



THE SETTLEMENT OF CHILDREN'S CASES THROUGH DIVERSION: ROLE OF LEADER COMMUNITY FOR JUSTICE

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ABSTRACT

The prison punishment model makes law enforcement behavior only oriented towards punishment, so that the concept of diversion is only used as an option, without considering the importance of the success of its implementation, this study is expected to produce objectives to determine, analyze and study the role of the community in resolving cases of children in conflict with the law through diversion. This study used a socio-legal approach. The results of the study state that, Diversion, as part of restorative justice, aims to restore the condition of victims and perpetrators, and repair relationships damaged by criminal acts, not just to impose punishment. In addition, the issue of child criminal cases can also be resolved through non-formal mechanisms based on standard guidelines. Forms of non-formal handling can be carried out through diversion as a mediation process facilitated by law enforcement at every level. In the case of Children in Conflict with the Law, necessary to present community leaders to provide considerations for the success of diversion so that it achieves the value of justice.

1. Introduction

The juvenile criminal justice process starting from investigation¹, prosecution, trial and in carrying out court decisions in juvenile correctional institutions must be carried out by officials who are specially educated or at least know the problems of juvenile delinquents. Treatment during the juvenile criminal justice² process must pay attention to the principles of child protection and continue to uphold the dignity of children without ignoring the implementation of justice, for that law enforcers are not only experts in the field of legal science but especially honest and wise and have a broad and deep view of the weaknesses

1 Nasution, Fahrul Rozi, Mustamam Mustamam, and Mukidi Mukidi., Restorative Justice Dalam Proses Penyidikan Terhadap Anak Sebagai Pelaku Tindak Pidana Persetubuhan. *Jurnal Ilmiah Metadata*, Vol.5 No.1, 2023, page. 290-304.

2 Senandi, Winna Amelia A., and Thresia Hilda MY Krey., Analisis Tentang Penanganan Anak Yang Berkonflik Dengan Hukum Dalam Sistem Peradilan Pidana. *Jurnal Hukum Ius Publicum*, Vol.6 No.1, 2025, page. 192-209.

and strengths of humans and their society.³

In human life, children are both a gift and a trust from God. As such, their care, upbringing, and education are the responsibility and obligation of their parents.⁴ One solution that can be taken in handling child criminal cases is the restorative justice approach, which is implemented by means of diversion.⁵ Restorative justice is a process where the parties involved in a particular violation meet together to resolve the problem together on how to resolve the consequences of the violation for the sake of the future, while Diversion is a diversion of the settlement of child cases from the criminal justice process to a process outside the criminal justice system.⁶

Restorative justice is considered a new way of thinking/paradigm in viewing a crime committed by a child. So the role of the Police is very important in handling the problems of children in conflict with the law because the handling of criminal cases is initially carried out by the Police investigation⁷ so that it is expected to be able to carry out the concept of diversion in handling cases involving children as the perpetrators. However, if the Police cannot carry out/apply the concept of diversion, then the Prosecutor's Office and Judge/Court are expected to be able to carry out the concept of diversion.⁸

The implementation of diversion is motivated by the desire to avoid negative effects on the child's soul and development due to their involvement with the criminal justice system.⁹ The implementation of diversion by law enforcement officers is based on the authority of law enforcement officers called discretion. In relation to discretionary power in the criminal case process, the word discretion is often associated with the authority of the police alone, while similar authority is associated with prosecutors, known as the right to deposit or transfer cases, which is commonly known as the opportunity.¹⁰

In Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, the community has been involved in the implementation of diversion and

3 Sri Widoyati Wiratmo Soekito., *Anak dan Wanita dalam Hukum*, Jakarta: LP3S, 1983, page.71.

4 Andri Winjaya Laksana, etc, Fiqh Jinayah's Approach to Children Trapped in the Octopus of Narcotics Trafficking, *Jurnal Ilmiah Mizani*, Vol.12 Issue.01, April, 2025, page. 309-321

5 Nasution, Chairuni., Pengaruh Diversi Terhadap Penyelesaian Tindak Pidana Anak Dan Tinjauan Terhadap Peradilan Anak. *Innovative: Journal Of Social Science Research*, Vol.3 No.6, 2023, page. 5067-5074.

6 Triwati, Ani, and Doddy Kridasaksana., Pijakan Perlunya Diversi Bagi Anak Dalam Pengulangan Tindak Pidana. *Jurnal USM Law Review*, Vol.4 No.2, 2021, page. 828-843.

7 Chuasanga A., Ong Argo Victoria., Legal Principles Under Criminal Law in Indonesia and Thailand, *Jurnal Daulat Hukum*, Vol.2 No.1, 2019;

8 Akbar, Muhammad Fatahillah., Pembaharuan Keadilan Restoratif Dalam Sistem Peradilan Pidana Indonesia. *Masalah-Masalah Hukum*, Vol.51 No.2, 2022, page. 199-208.

9 Badaru, Baharuddin, and Asriana Asriana., Implementasi Perlindungan Hukum Terhadap Anak Melalui Saran Diversi Dalam Setiap Peradilan Pidana Di Kabupaten Pinrang. *Indonesian Journal of Legality of Law*, Vol.6 No.1, 2023, page. 46-52.

10 Eva Achjani Zulfa, Indriyanto Seno Adji., *Pergeseran Paradigma Pemidanaan*, Bandung: Lubuk Agung, 2011, page.16.

restorative justice in resolving child criminal cases.¹¹ In accordance with Article 93, which reads: The community can participate in protecting children from prevention to social reintegration of children by: Submitting reports of violations of children's rights to the authorities; Submitting proposals regarding the formulation and policies related to children; Conducting research and education on children; Participating in resolving children's cases through diversion and restorative justice approaches; Contributing to the rehabilitation and social reintegration of children, child victims and/or child witnesses through community organizations; Monitoring the performance of law enforcement officers in handling children's cases; or Conducting socialization regarding children's rights and laws and regulations related to children. Community participation if not required in resolving cases of children in conflict with the law does not fulfill a sense of justice for children.¹² The word "can" in Article 93 of Law No. 11 of 2012 on the Juvenile Criminal Justice System should be mandatory, so that the community must be involved in resolving children's cases through diversion in order to provide more legal protection for children's rights.¹³ Resolving children's cases without community involvement can be considered complete by simply presenting the perpetrator's family and the victim's family as well as investigators, but it does not necessarily provide a sense of justice for children.¹⁴

Article 93 of the UUSPPA stipulates the following: "The community can play a role in protecting children from prevention to social reintegration of children by means of...and so on." The word "can" in Article 93 of the UUSPPA is the dilemma in the practice of implementing diversion, because it is permissible or not, depending on the situation. Article 93 of the UUSPPA does not provide legal certainty (uncertainty) and a sense of justice, namely restorative justice through diversion. This article does not determine the role of the community as an obligation in diversion, so it is not uncommon to find many ABH cases resolved without community involvement. The implication is that it is sufficient to present the perpetrator's family and the victim's family as well as investigators.¹⁵

11 Setyawan, Vincentius Patria., Makna Frasa "Pengurangan Tindak Pidana" Dalam Regulasi Penyelesaian Perkara Anak Dengan Keadilan Restoratif. *Ijolaes: Indonesian Journal of Law Research*, Vol.1 No.2, 2023, page. 28-31.

12 Kelibia, Muhammad Umar., Upaya Diversi Terhadap Anak Yang Melakukan Tindak Pidana Dalam Perspektif Keadilan Restoratif. *Iblam Law Review*, Vol.3 No.3, 2023, page. 426-441.

13 Hermi, Hermi Asmawati., Tinjauan Yuridis Terhadap Pertanggungjawaban Pidana Anak Sebagai Pelaku Penganiayaan Yang Mengakibatkan Kematian Menurut Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak. *Jurnal Hukum Legalita*, Vol.4 No.2, 2022, page. 147-160.

14 Zaidun, Zaidun, and Joko Setiyono., Penyelesaian Tindak Pidana Penganiayaan Dengan Pendekatan Keadilan Restoratif. *Jurnal Pembangunan Hukum Indonesia*, Vol.6 No.1, 2024, page.49-60.

15 Anggara, Rizki Bima, Risma Apriyanti, Rizka Erlyani, Pradipta Prihantono, Sofyan Sauri, Handoyo Prasetyo, and Atik Winanti., Penegakan Teori Keadilan Dan Kepastian Hukum Melalui Revisi Undang-Undang Sistem Peradilan Pidana Anak:(Studi Kasus Putusan No. 50/PID. SUS-Anak/2024/PN PLG Dan Putusan NO. 3/PID. SUS-Anak/2024/PN PNJ). *Lex Sharia Pacta Sunt Servanda: Jurnal Hukum Islam dan Kebijakan*, Vol.2 No.1, 2024, page. 32-39.

For example, the community representative is the local Head of the Environment, if there is none, it is not a problem, they can even choose anyone from the community they mean.¹⁶ Presenting one person from the community, for example the Kepling, is considered sufficient to meet the requirements. In other words, the norm of the word "can" in the article is only to fulfill the requirements. The orientation of diversion like this is no longer aimed at finding justice for children and/or the best resolution of cases for children in accordance with the philosophy of diversion itself, but rather is oriented towards fulfilling the requirements only. The essence of diversion based on the theory of restorative justice is to involve all elements and related elements, so that what is aimed at is transparency, honesty, and responsibility of each party by means of the community participating in monitoring and controlling the development of the resolution of ABH cases through diversion.¹⁷

The failure to accommodate the community's supervisory function for the settlement of ABH cases through diversion can increase suffering and psychological pressure for the child and his/her family.¹⁸ Law enforcement officers and other parties from child care institutions may have resolved cases against children through diversion, but in addition, negative stigma may also arise or ABH rights are still not protected or are taken away. Therefore, the purpose of requiring community participation is to carry out a supervisory function (control) over the implementation of diversion and as a balancer.¹⁹ Diversion is implemented in addition to preventing children from imprisonment, also trying to prevent children from deprivation of liberty, avoiding children from negative stigma, and avoiding children from retaliation, so that social harmony is created by paying attention to the principle of propriety in treatment, upholding morality, and maintaining public order.²⁰

The role of the community in resolving cases of children in conflict with the law through diversion in Indonesia currently indicates that it is still not running well. Law enforcement by the police, prosecutors, and judges still lacks concern and sensitivity from law enforcement officers in handling ABH. This should not happen, because they have the discretion to provide alternatives that are more

16 Airlangga, Rendy, Hizkia Andhian Pradipta, and Dyta Widi Erdianto., Reformulasi Konsep Diversi Berdasarkan Cita Hukum Non-Diskriminasi. *Refleksi Hukum: Jurnal Ilmu Hukum*, Vol.8 No.1, 2023, page. 17-38.

17 Sari, Gholin Noor Aulia, Wahyu Sinta Dewi Pramudita, Raden Muhammad Muhklasin, Dewi Sulistianingsih, and Martitah Martitah. Tinjauan Filosofis Keadilan Restoratif Dalam Lensa Teori Keadilan. *Hukum dan Politik dalam Berbagai Perspektif 3* (2024). 211

18 Kurniawan, Muhammad Andy, and Teguh Suratman., Peranan Penyidik Dalam Penyelesaian Perkara Anak Yang Berhadapan Dengan Hukum (ABH) Melalui Diversi Dengan Cara Restorative justice Di Polres Halmahera Timur. *MLJ Merdeka Law Journal*, Vol.5 No.2, 2024, page. 104-112.

19 Al-Ghony, Mishbahul Ummah, Andy Usmina Wijaya, and Fikri Hadi., Restorative Justice Dalam Penanganan Anak Yang Berhadapan Dengan Hukum. *Gorontalo Law Review*, Vol.7 No.1, 2024, page. 85-95.

20 Aryani, Tuti, Adelita Putri, and Alifia Khairunnisa., Efektivitas Upaya Diversi Dalam Penyelesaian Perkara Anak Yang Berhadapan Dengan Hukum. *Jurnal Pro Justitia (JPJ)*, Vol.5 No.2, 2024.

than imprisonment to protect the interests of the child's future.²¹

In the formulation of Article 93 of the UUSPPA, it does not specify the role of the community as an obligation in diversion, so it is not uncommon to find many ABH cases that are resolved without community involvement, In the formulation of Article 93 of the UUSPPA, it does not specify the role of the community as an obligation in diversion, so it is not uncommon to find many children in conflict with the law cases that are resolved without community involvement. The obstacles found were the first is the low level of public understanding regarding the implementation of diversion, the public considers prison to be the right place for children who commit crimes. The second is the attitude of the parties to the case, such as the victim not wanting to reconcile, the victim demanding very high compensation and the lack of good faith from the perpetrator, the third is the weakness in the SPPA Law, specifically regarding the requirements for diversion and there is no article that requires the parties to the case to participate in diversion.²²

In the settlement of children's cases through diversion, at every level of justice, be it investigation, prosecution, or court examination, there is no clear legal certainty and still provides options with and/or without direct community participation. The settlement of children's cases through diversion, even though it does not involve community participation, the Diversion decision is considered valid and the process is complete and does not need to be continued at every level of justice, be it investigation, prosecution, or court examination.²³

In the formulation of Article 93 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, it does not provide legal certainty and a sense of justice, namely restorative justice through diversion by requiring the involvement of community participation.²⁴

Dian Rahmawati's research states that the participation of the community in the implementation of diversion is very important because apart from being mandated by the Act No. 11 of 2012, community members also implement Community Based Corrections (CBC); community participation can increase the effectiveness and efficiency of the settlement of children's cases; Community participation in the implementation of diversion is an effort to protect children and protect the community itself.²⁵ Furthermore, research conducted by Fitria Yut Sepin states that The mentoring by Community Guidance Officers in the

21 Triwati, Ani, and Doddy Kridasaksana., Pijakan Perlunya Diversi Bagi Anak Dalam Pengurangan Tindak Pidana. *Jurnal USM Law Review*, Vol.4 No.2, 2021, page. 828-843.

22 Muhammad Rifqi Thoriq, Ramziati, Hambatan dalam Pelaksanaan Diversi Terhadap Anak Berkonflik dengan Hukum di Pengadilan Negeri Binjai, *Cendekia: Jurnal Hukum, Sosial & Humaniora*, Vol.2 Issue.1, 2024, page. 396-403

23 Jainah, Zainab Ompu, M. Faisal, and Alam Satria Kenali., Analisis Yuridis Peran Jaksa Dalam Proses Diversi Terhadap Anak Yang Berhadapan Dengan Hukum. *Justicia Sains: Jurnal Ilmu Hukum*, Vol.9 No.1, 2024, page. 286-296.

24 Kelibia, Muhammad Umar., Upaya Diversi Terhadap Anak Yang Melakukan Tindak Pidana Dalam Perspektif Keadilan Restoratif. *Iblam Law Review*, Vol.3 No.3, 2023, page. 426-441.

25 Dian Rahmawati and Bambang Tri Bawono, The Community Participation in the Implementation of Diversion at Investigation Level, *Law Development Journal*, Vol.3 Issue.4, December 2021, page. 808-818

implementation of diversion has referred to Law No. 11 of 2012, which mandates activities such as escorting, guiding, and assisting during the diversion process and the implementation of agreements, including reporting to the court if the diversion is not carried out.²⁶ Subsequent research conducted by Salsabila Ramdhan resulted in Diversion, which should be prioritized for Children in Conflict with the Law, is often bypassed in favor of formal court proceedings. This issue is exacerbated by limited community involvement, a dominant retributive mindset, and the absence of professional social workers factors that collectively hinder the realization of restorative justice and the psychological protection of the child. To optimize the protection of Children in Conflict with the Law is essential for law enforcement agencies (Police, Prosecutors, Courts) to deepen their understanding of children's rights and actively involve the community in diversion processes, including by inviting alternative necessary representatives. Additionally, public when education efforts are needed to increase awareness about diversion mechanisms and to challenge the negative stigma toward Children in Conflict with the Law, as well as the prevailing mindset that favors harsh.²⁷

This study is expected to produce objectives to determine, analyze and study the role of the community in resolving cases of children in conflict with the law through diversion in Indonesia today, as well as the role of the community in resolving cases of children in conflict with the law through diversion in Indonesia today.

2. Research Methods

This legal research is socio-legal research, namely placing law as a social phenomenon. In such cases, law is viewed from its external side only. Therefore, in socio-legal research, law is always associated with social problems. Such research is research that focuses on individual or community behavior in relation to law.²⁸ Qualitative data analysis techniques tend to be more tangible a process with selected data analysis to understand a thorough problem based on existing facts than to examine the problem for generalizing.²⁹

3. Results And Discussion

3.1 The Diversion Policy in the Context of Child Protection as a Diversion for Settlement of Children's Cases

Sentencing a child must be the last resort³⁰ because peace efforts can still be

26 Fitria Yut Sepin, Kasmanto Rinaldi, M.Musa., Optimizing the Role of Community Advisors in Assisting Juvenile Clients with Diversion at the Mandau Sector Police, *Pena Justisia*, Vol.23 No.03, Dec.2024, page. 16-30

27 Salsabila Ramdhan, Agustinus Pohan, Diversion of Juvenile Offenders Through Community-Based Collaboration, *Al Huwiyah Journal of Woman and Children Studies*, Vol.05 No.01, June 2025, page. 48-59

28 Peter Mahmud Marzuki., *Penelitian Hukum*, Jakarta: Kencana, 2009, page.87

29 Arya Zahroul Mufida; Pujiyono, Legal Protection Through Diversion in Child Crimes Based on the Juvenile Justice System Law (SPPA Law), *International Journal of Social Science Research and Review*, Vol.7 No.9, 2024, page. 308-317.

30 Crofts, Thomas, Enys Delmage, and Laura Janes., Deterring Children From Crime Through Sentencing: Can It Be Justified?" *Youth Justice*, Vol.23 No.2, 2023, page. 182-200.

made through diversion with a restorative justice approach as a penal mediation. The influence that causes a child to become a delinquent is not appropriate if handled according to adults in court. Children must receive protection, and also justice in order to determine their future.

Handling children in conflict with the law cannot use the criminal justice system used for adults.³¹ The Criminal Justice System that applies to adults is not appropriate if applied to a child in conflict with the law and for that reason a juvenile criminal justice system is used which specifically regulates the handling of children in conflict with the law.³²

The issuance of the Child Criminal Justice System Law replacing the Juvenile Court Law shows that there is a need for special handling related to children in conflict with the law, namely through diversion and if no agreement is reached, then criminal and action can be given.³³ The difference between criminal and action is traditionally stated as follows that criminal is retaliation for the perpetrator's mistake, while action is for the protection of society and the development of the perpetrator. The differences contained above can be interpreted that, punishment is given to someone who is considered guilty and able to take responsibility. Punishment in the existing Criminal Code has a form of retributive justice, meaning, retribution is given to the perpetrator as a result of the actions he has committed.³⁴

According to Wright,³⁵ penal mediation is a process in which victim(s) and offender(s) communicate with the help of an impartial third party, either directly (face-to face) or indirectly via the third party, enabling victim(s) to express their needs and feelings and offender(s) to accept and act on their responsibility." (A process in which victims and perpetrators of crimes meet and communicate with the help of a third party either directly or indirectly by using a third party as a liaison, making it easier for victims to express their needs and feelings and also allowing perpetrators to accept and be responsible for their actions).

The penal mediation proposed by Wright shows that what is meant is the implementation of restorative justice. In contrast to the approach to justice in the conventional criminal justice system which emphasizes retributive justice, this approach looks more at the direct participation of children as perpetrators,

31 Yuliatun, R. Khifti, and Juwita Juwita. , Implementation Of Regulations In Handling Children In Conflict With The Law (ABH). *Jurnal Scientia*, Vol.13 No.03, 2024, page. 140-156.

32 Galleposo, Dianne, Alliah Neil Robles, Geraldine Calasang, Fricella Blando, Crisia Mae Gumicad, Giovanni Ferraren, and Jhon Ed Amarille., Life Of Social Workers: Characterizing Their Experiences And Challenges In Handling Children In Conflict With The Law. *Threshold*, Vol.15 No.2, 2023.

33 Chandra, Tofik Yanuar., Penerapan Restorative Justice Dalam Sistem Peradilan Pidana Anak di Indonesia." *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial*, Vol.11 No.01, 2023, page. 61-78.

34 Simatupang, Rajarif Syah Akbar., Pelaksanaan Sistem Peradilan Pidana Anak Di Indonesia Perspektif Nilai Keadilan. *Jurnal Yuridis*, Vol.11 No.1, 2024, page. 54-63.

35 Qodir, Ibnu, Ahmad Sholihin Siregar, and Hasna Tuddar Putri., Analisis Yuridis Pelaksanaan Mediasi Pada Perkara Pidana Dalam Qanun Aceh Nomor 9 Tahun 2008 Tentang Pembinaan Adat. *Mubeza*, Vol.11 No.2, 2021, page. 61-68.

victims and the community in the process of resolving criminal cases. Despite the fact that this approach is still being debated theoretically, this view has in fact developed and has influenced many legal policies and practices in various countries.³⁶

The failure to implement this diversion shows that diversion has not been fully successful because of the many cases only 2 (two) were successfully handled through diversion by judges at the Medan District Court, this shows that obstacles were found in the success of diversion at the Medan District Court.³⁷

Peace is made between the victim and the child in this case the child in question is the perpetrator. The judge who handles the diversion case at the court level is a judge who is appointed based on the Decree of the Chief Justice or another official appointed by the Chief Justice upon the recommendation of the chief justice of the relevant district court through the chief justice of the high court.³⁸

Briefly, the appointment of a judge in handling children in conflict with the law in the district court is carried out by the local Chief Justice of the District Court.³⁹ The implementation of diversion carried out using the right restorative justice approach can lead to an agreement between the child perpetrator and parents/guardians with the victim and the victim's parents/guardians.⁴⁰

The parties involved in implementing the diversion deliberation are the child and their parents, their guardians, the victim and/or their parents/guardians, Community Guidance, and Professional Social Workers based on the Restorative Justice approach. Muladi in Hadi Supeno's book states that in restorative justice the victim's dignity is taken into account. The perpetrator must be responsible and reintegrated into his community. The perpetrator and victim are in an equal position and need each other, therefore they must be reconciled.

The function of law in community life is as a tool of social engineering.⁴¹ To realize this goal, the process of socializing laws and regulations is a necessity that must be attempted. This socialization process is important so that the legal

36 Flora, Henny Said., Perbandingan Pendekatan Restorative Justice Dan Sistem Peradilan Konvensional Dalam Penanganan Kasus Pidana. *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam*, Vol.5 No. 2, 2023, page 1933-1948.

37 Rismawati, Rismawati, Hardianto Djanggih, Muhammad Amir, and Marif Marif., Pelaksanaan Diversi Terhadap Anak Sebagai Pelaku Tindak Pidana: Studi Di Pengadilan Negeri Watampone. *Journal of Lex Theory (JLT)*, Vol.6 No.1, 2025, page. 39-54.

38 Simanjuntak, Esther Wita, Madiasa Ablisar, Sutiarnoto Sutiarnoto, and Marlina Marlina. "Peran Hakim Terhadap Penerapan Diversi Sebagai Upaya Menciptakan Restoratif Justice Dalam Tindak Pidana Anak. *Iuris Studia: Jurnal Kajian Hukum*, Vol.2 No.2, 2021, page. 310-321.

39 Delmiati, Susi., Pelaksanaan Diversi oleh Kejaksaan Negeri Sawahlunto Terhadap Anak yang Berkonflik Dengan Hukum. *Ekasakti Legal Science Journal*, Vol.1 No.1, 2024, page. 39-45.

40 Patrycia, Sri, Gialdah Tapiansari Batubara, and Faris Fachrizal Jodi., Implementasi Pendampingan Anak Berkonflik Hukum Dalam Pelaksanaan Proses Penegakan Hukum Berdasarkan Sistem Peradilan Pidana Indonesia. *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat*, Vol.2 No.01, 2024, page. 41

41 Sumardi, Dedy, Ratno Lukito, and Moch Nur Ichwan., Legal pluralism within the space of Sharia: Interlegality of criminal law traditions in Aceh, Indonesia. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, Vol.5 No.1, 2021, page. 426-449.

regulations can function effectively in community life.⁴²

The consequences that will arise if a legal product is not disseminated to all levels of society is the lack of public understanding of the substance of the regulation. As a result, many people do not understand and implement it as stipulated in the provisions of the legislation. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System is one example of a legal product that has not been implemented effectively.

Cases of children who have not been successfully diverted at the Police level are due to the public's understanding being very lacking.⁴³ The public considers that children should be punished with imprisonment. In fact, the obligation to implement diversion is not only carried out at the investigation level, but at the prosecution and trial stages, diversion is still carried out. The opportunity to implement diversion can still be carried out even though diversion at the investigation and Prosecutor's Office levels fails. The opportunity for successful implementation of diversion is not only carried out at the investigation level, but the opportunity is still available at the next two stages, namely the prosecution and examination stages in court.

Understanding the law by the community is very important to be provided so that law enforcement functions effectively. In order for the law to function properly, the following 4 (four) elements are needed, namely: the existence of laws and regulations, the existence of law enforcement officers, the existence of facilities that support its implementation and the existence of public legal awareness and compliance. Therefore, the community needs to be given serious socialization so that they are aware of the existence of legal regulations that regulate a problem and implement them according to the specified substance.

One of the obstacles in implementing diversion is the absence of the victim's parents when the diversion process is carried out.⁴⁴ The case will continue when the victim's parents have been summoned but do not heed it. The factors that cause the victim's parents to be absent are based on several reasons, such as their place of residence being very far away, not having enough time due to personal busyness and other reasons.⁴⁵

To anticipate the expiration of the detention limit at each stage of the case, it is

42 Nugmanovna, Mahmudova Aziza., The place and significance of social and legal control in the legal socialization of the individual in civil society. *Asian Journal of Research in Social Sciences and Humanities*, Vol.12 No.2, 2022, page. 21-33.

43 Goldstein, Naomi ES, Amanda NeMoyer, TuQuynh Le, Siying Guo, Lindsey M. Cole, Angela Pollard, Rena Kreimer, and Fengqing Zhang. Keeping Kids In School Through Prearrest Diversion: School Disciplinary Outcomes Of The Philadelphia Police School Diversion Program. *Law and Human Behavior*, Vol.45 No.6, 2021, page. 497.

44 Munggardijaya, Awang, Hernawati Hernawati, Yeti Kurniati, and Rini Ayu Susanti., Implementasi Diversi Terhadap Tindak Pidana yang Dilakukan oleh Anak Berdasarkan Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak. *Innovative: Journal Of Social Science Research*, Vol.5 No.3, 2025, page. 2214-2232.

45 Anam, Fahrur, Roy Marthen Moonti, Yusrianto Kadir, and Muslim Kasim., Penerapan Diversi Terhadap Tindak Pidana Tanpa Korban (Tindak Pidana Narkotika) Yang Dilakukan Oleh Anak. *WISSEN: Jurnal Ilmu Sosial Dan Humaniora*, Vol.2 No.2, 2024, page. 124-144.

immediately continued to the next level. Because the detention limit for children in conflict with the law in the SPPA Law is very low. Detention at the investigation level as regulated in Article 33 of Law No. 11 of 2012 is for 7 days and can be extended for 8 days. The detention period at the Prosecutor's Office level is lower than that at the investigation level. The detention limit at the prosecution stage is for 5 days and can be extended for 5 days. Meanwhile, the detention limit at the court level is for 10 days and can be extended for 15 days. The detention limit provided by the Law is very low, which has very fatal consequences if the victim's parents do not attend the diversion process. The case must be transferred to the next level if the detention period that has been set has expired. The time limit determined by the Law has legal consequences if it has exceeded the time limit, namely that the child must be removed by law.

Children who commit crimes sometimes do it repeatedly.⁴⁶ The victim shifts from one person to another. This is also a problem for the authorities in handling such cases of children. To overcome this so that the crime is not repeated, the authorities make an agreement with the child and his parents that the child will not repeat his actions again. Over time, he still continues to commit acts that violate the law.

Bad habits of children that cannot be changed are one of the reasons for the authorities to no longer care about him. If some children repeat their actions and do not comply with the peace agreement that has been made, and commit acts that violate the law the next time, then the case will be handed over to the authorities.⁴⁷ The detention of children is generally considered ineffective and often counterproductive. Numerous studies show that incarcerating minors can lead to negative psychological impacts, disrupt their education, and increase the likelihood of reoffending rather than rehabilitating them. Instead of fostering accountability and personal growth, detention environments often expose children to violence, abuse, and negative peer influences. Effective juvenile justice systems prioritize restorative justice, education, and community-based rehabilitation programs that address the root causes of delinquent behavior while supporting the child's reintegration into society. Therefore, detention should be a last resort, used only when absolutely necessary for public safety.

In the case of Children in Conflict with the Law, the community should be able to participate and supervise the implementation of the criminal justice system.⁴⁸ The community must be directly involved in enforcing criminal law. Because the current concept of diversion does not fully include the principle of justice as the goal of implementing the law. As explained in the previous chapter, community participation is not an obligation in diversion, so it is not uncommon to find many ABH cases that are resolved without community involvement. The

46 Tuasikal, Hadi, and Johana Asmuruf., Handling Children Who Commit Crimes Under the Criminal Justice System. *Journal of Law Justice*, Vol.2 No.2, 2024, page. 150-161.

47 Sanderan, Rannu, Daniel Ronda, Robi Panggarra, and Andrew Buchanan., Unnalli Melo's Theology and Peace Study on the Concept and Reality of Peace in Toraja Culture. *Jurnal Jaffray*, Vol.20 No.1, 2022, page. 38-57.

48 Panu, Ariyanti, Roy Marthen Moonti, and Ibrahim Ahmad., Reformasi Sistem Peradilan Pidana Anak di Indonesia Antara Diversi, Restoratif, dan Perlindungan Hak Anak. *Politika Progresif: Jurnal Hukum, Politik dan Humaniora*, Vol.2 No.2, 2025, page. 276-293.

implication is that it is sufficient to present the perpetrator's family and the victim's family as well as the investigator. The orientation of diversion like this is no longer aimed at finding justice for children and/or the best resolution of cases for children in accordance with the philosophy of diversion itself, but rather is oriented towards fulfilling the requirements only.⁴⁹

In addition, diversion can only be applied to criminal cases of children who are threatened with imprisonment of 7 years or less and repetition, while for criminal cases of children with a sentence of more than seven years, criminal justice procedures such as Law No. 3 of 1997 concerning juvenile courts still apply, where in this Law diversion is not applied, so that children in conflict with the law will still be processed in accordance with the objectives of child criminalization which are retributive justice. Then the concept of diversion only applies unilaterally to certain crimes.

The role of society in resolving cases of children in conflict with the law in the concept of diversion is an inseparable part of the renewal of juvenile criminal law in Indonesia, which has undergone a transformation from a retributive justice approach to restorative justice. The instrument used in restorative justice is diversion, which provides an opportunity for children in conflict with the law to reconcile with the victim. With this concept, children in conflict with the law can avoid the judicial process, so that the principle of *ultimum remedium* can run in the juvenile criminal justice system. The development of diversion as a restorative justice instrument continues to develop, from an instrument to a separate concept that requires serious study in an effort to support the renewal of juvenile criminal law in Indonesia.⁵⁰

The principle of justice places the law must apply fairly to everyone involved in the law itself, likewise diversion should be the rights of every child in conflict with the law, either with a threat of more than 7 years or repetition, thus every child has the right to get the opportunity for diversion, whatever the action taken.

This community participation is very important, because from the perspective of the community it can be assessed whether the process of resolving criminal cases can realize justice or not. The settlement of criminal cases should not be monopolized by law enforcement officers. It is precisely in the settlement that the community is involved, so that a balanced state is achieved.⁵¹

The settlement was carried out through deliberation involving the perpetrator's family, the victim, and the community at the scene of the crime. Law

49 Dharman, Iqbal Rasyid, and Padmono Wibowo., *Residivis Anak di LPKA Kelas I Medan: Studi Kasus Mengenai Faktor dan Solusi Terbaik. Journal of Management: Small and Medium Enterprises (SMEs)*, Vol.17 No.1, May 2024, page. 259-266.

50 Muladi, Andri, and Umar Anwar., *Optimalisasi Peran Pembimbing Kemasyarakatan Dalam Proses Diversi Pada Tingkat Penyidikan Kasus Anak Yang Berkonflik Dengan Hukum. Jurnal Pendidikan Kewarganegaraan Undiksh*, Vol.11 No.3, 2023, page. 118-126.

51 Maulana, Aby, Pathorang Halim, and Tubagus Heru Dharma Wijaya., *Kebijakan Penyelesaian Perkara Pidana di Luar Pengadilan Dengan Model Pemaafan Korban (Victim Pardon Model) Dalam Pembaruan Hukum Pidana Nasional (Perspektif Hukum Pidana dan Hukum Islam). Al-Qisth Law Review*, Vol.7 No.1, 2023, page. 132-166.

enforcement officers should facilitate the deliberation and implement what was agreed upon in the deliberation. The results of the deliberation showed that this case was resolved peacefully.

3.2 The Community Participation in Resolving Children's Cases Through Diversion is Currently Not Going Well

The current concept of diversion does not fully include the principle of justice as the goal of implementing the law, so it requires a deeper study to rebuild (reconstruct) the diversion paradigm based on justice. As explained in the previous chapter, community participation is not an obligation in diversion, so it is not uncommon to find many ABH cases that are resolved without community involvement. The implication is that it is sufficient to present the perpetrator's family and the victim's family and investigators. The orientation of diversion like this is no longer aimed at finding justice for children and/or the best case resolution for children in accordance with the philosophy of diversion itself, but rather is oriented towards fulfilling the requirements only. In addition, diversion can only be applied to juvenile criminal cases that are threatened with imprisonment of 7 years or less and repetition, while for juvenile criminal cases with a sentence of more than seven years, criminal justice procedures such as Law No. 3 of 1997 concerning juvenile courts still apply, where this Law diversion is not applied, so that children in conflict with the law will still be processed in accordance with the purpose of child criminalization which is retributive justice. Then the concept of diversion only applies unilaterally to certain crimes.

The role of society in resolving cases of children in conflict with the law in the concept of diversion is an inseparable part of the renewal of child criminal law in Indonesia,⁵² which has undergone a transformation from a retributive justice approach to restorative justice. The instrument used in restorative justice is diversion, which provides an opportunity for children in conflict with the law to reconcile with the victim. With this concept, children in conflict with the law can avoid the judicial process, so that the principle of *ultimum remedium* can run in the child criminal justice system. The development of diversion as an instrument of restorative justice continues to develop, from an instrument to a separate concept that requires serious study in an effort to support the renewal of child criminal law in Indonesia.⁵³

The principle of justice places the law must apply fairly to everyone involved in the law itself,⁵⁴ likewise diversion should be the rights of every child in conflict with the law, either with a threat of more than 7 years or repetition, thus every child has the right to get the opportunity for diversion, whatever the action

52 Nainggolan, Asmita Widimartha, and Yasmirah Mandasari Saragih., Penerapan Diversi terhadap Anak yang Berhadapan Dengan Hukum dalam Sistem Peradilan Anak. *Innovative: Journal Of Social Science Research*, Vol.3 No.4, 2023, page. 6371-6383.

53 Nasution, Chairuni., Pengaruh Diversi Terhadap Penyelesaian Tindak Pidana Anak Dan Tinjauan Terhadap Peradilan Anak. *Innovative: Journal Of Social Science Research*, Vol.3 no. No.6, 2023., page. 5067-5074.

54 Breen, Claire., *The standard of the Best Interests of the Child: A Western Tradition in International And Comparative Law*. Vol.72, Brill, 2021, page.72

taken. This diversion concept is what is tried to be built in this dissertation research, so that a justice-based diversion concept is obtained. Regarding the characteristics of the diversion concept in the renewal of juvenile criminal law regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, the diversion paradigm will then be discussed in order to build propositions related to the construction of diversion in Indonesia, and finally rebuilding the diversion paradigm with a justice value approach in order to find a new paradigm of the diversion concept as a concept of child protection in the juvenile criminal justice system in Indonesia.

From a policy approach perspective, criminal law reform is essentially part of social policy, criminal policy and part of law enforcement policy. If viewed from the perspective of a value approach, then criminal law reform is essentially an effort to review and re-evaluate (reorient and re-evaluate) the socio-political, socio-philosophical, socio-cultural values that underlie and provide content to the normative and substantive content of the desired criminal law". Jimly Assyiddiqie stated that theoretically, law is considered relevant, suitable for adoption in legal reform if it meets several measures of relevance, namely sociological relevance, philosophical relevance, theoretical relevance. Legal relevance, namely if the legal principle does not conflict with constitutional principles or does not conflict with legal norms of a higher level. Sociological relevance, namely if the legal principle is truly accepted and recognized by the community. Philosophical relevance, namely if the legal principle does not conflict with the legal ideals of a society as the highest positive value in the philosophy of life of that society. The philosophy of life of the Indonesian nation is measured by the philosophy of Pancasila, which is the source of all sources of law in the context of national and state life in Indonesia. Theoretical relevance, namely relevance based on the perspective of theories or science of criminal law and the criminal justice system.

The proposition of the purpose of implementing the diversion concept is to protect child perpetrators of crimes, to avoid the negative influence of the formal process of the juvenile criminal justice system for certain child perpetrators, because the completion of the formal process through the juvenile criminal justice system will allow more harm to the child perpetrator.⁵⁵ Therefore, the diversion program is a program that diverts the stages of the formal justice process for a defendant and replaces it with a policy based on a pattern of social community services. The purpose of implementing this program is to eliminate negative effects, such as those arising from the application of formal or administrative procedures in the conventional justice system. This alternative policy is considered the most appropriate step and will provide optimal results, especially in cases where the perpetrator commits a crime that is classified as minor or not serious and the family, school, and community environment themselves also provide support and can act appropriately.

55 Munajat, Makhrus., Transformasi Penanganan Anak dalam Konflik Hukum: Kerangka Diversi dan Keadilan Restoratif. *IN RIGHT: Jurnal Agama dan Hak Azazi Manusia*, Vol.14 No.1, 2025, page. 85-109.

The condition of Indonesian society as a religious society can accept the concept of diversion, this is seen in general about the characteristics of a religious society, namely, a society that believes and is devoted to God Almighty; love of the homeland, compassion for others, likes to work and is willing to sacrifice for others. A society that believes and is devoted to God Almighty will strongly support the implementation of child protection, because according to religious teachings, it is the duty of the head of the household (father) so that his family (children and wife) are protected from the torment of hellfire.⁵⁶

Guiding, educating and protecting children is an obligation, especially by parents, their families, and then the obligation of the local community and the government.⁵⁷ The implementation of the diversion concept requires the involvement of parents, the community and the government. The concept of diversion as a form of responsibility and parental affection in guiding children.⁵⁸

Indonesian society as a whole and united society, can accept the concept of diversion, this is seen that Indonesian society as a whole and united society, namely harmonious, peaceful, not divided by various factors such as beliefs, ideology, politics, economy and culture. Indonesian society with its diversity is what drives us to unite. In the principle of Indonesian unity,⁵⁹ there are values of a sense of responsibility, social solidarity towards fellow citizens, the people of Indonesia, and showing a willingness to make sacrifices in order to protect the nation of Bhineka Tunggal Ika. The concept of diversion is in accordance with the value of unity, because with this diversion program, the parties are reunited after a conflict. The concept of diversion can be an effort to resolve the conflict, or reunite the perpetrators and victims, by providing compensation or restitution, it is hoped that the victims' losses will be replaced, so that the feeling of resentment has disappeared between the parties.

Pancasila is not merely the moral of the Indonesian nation, but rather a moral that binds all humans and therefore can be called a universal moral. The 5 (five) moral principles of Pancasila are rooted in the natural position of humans as God's creatures and individual humans themselves.⁶⁰ The morals of Pancasila become a guide in making laws that regulate the life of the state, determine state institutions and their respective duties, the rights and positions of citizens,

56 Fitriati, Bunga, and Achmad Khudori Soleh., Dampak Sosial Dan Psikologis Pada Individu Yang Mengalami Konversi Agama Di Indonesia. *Maliki Interdisciplinary Journal*, Vol.1 No.2, 2023, page. 179-185.

57 Badran, Doaa Mohamed Ibrahim, and Mahmoud Abd Elhady., Ensuring Children's Right To Education: Balancing Legal Responsibility And Parental Authority Arbitrariness. *Conhecimento & Diversidade*, Vol.16 No.42, 2024, page. 180-192.

58 Jalilah, Nisfawati Laili., Konsep Diversi Dalam Penyelesaian Perkara Pidana Anak. *Al-IHKAM Jurnal Hukum Keluarga Jurusan Ahwal al-Syakhsiyyah Fakultas Syariah IAIN Mataram*, Vol.15 No.1, 2023, page. 19-38.

59 Risdiany, Hani, and Dinie Anggraeni Dewi., Penguatan karakter bangsa sebagai implementasi nilai-nilai Pancasila. *Jurnal Pendidikan Indonesia*, Vol.2 No.4, 2021, page. 696-711.

60 Nurak, Genesius, F. X. Marmidi, and Carolus A. Sihalo., Kemanusiaan yang Adil dan Beradab Menurut Pancasila: Tinjauan Etis atas Sila II dari Pancasila. In *Seminar Nasional Filsafat Teologi*, 2023, page,26-41.

the relationship between citizens and the state and vice versa.

Diversion practices have been used by various countries in the world to resolve criminal acts through processes outside the formal criminal justice system. The settlement of certain criminal acts, especially those committed by children, which occurs because the implementation of diversion in various countries has types of criminal acts that can be resolved according to the characteristics and regulations in that country. In general, the concept of diversion does not limit and place what criminal acts can be resolved. Every criminal act can be resolved by settlement outside the formal justice system through the diversion process, only the implementation of the process must be in accordance with the main principles of diversion.

Comparison of diversion implementation is needed in this study, because comparative legal studies are needed to understand how the development of law in other countries so that the legal reforms we carry out are reasonable to adjust (adapt) to the development of other countries in general.

Regulations in Several Countries Regarding Community Participation in Resolving Cases of Children in Conflict with the Law Through Diversion, In Australia there is the Young Offenders Act 54 of 1997, which gives law enforcement (police) the authority to divert child offenders. This can be seen from the objectives of the Young Offenders Act.

The Young Offenders Act 1997 (NSW), particularly Section 3, sets out objectives for addressing offences committed by children by providing an alternative scheme to court proceedings through the use of youth justice conferences, cautions, and warnings. This scheme aims to deliver an efficient and direct response to certain offences committed by young people, and to utilize youth justice conferences to create a community-based response involving all affected parties, emphasizing restitution by the offender and acceptance of responsibility for their actions, while also meeting the needs of both victims and offenders. In Australia, the police have the authority to carry out diversion for children aged 8–18 years, taking into account the importance of avoiding labeling or stigma caused by exposure to the juvenile justice system, as well as existing doubts regarding the effectiveness of available measures for dealing with young offenders.

Taking these 2 (two) things into consideration, the police have a custom or tradition as a special right, namely discretion in the form of an official warning rather than prosecuting child perpetrators (police have traditionally had the discretion to formally caution young offenders rather than prosecute).

The mechanism for implementing diversion involves several parties, as written by K. Daly⁶¹ as follows: A young offender (who has admitted to the offense), his or her supporters (often, a parent or guardian), the victim, his or her supporters, a police officer, and the conference convenor (or coordinator) come together to discuss the offense and its impact. Ideally, the discussion takes

61 Daly, Kate., Divergence or Convergence in Models of Youth Justice From Legislation to 2023?—A Comparison Between New Zealand and Ireland. Master's thesis, Maynooth (Ireland) : National University of Ireland, 2023.

place in a context of compassion and understanding, as opposed to the more adversarial and stigmatising environment associated with the youth court. Young people are given the opportunity to talk about the circumstances associated with the offense and why they became involved in it. The young person's parents or supporters discuss how the offense has affected them, as does the victim, who may want to ask the offender "why me?" and who may seek reassurance that the behavior will not happen again. The police officer may provide details of the offense and discuss the consequences of future offending. After a discussion of the offense and its impact, the conference moves to a discussion of the outcome (or agreement or undertaking) that the young offender will complete... The sanctions or reparations that are part of agreements include verbal and written apologies, paying some form of money compensation, working for the victim or doing other community work, attending counseling sessions, among others.⁶²

The juvenile criminal justice system in Japan⁶³ adheres to the Principle of Priority Protection (Hogo Yuusen Shugi), the Principle of Referring All Juvenile Cases to the Family Court (Zenken-Soochi-Shugi), and the Principle of Diversion. This is regulated in the 2007 amendment of the Juvenile Law. Age limits are differentiated based on the offense committed as written by Kazuno Hiroyuki as follows:

Article 3 of the Juvenile Law prescribes that the Family Court shall have jurisdiction over the following juveniles: (1) juvenile offender; a juvenile from 14 to 19 years of age who has committed a criminal offense, (2) law-breaking juvenile; a juvenile under 14 who has in violation of penal provisions, (3) pre-offender; a juvenile under 20 who is likely to commit an offense or act in violation of penal provisions, in view of his or her character or circumstances, because of specific factors.

The Principle of Priority Protection, namely the examination of children⁶⁴ (people under 20 years old) who have committed crimes is separated from the procedures for adults, and the examination procedure is not intended to punish children, but rather to protect and educate children. What is needed for children who commit crimes is protection from the state, not punishment by the state. The principle of handing over all cases, meaning that children who have committed crimes who are 14 years old or older after being questioned by the police (Katesaibansho, family court) are not prosecuted in the Regular Court.⁶⁵

62 Long, Joshua S., Targeted Violence In Correctional Facilities: The Complex Motivations Of Prisoners Who Kill Child Sex Abusers. *Journal of Criminal Justice*, Vol.82, 2022, page. 101980.

63 Baradel, Martina., The Rise Of Shaming Paternalism In Japan: Recent Tendencies In The Japanese Criminal Justice System. *Trends in Organized Crime*, Vol.24 No.1, 2021, page. 23-41.

64 Diputra, I. Wayan Pramana Kharisma, and Made Cinthya Puspita Shara., Pentingnya Asas Praduga Tak Bersalah Bagi Perlindungan Hak Anak Sebagai Tersangka dalam Peradilan Pidana Anak. *Ethics and Law Journal: Business and Notary*, Vol.2 No.4, 2024.

65 Arumbinang, Mohammad Hazyar, Yordan Gunawan, and Andi Agus Salim., Prohibition of Child Recruitment as Soldiers: An International Regulatory Discourse. *Jurnal Media Hukum*, Vol.30 No.1, 2023, page. 21-32.

Only child judges in the Family Court can decide on the most appropriate treatment for children, so all children's cases must be handed over to the Family Court.⁶⁶ The juvenile criminal justice system in Japan adheres to the Principle of Diversion, this can be seen from the fact that most naughty children are avoided from punishment in institutions and if it turns out that action must be taken, then the priority is guidance outside the institution, namely social supervision. Japan is very strict with the time for implementing diversion, the resolution of cases in the Family Court must be carried out within 23 days, and steps must be taken regarding this case no later than 8 weeks.

The policy of preventing or not bringing suspects to court is a form of preventive policy in law enforcement, granting law enforcement officers the discretion to decide whether or not to prosecute suspects, even when a crime has clearly been committed. This preventive approach is applied in the Japanese criminal justice system, where not all cases are forwarded by the police to the prosecutor's office. Factors that may justify non-prosecution include minor property offences, genuine remorse shown by the suspect, compensation made to the victim, and forgiveness from the victim. Furthermore, under Article 248 of the Japanese Criminal Procedure Code, prosecutors are granted the authority to suspend prosecution even when sufficient evidence exists, based on considerations such as the characteristics, age, and situation of the offender; the seriousness of the crime and the circumstances under which it was committed; and the conditions that followed the offense.

The parties involved in diversion in Japan consist of the child's parents or guardians, the police and probation officers who must have a background in Sociology, Psychology and Education. Before being handed over to the family court, the police first investigate the case involving the probation officer and the perpetrator's parents.

Diversion in Japan has a special character that is different from other countries, namely the role of the family court in deciding what is best for the child. The punishment given can be in the form of protective measures such as probation, given to child welfare institutions and recovery centers.

Other countries that have implemented diversion programs include: Fiji, the Philippines, Papua New Guinea; the Republic of Laos; Thailand; and East Timor. In Fiji,⁶⁷ the legal rules on diversion use the form of reconciliation and are developed with a family group deliberation model. In the Philippines, based on the Juvenile Justice Law on Restorative Justice (2003), including mediation, conciliation and family group deliberation as alternatives to the courts, and diversion can be implemented at the village, police and prosecutors levels. In Papua New Guinea, there is a Diversion Law that has been in effect since

66 Stephens, Tricia N., Colleen Cary Katz, Caterina Pisciotto, and Vicki Lens., The View From The Other Side: How Parents And Their Representatives View Family Court. *Family Court Review*, Vol.59 No.3, 2021, page. 491-507.

67 Otieno, Richard J., Development, State, and Ethnicity: A Framework for Comparative Analysis of the South Pacific and Northern Kenya. 2025, page. 121

1991.⁶⁸ In the Republic of Laos, diversion is implemented in the form of mediation and re-education as regulated in Customary Law. Thailand implements diversion in the form of conciliation and mediation as well as in the form of family group deliberation which began in 2002. In East Timor, diversion is implemented in the form of mediation in Customary Law and the Church is usually involved in the diversion process. Conferencing is a form of restorative justice approach developed in New Zealand and is a reflection of the traditional criminal case resolution process of the Maori tribe, the indigenous people of New Zealand. However, many countries have adopted this approach, including Australia, South Africa, the United States and several European countries.

In this form of conferencing, the resolution process involves not only the offender and the direct victim (primary victim), but also indirect victims (secondary victims), such as the victim's family or close friends, as well as the offender's family and close friends. The inclusion of these parties is important because they may be directly or indirectly impacted by the crime, they often have a strong interest and concern regarding the outcome of the conferencing process, and they can play a supportive role in ensuring the success of both the process itself and its ultimate objectives.

Of the several conferencing models that have developed, the model called Family Group Conferences or FGC has become a model that has developed in relation to handling crimes where the perpetrators are children. Therefore, in this model, the final resolution is focused on efforts to provide lessons or education to the perpetrator for what he did to the victim.

Circles are the same as conferencing, in the application of the restorative justice approach with this model, the parties involved include the perpetrator, victim, family and other parties involved including law enforcement officers. But unlike the previous model, every member of the community who feels interested in the case can come and participate. Circles in this case are defined as parties who are interested in the crime in general. This Circles model is adopted from the practice in Canada. Based on the description above, in principle in all these countries there are no exceptions for children who commit crimes to be diverted, but it is based on the age of the perpetrator who is categorized as a child. Unlike in Indonesia, the provisions of Article 7 paragraph (2) of Law No. 11 of 2012 provide exceptions for children who commit crimes with a sentence of more than 7 years and/or repeat crimes. The novelty of this research lies in the reconstruction of the diversion paradigm in Indonesia by emphasizing a justice-based approach that ensures diversion becomes the right of every child in conflict with the law regardless of the severity of the offense or whether it is a repeat offense. Unlike the current implementation, which limits diversion to cases with a maximum sentence of seven years, this study proposes a more inclusive and equitable diversion model inspired by comparative legal systems, particularly Japan and Australia, and rooted in Pancasila values, community

68 Kuzma, Jerzy., Knowledge Among The Rural Parents About The Vaccinations And Vaccination Coverage Of Children In The First Year Of Life In Papua New Guinea—Analysis Of Data Provided By Christian Health Services. *Research Square (Research Square)*, 2025. page.62

participation, and restorative justice principles. This approach aims to shift the orientation of diversion from merely fulfilling formal requirements to truly achieving child protection and holistic justice.

4. Conclusion

The goal of fair diversion is to achieve peace between victims and children in conflict with the law, resolve cases outside the judicial process, prevent children from being deprived of their liberty, encourage community participation, and instill a sense of responsibility in children. Diversion, as part of restorative justice, aims to restore the condition of victims and perpetrators, and repair relationships damaged by criminal acts, rather than simply imposing punishment. Furthermore, child criminal cases can also be resolved through non-formal mechanisms based on standard guidelines. Non-formal handling can be carried out through diversion as a mediation process facilitated by law enforcement at all levels. In achieving restorative justice, it can be resolved by requiring children in conflict with the law to attend education or training at certain institutions in the form of other actions carried out with recovery for the child and victim. Or, if punishment is imposed, the child's rights must not be ignored. Ultimately, non-formal handling can be implemented well if balanced with efforts to create a conducive justice system. The resolution of juvenile criminal cases through diversion can also be described as a system in which a facilitator manages the settlement process for the conflicting parties to achieve a satisfactory resolution as restorative justice. Tradition and consensus mechanisms are a concrete manifestation of strengthening the law that has existed in society for a long time. Thus, the essence of restorative justice is healing, moral learning, community participation and attention, dialogue, forgiveness, responsibility, and change, all of which are guidelines for the recovery process from a restorative justice perspective. As a formulation for diversion, in addition to being carried out through deliberation between law enforcement, the perpetrator's family and the victim, it is also necessary to present community leaders to provide considerations for the success of diversion so that it achieves the value of justice.

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