. In contrast, the case can be immediately terminated without the need to wait for a court decision upon the successful completion of the diversion. However, it is not always the case that children who undergo an ordinary examination are more susceptible to having their rights violated than those who undergo a diversionary process. A diversionary settlement would be preferable in light of these factors.<sup>28</sup>

The victim's family's refusal to forgive the perpetrator for the victim's treatment was also cited by Judge C as another reason for the diversion's failure. Additionally, there were instances in which the compensation provided was deemed inconsistent with the perpetrator's actions against the victim.

### D. Judge D

According to Judge D, the failure of diversion is due to first, not meeting the requirements for the implementation of diversion as mandated in Article 7 of the SPPA Law, namely children's cases that carry a threat of less than 7 years and are not repeat offenders. The inhibiting factor of diversion for children in conflict with the law is caused by law enforcement factors, namely differences in perceptions between law enforcers regarding the rules in Article 7 of the SPPA Law and Article 3 of Supreme Court Regulation No. 4 of 2014 concerning guidelines for the implementation of diversion in the juvenile criminal justice system, resulting in differences

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<sup>28</sup> Hambali, Azwad Rachmat. "Penerapan Diversi Terhadap Anak Yang Berhadapan dengan Hukum Dalam Sistem Peradilan Pidana (Diversion for Children in Conflict with The Laws in The Criminal Justice System)." *Jurnal Ilmu Hukum* 13, no. 1 (2019): 15-30.

in perceptions between judges in handling cases of children in conflict with the law.

Article 3 of Perma No. 4 of 2014 emphasizes that juvenile judges are obliged to seek diversion in the event that the child is charged with a criminal offense punishable by imprisonment under 7 (seven) years and is also charged with a criminal offense punishable by imprisonment of 7 (seven) years or more in the form of subsidiarity, alternative, cumulative or combination (combined) indictment. Article 7 of the SPPA Law stipulates: (1) Diversion must be pursued at the level of investigation, prosecution, and examination of children's cases in the district court. (2) Diversion, as referred to in paragraph (1), shall be implemented in the event that the criminal offense committed: a. is punishable with imprisonment under 7 (seven) years; and b. is not a repetition of a criminal offense.

The parties mentioned in the two articles of the law are only grammatically obligated to pursue diversion. If the article is grammatically correct and comprehensible, it should not be interpreted differently. These parties are only obligated to pursue diversion; they are not obligated to achieve successful diversion. Secondly, the guidance and supervision of children in conflict with the law is not optimal in certain regions due to the absence of BAPAS officers who are responsible for handling children's cases. Third, the next inhibiting factor to diversion is the negative response of the community, particularly the victim or the victim's family and the perpetrator's family, to efforts to resolve children's cases through diversion. This is due to the inherent paradigm in society that mandates that every criminal act that occurs must be punished with criminal penalties.

Judge D asserts that diversions are conducted with and without victims. Naturally, the principle of optimal fulfillment for the child is particularly relevant in the event of diversion failure with victims. This principle dictates that any decision-making process must consider the child's growth and development. Judges are required to guarantee that this principle is upheld by ensuring that the best interests of the child victim are not prioritized over those of the child as the perpetrator of the crime.

Judge D also stated that the failure factor of diversion with victims is typically the result of the victim's inability to reach a peace agreement. Consequently, Judge D recommends that the diversion be executed to the



best of one's ability. Diversion should not necessitate the restriction of criminal punishment. The child's development should be the focus of the future. This implies that all parties are willing to offer guidance if the child is involved.<sup>29</sup> Effective supervision and dedication are essential for the successful implementation of diversion. It is imperative that all parties collaborate to establish a juvenile justice system that prioritizes the protection of children's rights, rehabilitation, and recovery.<sup>30</sup>

#### E. Judge E

Judge E argues that diversion fails due to the victim's unwillingness to reconcile, the child's inability to fulfill the victim's request in conflict with the law, and regional cultural factors that can also contribute to the failure of diversion. Additionally, Judge E underscored that all decisions in Juvenile Justice System cases are made with the child's best interests in mind. If diversion is unsuccessful, one of the methods for achieving the child's best interests cannot be fulfilled. However, it is still possible to be fulfilled during the case examination. The judge will still make a decision that is in the child's best interest during the case examination.

#### F. Judge F

Judge F states that it is imperative to comprehend the definition of "*diversion*" before determining the reasons for its failure. Diversion is the transfer of the settlement of children's cases (Child Perpetrators) from the criminal justice process to a process outside the criminal justice system, as defined in Article 1 Paragraph (7) of the Law of Republic Indonesia No. 11/2012.

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<sup>29</sup> Yunus, Yutirsa. "Analisis Konsep Restorative Justice Melalui Sistem Diversi Dalam Sistem Peradilan Pidana Anak Di Indonesia." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 2, no. 2 (2013): 231-245; Bagus, J. D. "Analisis Syarat Diversi Dalam Sistem Peradilan Pidana Anak." *Journal of Correctional Issues Volume* 4, no. 2 (2021).

<sup>30</sup> Mahka, Muh Fachrur Razy, Karman Jaya, and Asriyani Ismail. "Diversi Sebagai Bentuk Penyelesaian Perkara Pidana Anak dalam Sistem Peradilan Pidana Anak." *Jurnal Al Tasyri'iyah* (2023): 71-86.

The following are the reasons why diversion was unsuccessful or failed, as explained by Judge F: (1) The child offender and the victim were unable to reach an amicable agreement regarding the implementation of diversion deliberations. (2) The victim desires that the case be continued until it is tried in court. (3) The victim is unwilling to forgive the child offender for the actions of the child offender. (4) The diversion agreement that has been reached is not being implemented. Judge F also underscored that the trial process will persist in the event that diversion is unsuccessful. Juvenile judges will render the most favorable decision for the child perpetrator when reviewing children's cases.

#### G. Judge G

According to Judge G, the diversion was unsuccessful because the peace agreement offered was not agreed upon by one of the parties (either the juvenile offender/family or the victim). As Judge G experienced, the child/family did not agree to pay money to the victim or the victim's family. According to Judge G, even though diversion failed, efforts were still made to fulfill the needs of the child, especially in terms of sentencing. The most lenient punishment for the child is sought. Judge G also emphasized that corporal punishment or imprisonment should be avoided as much as possible. Imprisonment for children is the last resort (*ultimum remedium*). Law enforcement officials are responsible for protecting children in conflict with the law. This responsibility not only refers to normative rules but also prioritizes peace.<sup>31</sup>

## IV. Conclusion

In conclusion, the failure of diversion in juvenile cases is primarily attributed to the lack of agreement between the perpetrator or their family and the victim or their family. This discord often arises from one or both parties refusing to pursue peace, or from an inability to agree on

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<sup>31</sup> Abdurrachman, Hamidah, Fajar Ari Sudewo, and Dyah Irma Permanasari. "Model Penegakan Hukum Anak yang Berhadapan dengan Hukum dalam Proses Penyidikan." *Pandecta Research Law Journal* 10, no. 2 (2015): 167-179.

compensation for the loss incurred. Such disagreements prevent the successful implementation of the diversion process. Additionally, inconsistencies in the interpretation of Article 3 of Perma No. 4 of 2014 and Article 7 of the Juvenile Criminal Justice System Law (SPPA) by law enforcement personnel can further hinder the success of diversion. Despite these challenges, the failure of diversion does not close the door on the opportunity to provide the child with appropriate care. For instance, in the case examined, the judge's decision to impose a one-month coaching sentence and place the child in a rehabilitation center demonstrates that law enforcement can still ensure the child's well-being, even when diversion is unsuccessful.

Although the failure of diversion does not preclude the possibility of providing quality care for children in conflict with the law, achieving successful diversion remains the preferred approach. Successful diversion interrupts the harmful cycle of criminal proceedings, offering a more constructive path for rehabilitation. To achieve this, law enforcement, particularly judges, must serve as facilitators of the process. Successful diversion is essential for ensuring a cheap, simple, and swift criminal justice system that prioritizes the well-being of children. To address the challenges that hinder diversion, it is crucial for law enforcement to play a more proactive role in convincing both parties of its value. Furthermore, to resolve discrepancies in the interpretation of relevant laws, a unified and authoritative interpretation from the Supreme Court would provide essential guidance for consistent and effective application of diversion principles.

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