

Diversion As a Form of Resolving Child Criminal Cases Through the Restorative Justice System by Investigators

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Abstract. *Cases of violence between children often occur, this is because the emotional maturity of children is not yet fully mature so that pathological social problems often occur which make children often commit violence between each other. This makes children often face the law, therefore children need a guarantee of mental protection and intellectual growth, so the concept of restorative justice through diversion is needed, however, diversion has not been optimally implemented, especially in the Cirebon City area. This study aims to describe the process of investigation of child criminal cases through restorative justice at the Cirebon City Police. To analyze the obstacles and solutions in the process of investigation of child criminal cases through restorative justice at the Cirebon City Police. The type of research used in this study is a descriptive analytical legal research type. Based on the research results, it is known that the investigation process for child criminal cases through diversion as an effort to realize restorative justice at the Cirebon City Police is not yet optimal, this is because 95 cases of violence committed by children were resolved at the Cirebon City District Court in 2024. Constraint in the process of investigating cases of child criminal acts through restorative justice at the Cirebon City Police in the form of the lack of public knowledge regarding the resolution of criminal cases through restorative justice; the lack of public awareness to reconcile through restorative justice in cases of minor assault; and the lack of regulation of the resolution of hate speech crimes through restorative justice in a complete and specific manner at the level of government regulations, both central and regional.*

Keywords: *Children; Diversion; Restorative Justice.*

1. Introduction

The United Nations (UN) Agreement in 1948, known as the Universal Declaration of Human Rights (UDHR), one of the formulations of which is that every human being is born free and equal in dignity and rights. Based on the UN Agreement, children are guaranteed their rights to live and develop according to their abilities and must be protected. Protection of children's rights by the international community is stated in (1) the 1959 UN General Assembly Declaration on the Rights of the Child; (2) the 1966 International Covenant on Civil

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and Rights of the Child; (3) the 1966 International Covenant on Economic, Social & Cultural Rights; (4) the 1989 UN Convention on the Rights of the Child.¹

The Convention on the Rights of the Child is the most comprehensive legal and human rights instrument for promoting and protecting children's rights.²Indonesia is one of the countries that has ratified the Convention on the Rights of the Child (CRC) in 1990 which was approved by the UN General Assembly on 20 November 1989.³The Convention on the Rights of the Child which has been ratified by the Indonesian government through Presidential Decree Number 37 of 1990, then stated in Law Number 4 of 1979 concerning Child Welfare, Law Number 35 of 2014 concerning Child Protection. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, all of which state the general principles of child protection, namely non-discrimination, the best interests of the child, a life that respects and grows and develops. The presence of these regulations has formulated protection for children's rights, but in reality they have not received very beneficial treatment for the best interests of the child.⁴

In Article 1 number 2 of Law of the Republic of Indonesia Number 35 of 2014 concerning Child Protection, it is formulated that "Child Protection is all activities to guarantee children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity and receive protection from violence and discrimination". Children are included in the group that is vulnerable to the occurrence of a criminal act that is in conflict with the law, either as perpetrators of criminal acts, or as victims of criminal acts and children who are witnesses to criminal acts, as formulated in Article 1 numbers 2, 3, 4 and 5 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Children have specific rights that are different from the rights of adults, this is because children are very vulnerable to violence, mistreatment and exploitation.⁵Various criminal cases involving children who have to deal with the law are actual and factual problems as social and criminal symptoms that have caused concern among parents in particular and society in general as well as law enforcers.⁶

The forms of crime and criminal acts that are often committed by children include theft, drug abuse, fighting, sexual harassment, traffic violations, and abuse to cases of murder and motorcycle gang crimes (begal) whose perpetrators are children. Other facts also show that

¹Muhammad Azil Maskur, "Legal Protection for Juvenile Delinquency in the Indonesian Criminal Procedure Process", *Pandecta: Research Law Journal*, Vol.7, No.2, 2012, p.172

²Zendy Wulan Ayu Widhi Prameswari, "Ratification of the Convention on the Rights of the Child in the Legal Regulation System in Indonesia", *Jurnal Yuridika*, Vol.32, No.1, January 2017, p.167.

³Hardianto Djanggih, "Concept of Legal Protection for Children as Victims of Cybercrime Through Penal and Non-Penal Approaches", *Jurnal Mimbar Hukum*, Vol.30, No.2, June 2018, p.317

⁴Yul Ernis, "Diversion and Restorative Justice in Resolving Child Criminal Cases in Indonesia", *Scientific Journal of Legal Policy*, Vol.10, No.2, July 2016, 163-174.

⁵Nur Rochaeti, "Implementation of Restorative Justice and Legal Pluralism in the Juvenile Criminal Justice System in Indonesia", *Journal of Legal Issues*, Vol. 44, No. 2, April 2015, p. 150

⁶Ulang Mangun Sosiawan, "Perspective of Restorative Justice as a Form of Protection for Children in Conflict with the Law", *DE JURE Legal Research Journal*, Vol.16, No.4, December 2016, p.428

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children in various cases must face the law as victims of violent treatment, both physical violence, psychological violence, sexual harassment violence and neglect violence.⁷

The current Juvenile Criminal Justice System refers to Law Number 11 of 2012, in the process mechanism it must still go through a formal process like adults by going through an investigation and inquiry process by the police, a prosecution process by the prosecutor's office and a trial in court. This long formal process has given rise to several ideas from both scientists and law enforcement officers to find the best alternative handling for children by maximally distancing children from the formal justice system. In fact, children in any situation must continue to grow and develop as they should and for children who are faced with the law must receive justice philosophically including shifting the retributive legal approach towards restorative.⁸

According to the Director of Analysis of Legislation at Bappenas, Diani Sadia Wati, the reasons for changing Law Number 3 of 1997 concerning Juvenile Courts to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) were due to several things as follows: First, the failure of the juvenile criminal justice system to produce justice; Second, the rate of criminal acts and recidivism of children has not decreased; Third, the judicial process has failed to treat children; Fourth, the courts have used more imprisonment (imprisonment) than other forms of sanctions; and Fifth, an overly legalistic approach.⁹

In order to maintain dignity and honor, children have the right to receive special protection, especially legal protection in the justice system as a consequence of Indonesia as a state party to the Convention on the Rights of the Child which regulates the principles of legal protection for children, and has an obligation to provide special protection for children in conflict with the law.

Diversion in Article 1 number 7 of Law Number 11 of 2012 concerning the Juvenile Justice System is a process of resolving cases of children in conflict with the law, from the criminal justice process to a process outside the criminal justice system, with deliberations involving children, parents, and community counselors, to prevent children from being deprived of liberty, intended to keep children away from the criminal justice process. The Criminal Justice System in Indonesia is considered not to be on the side of child perpetrators of crimes or children in conflict with the law, the current criminal law products are considered to be rooted in the social structure of society in this case the criminal law products on children only regulate victims of criminal crimes. Meanwhile, perpetrators of crimes from among children have almost never received fair legal treatment and on average children who are caught in criminal cases are thrown into prison, even worse, many prisons mix adult prisoners with child prisoners.¹⁰

⁷Sri Endah Wahyuningsih, Legal Protection for Children as Victims of Criminal Acts Against Morality in Current Positive Criminal Law, Journal of Legal Reform Volume III No. 2 May - August 2016, p. 173.

⁸Bambang Sukoco, Lecturer, Faculty of Law, Muhammadiyah University of Surakarta, 2015, Restorative Justice Approach as an Effort to Resolve Cyber Crimes with Child Perpetrators, paper compiled as an assignment for the criminal law and development of information technology course, page 16

⁹<http://www.bappenas.go.id/berita-dansiaran-pers/indonesia-akan-berlakukan-uuno-11-tahun-2012-tentang-sistem-peradilanpidana-anak/>, accessed on 29 October 2015.

¹⁰Gatot Supramono, 2007, Juvenile Court Procedure, Jakarta: Djambatan, page 1.

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During the examination process, children in conflict with the law are forced to follow the procedures that are usually followed by adults. This situation allows children to be forced to go through the examination process that has become a habit of police officers in conducting investigations or inquiries in handling criminal cases.

The reason for imprisonment, judges more often use judicial policies and discretion, rather than sociological considerations, not only that, many judges ignore community research, even though there are quite a few social structures in Indonesia that experience social pathology and panels of judges that ignore community research from BAPAS.¹¹

Children who are still minors still have unstable natures and are easily uncontrolled by circumstances from within themselves and their surroundings. In fact, in society, children who are in conflict with the law still lack the ability to control themselves against the negative influence of their social environment outside the home, lack of supervision from both parents so that they are influenced by friends in the surrounding environment, and are still classified as unstable in carrying out actions.¹² Distrust of prisons or ineffective child development, the author concludes that children in conflict with the law need to be diverted at all levels so that the child still has a long future and still needs guidance from both parents, if diversion is not carried out then many children will go to prison or development and the rights of children guaranteed by the law on child protection are not fulfilled, so that it will cause children to be psychologically disturbed and make children stupid and easily colonized by others and will have a major impact on the growth of children when they are adults, it could be that the child when they are adults becomes a recidivist.

Various explanations that exist show that the law has contradicted its original purpose. Related to legal purposes, Sri Endah stated that:¹³

If what national law aspires to is a Pancasila legal system, then it is appropriate to study and develop laws that contain Pancasila values, meaning laws that are oriented towards the value of the Almighty God, laws that are oriented towards the values of Just and Civilized Humanity, laws that are based on the value of Unity, and laws that are imbued with the values of People Guided by Wisdom in Deliberation/Representation and the values of Social Justice. For all Indonesian people.

In its concept, child protection does not only include protection of their rights but also relates to aspects of fostering the younger generation, taking into account that children are not individualists because children are still very dependent on adults, especially adults they know, in addition to the fact that children are not yet able to support themselves. This situation clearly contradicts the objectives of the rule of law in the concept of development law. So that in its development the law should be able to realize justice for children in order to support the life of children that is guaranteed, beneficial and has legal certainty.¹⁴

¹¹Solopos.com, 2016, Friday 20 May 2016, 05.00 WIB: 90% of children in conflict with the law end up in prison, in <http://www.solopos.com/2016/05/20/90-anak-berhadapan-hukumberakhir-di-penjara-721069>

¹²M Ghufuran H. Kordi K, 2015, Disobedience to Children Reflections on Children's Rights & Protection, Yogyakarta: Pustaka Baru Press, p. 238.

¹³Sri Endah Wahyuningsih, Principles of Criminal Individualization in Islamic Law and Indonesian Legal Reform, UNDIP, Cirebon, 2013, p. 68.

¹⁴Nur Cahyanti, Budi Raharjo, and Sri Endah Wahyuningsih, Sanctions Against Notaries Who Commit Criminal Acts According to the Laws and Regulations in Indonesia, Jurnal Akta, Vol 5 No 1 March 2018, p. 91.

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The concept of a state of law (nomocracy) has guaranteed the principle of equal rights before the law (before the law), so the concept of development law which prioritizes openness (transparency) is equivalent to the offer of forming law as a consensus involving the public sphere, the concept of a state of law which prioritizes deliberative democracy.¹⁵

According to the author of this study, a specific discussion is needed to further discuss "DIVERSION AS A FORM OF RESOLVING CHILD CRIMINAL CASES THROUGH THE RESTORATIVE JUSTICE SYSTEM BY INVESTIGATORS."

2. Research Methods

The type of research used in this study is a type of analytical descriptive legal research. Analytical descriptive legal research is a method that functions to describe or provide an overview of the object being studied through data or samples that have been collected as they are without conducting analysis and making conclusions that apply to the public.¹⁶

3. Results and Discussion

3.1. The Development of the Restorative Justice System in Indonesia

The concept of diversion and restorative justice itself is increasingly known through seminars that foster enthusiasm and desire to study these two concepts in more depth. In 2004 in Jakarta, a discussion was held among law enforcement officers involved in the juvenile criminal justice system to discuss the best steps in handling child perpetrators of crimes. The discussion held among law enforcement officers aimed to find the best solution in order to provide protection for children. This seriousness was first carried out by the Bandung District Court by creating a special detention room and a waiting room for children on August 13, 2004. Seeing the seriousness of law enforcement officers in the criminal justice system in Bandung, UNICEF designated the city of Bandung as a Pilot Project in implementing the concept of diversion and restorative justice in Indonesia.¹⁷

Diversion and restorative justice programs have grown rapidly throughout the world in a short time. The starting point for changing the juvenile justice system in several countries and the reasons put forward for child perpetrators are the reasons for implementing a new concept, namely restorative justice. This concept is relevant for the transformation of all parts of the criminal justice system to the right process, meaning that at every level of justice or institution of law enforcement officers included in the criminal justice system can be transferred to the restorative justice process.¹⁸

In Indonesia itself, with the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the concept of diversion and restorative justice is implemented as a form of resolving criminal cases committed by children as perpetrators and making criminal

¹⁵Sri Endah Wahyuningsih, Criminal Law Enforcement Policy on Money Laundering Prevention in the Framework of Criminal Law Reform in Indonesia, Journal of Legal Reform Volume III No. 2 May - August 2016, p. 47.

¹⁶Sugiono, Quantitative, Qualitative and R&D Research Methods, Alfabeta, Bandung, 2009, p. 29.

¹⁷Hadi Supeno, Restorative Justice: A Model of Future Indonesian Juvenile Justice, Diponegoro University, Cirebon, 2006, p. 211.

¹⁸Location, cit.

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punishment an ultimum remedium or last resort used when an appropriate resolution is not achieved through these two concepts.¹⁹

3.2. Investigation Process for Child Criminal Cases Through Restorative Justice at Cirebon City Police

The application of restorative justice emphasizes the pure willingness of the perpetrator to repair the losses that have been caused as a form of responsibility. Repair of losses must be proportional by considering the rights and needs of the victim. To produce an agreement between the parties, in this case the victim and the perpetrator, informal dialogues such as mediation and deliberation are needed.

The involvement of relevant and interested community members is very important in this section as an effort to re-accept the child in society. Restorative justice offers the best solution in resolving cases of child crime, namely by prioritizing the core problem of a crime. An important solution to note is to repair the damage or loss caused by the crime.

Restorative Justice practices and programs are reflected in its objectives of addressing criminal acts by:²⁰

1. *Identifying and taking steps to repair harm*(identify and take steps to repair loss/damage);
2. *Involving all stakeholders*(involving all interested parties);
3. *Transforming the traditional relationship between communities and their government in responding to crime*(changing something that has been traditional regarding the relationship between society and government in responding to crime).

Van Ness, as quoted by Mudzakkir, said that restorative justice is characterized by several propositions, namely:²¹

- a. Crime is a conflict between individuals that results in harm to the victim, society and the perpetrator himself.
- b. The goal that must be achieved from the criminal justice process is to reconcile the parties while repairing the losses caused by the crime.
- c. The criminal justice process must facilitate the active participation of victims, offenders and the community. Criminal justice should not be dominated by the state to the exclusion of others.

Restorative justice will conflict with the principles of legality and legal certainty (*rechtzakerheid*). This is because restorative justice does not focus on imprisonment, but rather on how to improve or restore the condition of the victim after a crime has occurred. In this case, the perpetrator of the crime can be required to pay compensation, do community service, or other reasonable actions ordered by law enforcement or the court. The restorative justice approach in criminal law has the power to restore the relationship between the perpetrator and the victim. It also has the power to prevent deeper hostility between the parties and encourage reconciliation between the perpetrator and the victim

¹⁹*Location, cit.*

²⁰Mc Cold and Wachtel, *Restorative Practices*, (The International Institute for Restorative Practices (IIRP), 2003), p. 7.

²¹Siswanto Sunarso, *Victimology in the Criminal Justice System*, Sinar Grafika, Jakarta, 2014, p. 157

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voluntarily. Another power is to encourage the participation of other community members, such as family members or neighbors and emphasize the importance of the victim's role in a process towards justice. On the victim's side, restorative justice provides the power to give the perpetrator the opportunity to express regret to the victim and it is better if facilitated to meet in a meeting that is conducted professionally.²²

This restorative justice perspective is a result of the shift in law from *lex talionis* or retributive justice by emphasizing efforts to restore (restorative). In efforts to restore victims when with a more retributive and legalistic approach it is difficult to heal the victim's wounds. So restorative justice seeks to emphasize the perpetrator's responsibility for his behavior that causes harm to others.²³

On the side of legal aid, in general it is not always available or if it is available the cost of legal institutions is not cheap and awareness of the role of the parties themselves in determining decisions still requires experience and consistency. The implications of this restorative justice are expected to reduce the number of people entering the criminal justice process, especially in correctional institutions, reduce the burden on the criminal justice system and increase public participation in helping to resolve legal cases.²⁴

The principles of restorative justice according to Adrinus Meliala are as follows:²⁵

- a. Making perpetrators of criminal acts responsible for repairing the losses caused by their mistakes.
- b. Giving criminals the opportunity to prove their capacity and quality while also constructively overcoming their guilt.
- c. Involving victims, families and other parties in solving problems.
- d. Creating a forum to work together to solve problems.
- e. Establishing a direct and concrete relationship between an act deemed wrong or evil and a formal social reaction.

Settlement of criminal acts through restorative justice a conflict or damage that arises due to a criminal act is seen as a conflict that occurs in the relationship between members of society that must be resolved and restored by all parties together. The circle of resolution is centered on balance by providing opportunities for victims to play a role in the process of resolving criminal acts. Umbreit explains that, "restorative justice is a victim-centered response to crime that allows the victim, the offender, their families, and representatives of the community to address the harm caused by the crime" (restorative justice is a response to a crime that is centered on the victim wants the victim, the perpetrator of the crime, their families, and representatives of the community to address the damage and losses caused by the crime).

Susan Sharpe stated that there are 5 (five) principles in restorative justice, namely:²⁶

²²Location, cit.

²³Location, cit.

²⁴Location, cit.

²⁵Location, cit.

²⁶Rufinus Hotmaulana Hutaeruk, *Combating Corporate Crime Through a Restorative Approach: A Legal Breakthrough*, Sinar Grafika, Jakarta, 2013, p. 130.

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a. Restorative justice invites full participation and consensus

Restorative Justice contains full participation and consensus. In this case, the victim and the perpetrator are actively involved in the negotiation to find a comprehensive solution. In addition, it also opens up opportunities for the community who have felt their security and order have been disturbed by the perpetrator to sit together to solve the problem. The invitation to participate is basically not binding/mandatory, only voluntary, although of course the perpetrator will be included, if not, the traditional justice process will run;

b. Restorative justice seeks to heal what is broken

Restorative Justice seeks solutions to restore and heal the damage or loss caused by the crime committed by the perpetrator. This also includes efforts to heal or restore victims of the crime that befell them. However, perpetrators also need healing, they need to be freed from their guilt and fear.

c. Restorative justice seeks full and direct accountability

Restorative Justice provides a sense of complete responsibility for the perpetrator who is responsible for his actions. The perpetrator must show his remorse and admit his mistakes and realize that his actions have caused harm to others;

d. Restorative justice seeks to reunite what has been divided

Restorative Justice seeks to reunite the perpetrator as a member of society with his/her community that has been separated due to the crime. This is done by reconciling the victim and the perpetrator and reintegrating both into normal community life. Both must be freed from their past for a brighter future.

e. Restorative justice seeks to strengthen the community in order to prevent further harm

Restorative Justice empowers communities to prevent crimes from happening again. Crime causes damage to people's lives, but crime can be a lesson for communities to open up true justice for everyone.

The process of resolving criminal acts through a restorative approach, each individual is required to play an active role in solving problems and the State in this case is placed as a party that must provide support for individuals or communities who have the desire to resolve the conflicts they experience. The view of restorative justice is that individuals actually play their roles and responsibilities in resolving conflicts collectively and are not charged to the State.

According to Helen Cowie and Jennifer, the main aspects of restorative justice are identified as follows:²⁷

a. Reparation, is not about gaining victory or accepting defeat, accusations or revenge but about justice;

b. Restoration of the relationship, not in the form of punishment where the perpetrators take responsibility for their mistakes and correct them in a number of ways, but through a process of open and direct communication between the victim and the perpetrator, which has the potential to change the way they relate to each other;

²⁷Hadi Supeno, *Restorative Justice: A Model of Future Indonesian Juvenile Justice*, Diponegoro University, Cirebon, 2006, p. 203.

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c. Reintegration, at its broadest level, provides an arena in which children and parents can have a fair process. The idea is that they can learn about the consequences of violence and crime and understand the impact of their behavior on others.

According to Russ Immarigeon, in the recovery process, a broad relationship is needed between the perpetrator, victim and community, to understand the consequences of their actions which may give rise to a sense of regret for the perpetrator, so that a situation is created that can provide information to each other, learn from each other, and to jointly reach an agreement on a punishment and sanctions. Recovery must be interpreted as the return of the victim's rights through compensation made by the perpetrator and the granting of rights to the perpetrator to be accepted as part of society. The understanding given by legislators through the Child Criminal Justice System Law, restorative justice is present to provide recovery, not to provide retaliation which has been adopted in Indonesia, especially applied to criminal acts committed by adults. Recovery of all losses caused by criminal acts is the main goal given by restorative justice without giving burden and responsibility to one person only, namely the perpetrator, but all parties who are considered to have played a role in resolving the problem.²⁸

The development of the legal system in Indonesia discusses the problems of children in conflict with the law by presenting the concept of diversion as a manifestation of restorative justice. The policy of laws and regulations regarding children themselves starts from international conventions to national laws and regulations in Indonesia. Protection for children in the form of national laws and regulations can be seen from the birth of Article 330 of the Civil Code which provides limitations for minors, articles 45, 46, 47, 72 of the Criminal Code, Article 153 explicitly stated by the Criminal Procedure Code, Law Number 1 of 1974 concerning Marriage, Law Number 4 of 1979 concerning Child Welfare, Law Number 12 of 1995 concerning Correctional Institutions, Law Number 39 of 1999 concerning Human Rights, Law Number 23 of 2002 concerning Child Protection, Law Number 3 of 1997 concerning Juvenile Courts, Ratification of the Convention on the Rights of the Child in Presidential Decree Number 36 of 1990 and other implementing regulations. The above laws and regulations are still inadequate in resolving the handling of children. One of the weaknesses is the absence of explicit regulations regarding the obligations of law enforcement officers to prevent children from entering formal justice at an early stage.

The investigation conducted by the National Police aims to collect evidence to find out whether an incident that occurs is a criminal incident, with the investigation also aimed at finding the perpetrator. After the investigation, the next stage is an investigation. Investigations of criminal cases are carried out by the police in accordance with the Criminal Procedure Code and Law No. 3 of 1997 concerning Juvenile Courts. The police in conducting investigations of child perpetrators of crimes must pay attention to various provisions regarding efforts to handle children from arrest to the placement process.

Based on these provisions, the police have their own authority and policies in determining whether the child's case can be resolved through diversion or not, such as cases of sexual abuse and drugs which are usually forwarded to prosecution. If diversion is successful, then recovery will be carried out. However, if diversion is unsuccessful or the police, based on

²⁸Location, cit.

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their authority, state that the case must be continued, then the process will be continued by transferring the files to the prosecutor's office. However, sometimes in carrying out their duties, the police do not even offer diversion and restorative justice. In addition, the victim's family is also unwilling to make peace, which is indicated by a statement on stamped paper asking for the perpetrator to be punished as severely as possible. There are several criteria for criminal acts involving children as perpetrators that must be resolved using the diversion principle approach, namely:

1. The category of criminal acts that are threatened with criminal sanctions of up to 1 (one) year must be prioritized for diversion, criminal acts that are threatened with criminal sanctions of more than 1 (one) year up to 5 years can be considered for diversion, all cases of theft must be attempted to implement diversion unless it causes or gives rise to losses related to the body and soul.
2. Considering the age of the perpetrator, the younger the perpetrator, the more urgent the need for implementing the diversion principle.
3. The results of research from the Correctional Agency (BAPAS), if it is found that there are motivating factors for children to be involved in criminal cases, then the urgency of implementing the diversion principle is increasingly necessary.
4. The level of public unrest caused by children's actions.

There are several references that can be used in implementing diversion for children in conflict with the law, especially as perpetrators, namely:

1. Republic of Indonesia Law no. 2 of 2002 concerning the Police of the Republic of Indonesia;
2. Republic of Indonesia Law no. 23 of 2002 concerning Child Protection
3. Republic of Indonesia Law No. 3 of 1997 concerning Juvenile Courts;
4. Law No. 11 of 2012 concerning the Juvenile Justice System; and
5. TR Kabareskrim No. 1124/XI/2006 concerning Guidelines for the Implementation of Diversion for the Police.

The main principle of implementing the diversion concept is persuasive action or non-penal approach and giving someone the opportunity to correct their mistakes. Officers in conducting diversion show the importance of obedience to the law and regulations. Handling the problem of children in conflict with the law should be done with a family approach and as far as possible avoid children from the judicial institution. The court for children in conflict with the law is the last resort after various efforts made with a family approach have been taken.

In order to realize restorative justice through diversion in handling child cases, the police have the authority to exercise discretion (discretionary power). Discretionary authority is a legal authority in which the police have the right to continue or not to continue a case. Based on this authority, the police can also divert a child's case so that the child does not need to face formal criminal court settlement.

The existence of diversion in handling cases of child abuse as an effort to realize restorative justice in reality has not been able to be realized optimally, especially in the West Java Regional Police area. Based on the EMP Pusiknas Bareskrim Polri, the West Java Regional

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Police have taken the most action against children in conflict with the law related to crimes and thuggery carrying sharp weapons. Throughout 2024, the West Java Regional Police took action against 143 children related to these crimes. The most were children aged 12 to 17 years, as many as 130 children. While 13 other children were under 11 years old. The West Java Regional Police are also the regional unit with the most actions related to brawls. Data on the DORS SOPS Polri application shows that since the beginning of the year, the West Java Regional Police have taken action against 3 brawls. Meanwhile, in second place is the Polda Metro Jaya which took action against 117 children related to crimes and thuggery carrying sharp weapons, as well as taking action against 2 brawl cases. Meanwhile, the third position is occupied by the North Sumatra Police, which prosecuted 116 children and 1 brawl case. Of the 34 regional units spread throughout Indonesia, six police did not report any action against children related to crimes and thuggery carrying sharp weapons, namely the Aceh Police, the Riau Islands Police, the East Nusa Tenggara Police, the North Kalimantan Police, the Gorontalo Police, and the North Maluku Police. Meanwhile, for brawl cases, there were six police that reported taking action against the disturbances. Namely the West Java Police (3 cases), the Metro Jaya Police (2 cases), the South Sulawesi Police (2 cases), the Banten Police (2 cases), the North Sumatra Police (1 case), and the West Java Police (1 case). Brawls are one of the crimes and violence committed by groups. Carrying sharp weapons is also an illegal act that is prohibited by law. The National Police continues to strive to prevent brawls between youths in their respective regions. The police patrol vulnerable areas to prevent security disturbances, especially brawls which are very disturbing to the community. Of all the cases, most are resolved in court.²⁹

The number of cases submitted to the Cirebon City District Court related to cases of violence committed by children was 78 cases from cases involving 117 suspects, of which 95 cases were brawls, while 8 cases were bullying with violence.³⁰ Based on the available data, especially in West Java, it is clear that diversion is rarely carried out in the legal process for children involved in cases of violence. Criminal punishment on children can have significant psychological impacts, both short-term and long-term, including fear, loss of self-confidence, and even trauma. Long legal processes and prison sentences can trigger behavioral problems, depression, and even the risk of suicide. In addition, punishment can damage family relationships, cause deprivation, and increase the risk of social stigma. Police Commissioner Joni Surya said that the impact of criminalization on children can be:³¹

a. Fear and Loss of Self-Confidence:

Children who are in conflict with the law, or who have been punished, may feel afraid of law enforcement officers, legal institutions, and even parents or other adults. This fear can hinder social and emotional development, and cause a loss of confidence in one's own abilities.

b. Trauma:

²⁹National Police Education Center, "Number of Children Involved in Violence Cases", https://pusiknas.polri.go.id/detail_artikel/antara_tawuran_dan_senjata_tajam#:~:text=Throughout%20the%20years%202024%2C%20Polda%20Jawa,the%20most%20related%20to%20brawl%20actions., May 7, 2025.

³⁰Interview with Police Commissioner Joni Surya as Head of Samapta of Cirebon Police, April 4, 2025.

³¹Interview with Police Commissioner Joni Surya as Head of Samapta of Cirebon Police, April 4, 2025.

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Severe legal proceedings, especially those involving violence or imprisonment, can cause serious psychological trauma. This trauma can lead to behavioral problems, depression, anxiety, and difficulties in daily living.

c. Behavioral Issues:

Harsh punishment can cause children to experience behavioral problems, such as becoming more aggressive, behaving unlawfully, or even isolating themselves.

d. Depression and Anxiety:

Children who are in conflict with the law or are punished, especially in prison, are at risk of experiencing depression and anxiety. This depression and anxiety can hinder cognitive and social development, and cause difficulties in forming social relationships.

e. Social Stigma:

Criminal penalties can cause children to be socially stigmatized, which can hinder their opportunities for employment, education, and a normal social life.

f. Damage to Family Relationships:

Frequent or harsh punishment can damage the relationship between children and parents, cause communication breakdowns, and trigger conflict within the family.

g. Deprivation:

Prison sentences can lead to deprivation, which is the lack of opportunities to obtain basic needs such as education, health care and social support.

The various negative impacts of criminal sanctions on children show the importance of implementing diversion for children involved in cases of violence. The provisions of Article 5, Article 7 to Article 9 of the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System clearly state that diversion as an effort to realize restorative justice in the investigation of cases of violence committed by children is an obligation mandated by law. However, in reality, according to Police Commissioner Joni Surya, most parents of victims of acts of violence between children prefer to take legal action through the courts, so that the perpetrators who are still children are expected to be punished as severely as possible. This is especially true in cases of violence that result in death.³²

It should be understood that violent crimes committed by children are acts of delinquency or Juvenile delinquency is behavior that reflects errors in educational patterns, both at home and in society and at school. This problem cannot be assessed from one aspect, but must involve many aspects, including the individual aspect of the teenager himself. Basically, the occurrence of juvenile delinquency indicates the indiscipline of teenagers towards the applicable rules and norms, be it family, school, society or self-norms as an individual, and the instillation of these norms must of course be given to individual teenagers so that they have a good understanding related to these norms. The causes of this delinquency include the result of wrong parenting patterns, a bad school environment, bad social groups, a non-conducive social and community environment, weak self-control, and adolescent emotional maturity that does not develop according to the level of adolescent development age. That is why this article attempts to examine the causes of

³²Interview with Police Commissioner Joni Surya as Head of Samapta of Cirebon Police, April 4, 2025.

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juvenile delinquency and preventive measures and how to improve adolescent discipline from a psychological and Islamic perspective. The report of the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which met in London in 1960, stated that there was an increase in the number of juvenile delinquents in the quality of crime, and an increase in the ferocity and cruelty of the crimes, which were more often committed in group actions than individual crimes.³³

The facts then show that all types of juvenile crime are increasing in number with the increasing pace of industrialization and urbanization. In industrial cities and large cities that are rapidly developing physically, there are far more cases of crime than in "primitive" societies or in villages. And in economically prosperous countries, the level of this crime is correlated with the process of industrialization. Therefore, America as the most economically advanced country among the nations of the world, has the highest number of juvenile crimes; so there is the highest level of juvenile crime. Social diseases or social diseases are all forms of behavior that are considered inappropriate, violate general norms, customs, formal laws, or cannot be integrated into general behavioral patterns. Social diseases are also called social disorganization, because the symptoms develop into social excesses that disrupt the integrity and smooth functioning of social organizations. Furthermore, it is also called social disintegration, because one part of the social structure develops out of balance with other parts (for example, members of a tribe, clans, etc.) so that the process can disrupt, hinder, or even harm other parts, because it cannot be integrated into a complete totality.³⁴

Juvenile delinquency does not arise and exist just like that in every life, because these delinquencies have causes which are factors of the occurrence of juvenile delinquency. Initially, there were criminologists who assumed that the elements of intention and opportunity greatly influenced the causes of crime or juvenile delinquency. The element of intention is related to endogenous and exogenous factors.³⁵

Endogenous factors are factors that originate from within the child itself that influence his/her behavior, including: first, biological and psychological disabilities. Second, hampered personality and intelligence development so that he/she cannot internalize the prevailing norms. Exogenous factors are factors that originate from outside the child that can influence his/her behavior. According to Walter Lunden, the factors that play a role in the emergence of delinquency are as follows:³⁶

1. The wave of urbanization of teenagers from villages to cities is quite large in number and difficult to prevent.
2. The occurrence of conflict between traditional rural customary norms and new norms that are growing in the process and rapid sexual shifts, especially in big cities.
3. The fading of individual personality patterns that are strongly linked to traditional social control patterns, so that members of society, especially teenagers, face "vague patterns" in

³³Mr. Murdianto, *Social Pathology, Concepts, Theories and Applications*, State Islamic University (UIN) Mataram, Mataram, 2019, pp. 136-149.

³⁴*Location, cit.*

³⁵*Location, cit.*

³⁶*Location, cit.*

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carrying out their behavior.

4. The development of juvenile delinquency is caused by the negative impact of rapid global changes including knowledge and technology beyond their awareness.

Social and cultural influences play a major role in the formation or conditioning of criminal behavior of teenagers. The behavior of these teenagers shows signs of lack or absence of confirmation of social norms, the majority of juvenile delinquents are under the age of 21 years. The highest number of crimes is at the age of 15-19 years: and after the age of 22 years, cases of crime committed by delinquent gangs decrease.³⁷

3.3. Obstacles and Solutions in the Investigation Process of Child Criminal Cases Through Restorative Justice at the Cirebon City Police

1. Constraint In the Process of Investigating Child Criminal Cases Through Restorative Justice at the Cirebon City Police

The implementation of restorative justice also faces several challenges and obstacles, such as lack of understanding and support from the community, lack of training for legal practitioners, and lack of clear and systematic regulations for the implementation of restorative justice. Likewise with the supporting facilities and infrastructure for the process as mentioned below:³⁸

- a. The limitations of Special Child Development Institutions in Indonesia require that juvenile criminals are still placed in adult prisons/detention centers;
- b. Places for fostering children under the age of 12 years, and special care facilities for detained children if there are no special service rooms for children under the responsibility of the Social Welfare Institution (LPAS) are not yet evenly available throughout Indonesia;
- c. Replacement prisons for children aged 14-18 years are not yet evenly available throughout Indonesia;
- d. Not all police stations have 24-hour child care facilities in the Special Child Service Room (RPKA).

Based on the data above, it can be understood that the purpose of resolving criminal acts committed by children has not been optimally implemented as stipulated in the Child Protection Act, because the facilities available are still inadequate. The juvenile criminal justice system is required to be implemented at all levels, not all violations committed by children can follow the diversion process. Efforts to overcome the situation of children involved in violations of the law within the framework of the juvenile justice system are carried out by referring to the provisions of criminal acts that threaten a prison sentence of less than 7 years, provided that the crime is not a repeated act. If a child who has previously committed a violation of the law violates the law again, then the assessment of the crime committed by the child can be included in the same or different category. However, if a child who has previously experienced diversion again commits a violation of the law, diversion can no longer be applied as a method for resolving the child's case.³⁹

³⁷Location, cit.

³⁸Interview with Police Commissioner Joni Suryaas Head of Samapta of Cirebon Police, April 4, 2025.

³⁹Interview with Police Commissioner Joni Suryaas Head of Samapta of Cirebon Police, April 4, 2025.

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The transfer of child case resolution outside the criminal justice process, known as diversion, is part of state policy. This is done by considering the best interests of the child, to prevent stigmatization and avoid imprisonment. Efforts to resolve child crimes through diversion are implemented as much as possible, considering that Article 13 of the SPPA Law emphasizes that if the diversion process does not result in an agreement between the victim and the perpetrator of the crime or the agreement is not implemented, then the process outside the child criminal justice system will be continued into the child justice process as a formality contained in the Criminal Procedure Code. Based on the various weaknesses that exist, it is clear that in the existing investigation process, diversion as a legal instrument to protect children as perpetrators of violence has not been realized, this also shows that the legal process has not been able to realize child protection in terms of children's basic rights.⁴⁰

The obstacles in implementing restorative justice in Cirebon City in cases of violence against children are:⁴¹

- a. Lack of public knowledge regarding the resolution of criminal cases through restorative justice;
- b. Lack of public awareness to make peace through restorative justice in cases of minor assault;
- c. The settlement of hate speech crimes through restorative justice has not been regulated completely and specifically at the level of government regulations, both central and regional.

The theory of legal validity states that any action to be taken by the role holders, implementing institutions or law makers is always within the scope of the complexity of social, cultural, economic and political forces and so on. All social forces always work in every effort to function the applicable regulations, apply their sanctions, and in all activities of the implementing institutions. Finally, the role played by the legal institutions and institutions is the result of the work of various factors.⁴²

2. Solutions to Problems in the Investigation Process of Child Criminal Cases Through Restorative Justice at the Cirebon City Police

Effectiveness is a vocabulary in Indonesian that comes from English, namely "efektive" which means successfully obeyed, validated, efficacious and fortunate. From the series of meanings above, the most appropriate is successfully obeyed. Effectiveness according to Amin Tunggal Widjaya is the result of making decisions that direct doing something right, which helps fulfill a company's mission or achieving goals.⁴³

Meanwhile, according to Permata Weshia, effectiveness is a condition or ability of a work done by humans to provide the expected benefits. In order to see the effectiveness of work, four types of considerations are generally used, namely: Economic, physiological, psychological and social considerations. Effectiveness is also said to be a condition that

⁴⁰Location, cit.

⁴¹Location cit.

⁴²William J. Chambliss and Robert B. Seidman in Esmi Warassih, Legal Institutions: A Sociological Study, UNDIP Press, Cirebon, 2011, p. 10.

⁴³Amin Tunggal Widjaya, Management: An Introduction, First Printing, Rineka Cipta Jaya, Jakarta, 1993, p. 32.

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shows the success of work that has been determined. Sarwoto terms effectiveness as "effective", namely good service in terms of style and quality that really suits the needs in achieving the goals of an organization.⁴⁴

According to Campbell JP, the most common and prominent measures of effectiveness are:⁴⁵

- a. Program Success
- b. Target success
- c. Satisfaction with the program
- d. Input and output levels
- e. Achieving overall objectives So that the effectiveness of the program can be carried out with operational capabilities in implementing work programs that are in accordance with previously determined objectives.

Based on the descriptions above, it can be concluded that effectiveness is the ability to carry out the activities of an institution physically and non-physically to achieve goals and achieve maximum success.

The success of restorative justice efforts depends on the parties. Of course, there are many differences in the conditions and motivations of the parties in the process, for example, the victim's orientation in seeking justice is that justice must imprison the suspect. This is in contrast to the mechanism offered by restorative justice which is more oriented towards the quality of the process, namely making the perpetrator of the crime aware of his mistakes, the need for conflict to be resolved, the victim's peace from fear and so on. Here are some of the problems of restorative justice based on the parties:

a. Victim

It must be acknowledged that some victims in these cases may not want restorative justice for various reasons. It is important that victims should not be forced to participate in the restorative justice process. However, investigators can seek to provide legal opinions on their right to participate in the restorative justice process at any time. In cases involving child victims, special care must be taken to protect and ensure that their consent is truly voluntary. In some recovery processes involving child victims, or other vulnerable groups (e.g. women, or individuals with mental disorders), investigators or their legal counsel provide the victim with an understanding of the clear purpose of participating in restorative justice.

b. Perpetrator

The most important thing about restorative justice efforts is that the perpetrator is able to fulfill the commitments they have made as part of the agreement. The perpetrator must show that they have accepted responsibility for their behavior and are ready to be held accountable for it in a very real and practical way.

c. Investigator

⁴⁴Sarwoto, Basics of Organization and Management, Ghala Indonesia, Jakarta, 1990, p.126.

⁴⁵Location, cit.

In addition to the above parties, the issue of discretion in the form of restorative justice is the central point of the investigator's opinion or belief regarding the problem being faced. The problem being faced is inseparable from the community. If the investigator considers the community being faced as citizens who must be protected, fostered, cared for, guided or served, then the tendency for restorative justice will be greater. Because the investigator is aware that his task is not merely to take repressive action, such as the perpetrator carrying out illegal logging. In this case, the perpetrator committed a relatively minor assault so that the investigator can carry out restorative justice efforts so that he does not have to take action in the SPP process. On the other hand, if the investigator considers the community as an opponent, and the community also considers the investigator as an enemy, then the relationship between the two will be less good and always suspicious.⁴⁶ In the case where investigators suggest that the case be resolved peacefully to the parties, the public often considers it as a trick by the police to gain material benefits. These assumptions can affect efforts to implement restorative justice. According to Achmad Ali, this happens because of suboptimal socialization to the target of the legal regulations, namely the public.⁴⁷

Law enforcement against legal rules is not limited to arresting as many perpetrators as possible to be processed formally. But what is more substantial is how law enforcement efforts can guide the community not to commit unlawful acts. In the context of law enforcement, the police as investigators can act to mobilize community participation in the democratic law enforcement process.⁴⁸

In addition to the above factors that influence the problematic implementation of restorative justice is the cultural factor. Culture as according to Soerjono Soekanto, what is meant by culture is one element of the legal system, in the form of values that underlie the implementation of a law. These values are abstract conceptions of what is considered good (so it is adopted) and what is considered bad (so it is avoided).⁴⁹

The solutions that can be done are:

1. For the government, it is necessary to emphasize in Article 7 of the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System that the type of conditions for carrying out diversion are not only based on the child's actions which constitute a criminal act that is subject to a 7-year prison sentence but also need to look at the aspects of the child's criminal responsibility and the child's future circumstances.
2. For law enforcers, it is necessary to emphasize to the parties in cases of violence committed by children that the legal process through diversion for children must be carried

⁴⁶Malik AL-Ghazali, Restorative Justice Approach on The Under Age (Minors) Violator of The Traffic Case Accident (Laka) That Lead to Death in Majalengka Police, Journal of Sovereign Law Volume 1 Issue 3 September 2018, p. 708-800.<http://jurnal.unissula.ac.id/index.php/RH/article/view/3371>.

⁴⁷Ragil Tri Wibowo and Akhmad Khisni, Restorative Justice in Application for Crime Investigation on Property, Jurnal Daulat Hukum Volume 1 No. 2 June 2018, pp. 555-556.<http://jurnal.unissula.ac.id/index.php/RH/issue/view/284>.

⁴⁸Iman Faturrahman and Bambang Tri Bawono, Application of Restorative Justice to Solution of Traffic Accidents, Jurnal Daulat Hukum Volume 4 Issue 1, March 2021, pp. 30-31.

⁴⁹M. Gargarin Friyandi and Aryani Witasari, Restorative Justice In Application For Crime Investigation Abuse In Polsek Middle Cirebon, Jurnal Daulat Hukum Volume 2 Issue 1, March 2019, pp. 41-44.<http://jurnal.unissula.ac.id/index.php/RH/article/view/4204>.

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out first.

3. For the community, there needs to be legal education about the importance of diversion, especially in cases of violence committed by children.

4. Conclusion

1. The investigation process for child criminal cases through diversion as an effort to realize restorative justice at the Cirebon City Police has not been optimal, this is because 95 cases of violence committed by children were resolved at the Cirebon City District Court in 2024. 2. Constraintin the process of investigating cases of child criminal acts through restorative justice at the Cirebon City Police in the form ofthe lack of public knowledge regarding the resolution of criminal cases through restorative justice; the lack of public awareness to reconcile through restorative justice in cases of minor assault; and the lack of regulation of the resolution of hate speech crimes through restorative justice in a complete and specific manner in government regulations, both central and regional. The solutions that can be done are:for the government, it is necessary to emphasize in Article 7 of the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System that the type of requirements for diversion are not only based on the child's actions which are criminal acts that are subject to 7 years of imprisonment but also need to look at the aspects of the child's criminal responsibility and the child's future. For law enforcers, it is necessary to emphasize to the parties in cases of violence committed by children that the legal process through diversion for children must be carried out first. For the community, there needs to be legal counseling about the importance of diversion, especially in cases of violence committed by children.

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