

THE LEGAL FRAMEWORK OF POLICE DISCRETION IN JUVENILE DIVERSION: A RESTORATIVE JUSTICE APPROACH FOR CHILDREN IN CONFLICT WITH LAW

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Abstract

This study aims to analyze the application of diversion for children in conflict with the law during the investigation stage, examine police discretion in cases involving offenses punishable by more than seven years of imprisonment, and formulate a diversion model oriented toward restorative justice. This study employs a normative-juridical method with a descriptive-analytical approach, using statutory, conceptual, case, and comparative approaches. The primary legal sources are Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 16 of 2011 concerning Legal Aid. Data were collected through literature review and interviews with police officers and analyzed qualitatively through legal interpretation and normative analysis. The results show that the implementation of diversion at the investigation stage generally complies with applicable regulations but remains suboptimal due to institutional constraints, limited inter-agency coordination, inadequate supporting facilities, and inconsistencies in the application of restorative justice. The study finds that restricting diversion to offenses punishable by less than seven years of imprisonment may limit the implementation of the best interests of the child. Police discretion can facilitate diversion for more serious offenses, provided that strict criteria, accountability, transparency, and restorative justice principles are upheld.

Keyword: *Criminal Investigation; Child Protection; Legal Aid; Police Discretion; Restorative Justice.*

A. INTRODUCTION

The protection of children in conflict with the law is an integral part of modern criminal justice systems that prioritize the “best interests of the child” as a guiding principle.¹ From an international perspective, juvenile justice systems have moved beyond a purely punitive orientation, instead favoring a restorative approach aimed at repairing relationships among the offender, victim, family, and community, while fostering the child’s social reintegration. This approach evolved in response to findings indicating that formal judicial proceedings often exacerbate stigmatization and hinder a child’s psychological development. Consequently, international organizations, including the United Nations (UN) and United Nations Children’s Fund (UNICEF), have emphasized the importance of resolving juvenile cases through non-custodial measures and mechanisms outside the formal court process whenever possible.²

In Indonesia, this paradigm is embodied in the Juvenile Criminal Justice System (*Sistem Peradilan Pidana Anak/SPPA*), which positions diversion as the primary instrument for achieving restorative justice.³ Diversion is designed to shift the resolution of juvenile cases away from criminal court proceedings toward a deliberative process involving the offender, victim, family, and community, thereby minimizing the negative impact of criminal proceedings on the child’s development. The existence of this mechanism reflects a shift in the orientation of juvenile criminal law from a repressive approach to one that is rehabilitative and restorative.⁴

Nevertheless, the implementation of diversion in law enforcement practice continues to face challenges. Research conducted by the Jakarta Legal

¹ Aryani Witasari, and Muhammad Sholikul Arif, “Implementasi Diversi Guna Mewujudkan Restorative Justice Dalam Sistem Peradilan Pidana Anak,” *Jurnal Hukum Unissula* 35, no. 2 (2019): 167. See too, Muhammad Ansori Lubis, Muhammad Yassid, and Novi Juli Rosani Zulkarnain, “Legal Protection of Children as Victims in Restorative Justice Based on Justice Value,” *Jurnal Pembaharuan Hukum* 9, No 2 (2022): 206.

² UNICEF, *Improving the Protection of Children in Conflict with the Law in South Asia: A Regional Parliamentary Guide on Juvenile Justice* (Kathmandu: UNICEF, 2007), 112. See too, UNICEF, *Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law* (Kathmandu: UNICEF, 2006), 232; United Nations, *Protecting the Rights of Children in Conflict with the Law: Programme and Advocacy Experiences from Member Organisations of the Inter-Agency Coordination Panel on Juvenile Justice*, (Geneva: Inter-Agency Coordination Panel on Juvenile Justice, 2004), 12.

³ Dyah Listyarini, “Juvenile Justice System Through Diversion and Restorative Justice Policy,” *Diponegoro Law Review* 2, no. 1 (2017): 169. See too, Deni Achmad, “Implementation of Diversion in The Juvenile Criminal Justice System: A Study of Effectiveness and Obstacles,” *Journal of Law and Policy Transformation* 10, no. 1 (2025): 118.

⁴ Azwad Rachmat Hambali, and Zainuddin Zainuddin, “Implementation of Diversion for Children in Conflict with the Law by the National Police of Indonesia,” *European Journal of Law and Political Science (EJ-POLITICS)* 2, no. 6 (2023): 15. See too, Claudia Carolina Indra Putri, “Juridical Review of Restorative Justice in the Juvenile Justice System through Diversion,” *IJCLS (Indonesian Journal of Criminal Law Studies)* 4, no. 1 (2019): 4; Sulis Setyowati, “Problematika Penerapan Diversi Dalam Penyelesaian Perkara Tindak Pidana Anak Dalam Mewujudkan Keadilan Restoratif,” *UNES Law Review* 6, no. 4 (2024): 11690.

Aid Institute (*Lembaga Bantuan Hukum*/LBH Jakarta) on the implementation of diversion at the police level indicates that it has not been applied optimally. Of the 229 juvenile cases studied, only a small fraction were resolved through diversion, while the majority proceeded through formal investigation mechanisms and, in some instances, resulted in detention. These findings suggest that the resolution of juvenile cases remains dominated by a repressive approach, meaning the restorative objectives that underpin the SPPA have not yet been fully realized.⁵ This situation is further supported by research conducted by Winarno et al.,⁶ which indicates that police officers still face various obstacles in exercising discretionary authority to uphold the rights of children in conflict with the law, stemming from both limited normative understanding and concerns regarding the legal consequences of exercising such discretion.

The issue becomes increasingly complex when cases involving children carry a potential criminal penalty exceeding seven years.⁷ In such situations, police authorities tend to opt for proceeding with formal judicial processes, even when there are substantive opportunities for a resolution that better reflects restorative justice. This phenomenon garnered public attention through the case of a student who killed an attempted robber while protecting his girlfriend from an attempted rape. That case sparked a broad debate regarding the limits of applying criminal law to children, the protection of children's rights, and the scope of law enforcement discretion in achieving substantive justice.⁸

Fundamentally, this issue concerns not only the application of legal norms but also the relationship between legal certainty, justice, and legal utility. Lawrence M. Friedman⁹ explains that the effectiveness of a legal system

⁵ LBH Jakarta, "Potret Pelaksanaan Diversi di Kepolisian," *BantuanHukum*, January 24, 2020, <https://www.bantuanhukum.or.id/web/potret-pelaksanaan-diversi-di-kepolisian/>, Accessed on July 10, 2026.

⁶ Endro Winarno, "Penerapan Kewenangan Diskresi Kepolisian dalam Pemenuhan Hak Anak Berhadapan dengan Hukum," *Jurnal PKS* 14, no. 3 (2015): 457.

⁷ Aryani Witasari, and Muhammad Sholikul Arif, "Implementasi Diversi Guna Mewujudkan Restorative Justice Dalam Sistem Peradilan Pidana Anak," *Jurnal Hukum Unissula* 35, no. 2 (2019): 168. See too, Ririn Kurniasi, "Penerapan Restorative Justice Terhadap Anak Yang Menjadi Pelaku Tindak Pidana Melalui Diversi," *UNES Law Review* 6, no. 4 (2024): 10824; Yul Ernis, "Diversi Dan Keadilan Restoratif Dalam Penyelesaian Perkara Tindak Pidana Anak di Indonesia (Diversion and Restorative Justice in Case Settlement of Juvenile Justice System in Indonesia)," *Jurnal Ilmiah Kebijakan Hukum* 10, no. 2 (2016): 166.

⁸ Detik News, "BPIP Beri Dukungan Moral ke Pelajar Pembunuh Begal yang Hendak Perkosa Pacar," <https://news.detik.com/berita/d-4865132/bpip-beri-dukungan-moral-ke-pelajar-pembunuh-begal-yang-hendak-perkosa-pacar/1>, Accessed on July 10, 2026. See too, Detik News, "Kasus Pelajar Bunuh Begal karena Lindungi Pacar Malah Diadili, Ini Kata Mahfud," *DetikNews*, January 24, 2020, <https://news.detik.com/berita/d-4869171/kasus-pelajar-bunuh-begal-karena-lindungi-pacar-malah-diadili-ini-kata-mahfud>, Accessed on July 10, 2026.

⁹ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russel Sage Foundation, 1975), 31.

is determined not merely by legal substance but also by legal structure and the legal culture prevailing within society. Consequently, the successful implementation of diversion does not rely solely on the existence of norms; it is also influenced by how law enforcement officials understand, interpret, and exercise their authority in practice.

From the perspective of legal philosophy, Gustav Radbruch asserts that law must balance three fundamental values: justice, legal certainty, and utility.¹⁰ Furthermore, Radbruch emphasizes that positive law should not be upheld if it results in manifest injustice. This line of reasoning is particularly relevant to the implementation of diversion for children in conflict with the law, where the formal enforcement of norms risks overlooking the child's best interests, which is, in fact, the primary objective of the juvenile criminal justice system.

On the other hand, legal certainty remains an indispensable element in the administration of a state governed by the rule of law. Jan Michiel Otto¹¹ posits that legal certainty requires rules that are clear, consistent, and predictable, and that are applied uniformly by all law enforcement officials. This view was further enriched by Aarnio,¹² Peczenik¹³, and Paunio¹⁴ who distinguished between the formal and substantive dimensions of legal certainty. Formal legal certainty emphasizes consistency with written rules, whereas substantive legal certainty allows room for rational interpretation to achieve just outcomes. The distinction between these two dimensions explains why police officers often face a dilemma when choosing between adherence to normative provisions and the achievement of restorative justice for children.¹⁵

¹⁰ Gustav Radbruch, "Legal Philosophy," In Emil Lask, Gustav Radbruch, and Jean Dabin, *The Legal Philosophies of Lask, Radbruch, and Dabin* (Cambridge: Harvard University Press, 1950), 121.

¹¹ Jan Michiel Otto, *Kepastian Hukum di Negara Berkembang* (Jakarta: Komisi Hukum Nasional, 2003), 121. See too, Esther Wita Simanjuntak, 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* 2, no. 2 (2021): 313.

¹² Aulis Aarnio, *The Rational as Reasonable: The Treatise on Legal Justification* (Dordrecht: D. Riedel Publishing Company, 1987), 23.

¹³ Alexander Peczenik, *On Law and Reason* (Dordrecht: Kluwer Academic Publishers, 1989), 23.

¹⁴ Elina Paunio, "Beyond Predictability – Reflections on Legal Certainty and the Discourse Theory of Law in the EU Legal Order," *German Law Journal* 10, no. 11 (2009): 232.

¹⁵ Irma Cahyaningtyas, "Criminal Justice System Toward Children with Legal Conflict Seen in Justice Restorative Prespective," *Jurnal Hukum Prasada* 7, no. 1 (2020): 18. See too, Muhammad Ansori Lubis, "Discretion of Law Enforcement Officials in Handling Children Who Commit Crimes: A Study of Compliance with the Principles of Restorative Justice," *Jurnal Ilmiah METADATA* 7, no. 3 (2025): 283; Dyah Listyarini, "Juvenile Justice System Through Diversion and Restorative Justice Policy," *Diponegoro Law Review* 2, no. 1 (2017): 170.

In this context, Rahardjo's¹⁶ concept of "progressive law" offers the perspective that law exists fundamentally for the sake of humanity, not the other way around. Law enforcement should not merely aim to execute regulatory texts mechanically but must be capable of realizing justice that resonates within society. Therefore, the discretionary authority held by the police should be understood as an instrument to bridge the tension between legal certainty and justice, particularly in the resolution of cases involving children who require special protection.

Although various studies have addressed diversion, restorative justice, and police discretion, research specifically analyzing the relationship between normative restrictions on diversion, the exercise of police discretion in cases involving offenses punishable by more than seven years of imprisonment, and efforts to achieve restorative justice remains relatively limited. Most studies focus on the general implementation of diversion without deeply examining how normative conflicts and the dilemmas faced by police officers regarding discretion affect the protection of children's rights in practice. This gap in research highlights the need to formulate a concept for the application of police discretion that ensures legal certainty while simultaneously realizing restorative justice for children in conflict with the law. Based on the foregoing, this study aims to analyze the implementation of diversion in the resolution of juvenile cases at the investigation stage, examine the scope for exercising police discretion in juvenile cases involving offenses punishable by more than seven years of imprisonment, and formulate a concept for the application of police discretion that aligns with the principles of restorative justice and the protection of children's rights within the Indonesian criminal justice system.

RQ1: How is diversion implemented for children in conflict with the law at the investigation stage within the Indonesian juvenile criminal justice system?

RQ2: How can police discretion in implementing diversion for children in conflict with the law be exercised from the perspective of progressive law and restorative justice?

B. RESEARCH METHODS

This study is a normative-juridical legal study with a descriptive-analytical nature. This approach is employed to examine the legal norms, principles, and doctrines governing the application of police discretion, diversion, and restorative justice within the juvenile criminal justice system in Indonesia. The research not only describes applicable legal provisions but also analyzes their alignment with legal theory and law enforcement practices to

¹⁶ Satjipto Rahardjo, *Membedah Hukum Progresif* (Jakarta: Kompas, 2006), 131.

derive comprehensive legal arguments based on philosophical, juridical, and sociological aspects.

The study utilizes four approaches: the statute approach to examine regulations governing the juvenile criminal justice system and police authority; the conceptual approach to analyze the concepts of discretion, diversion, restorative justice, and the protection of children's rights based on expert doctrines; the case approach to scrutinize the application of norms in the practice of handling juvenile cases; and the comparative approach to compare the regulation and application of these concepts across various legal perspectives.

Data sources consist of primary legal materials (legislation and court rulings; secondary legal materials) including books, scholarly articles, research findings, and legal doctrines; and tertiary legal materials (legal dictionaries, encyclopedias, and other reference sources). Data collection was conducted through literature reviews and documentation, supplemented by interviews with police officers to obtain an empirical overview of diversion practices during the investigation stage. The primary focus of this research is based on Law Number 11 of 2012 and Law Number 16 of 2011 concerning Legal Aid.

All legal materials were analyzed qualitatively using a normative approach, employing systematic, conceptual, and analytical interpretations of applicable legal provisions. The analysis aimed to identify the alignment between norms and practices, formulate coherent legal arguments, and develop an ideal concept for the use of police discretion in implementing diversion, one oriented toward legal certainty, the protection of children's rights, and restorative justice.

C. RESULTS AND DISCUSSION

1. Implementation of Diversion for Children in Conflict with the Law at the Investigation Stage

The police force is a law enforcement institution that plays a central role in the criminal justice system, as it holds the authority to conduct preliminary inquiries and formal investigations which acts that serve as the gateway to the law enforcement process. Beyond performing repressive functions through law enforcement, the police also fulfill a preventive role in maintaining public order. Within the context of the Indonesian legal system, the Indonesian National Police (*Polisi Republik Indonesia*/Polri) is part of the legal structure responsible for applying and enforcing the law within an integrated criminal justice system; consequently, the success of legal protection for children depends heavily on the quality of the investigation process.¹⁷

¹⁷ Hiariej Edward O.S., *Membangun Sarana dan Prasarana Hukum yang Berkeadilan*, In Dinal Fedrian et al., *Dialektika Pembaruan Sistem Hukum Indonesia* (Jakarta: Komisi Yudisial Republik

In cases involving children, the investigation process is guided not only by the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana/KUHAP*) but also by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (*Sistem Peradilan Pidana Anak/SPPA*). Article 16 of the SPPA Law stipulates that general criminal procedural provisions remain applicable unless specific regulations are provided within the SPPA Law itself. Unlike investigations involving adult offenders, investigations into cases involving children must be conducted by juvenile investigators who possess the requisite experience, competence, and specialized training in juvenile justice.¹⁸ In carrying out their duties, investigators are required to prioritize the principle of the "best interests of the child" by employing an approach that is effective, sympathetic, and non-intimidating, while also safeguarding the child's identity and avoiding social stigmatization, as mandated by the SPPA Law.

Furthermore, investigators are required to involve Community Counselors from the Correctional Center (*Balai Pemasyarakatan/Bapas*) to prepare a community assessment report, which serves as a basis for consideration during the investigation process. Investigators may also seek the opinions of psychologists, psychiatrists, social workers, or other experts, and are required to coordinate with the public prosecutor from the very beginning of the investigation. These mechanisms demonstrate that the resolution of juvenile cases is designed with a multidisciplinary approach, ensuring that decisions take into account not only legal aspects but also the child's psychological and social conditions.¹⁹

During the investigation process involving a children in conflict with the law, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (*Undang-Undang Sistem Peradilan Pidana Anak/UU SPPA*) imposes strict limitations on pro justitia actions, particularly arrest and detention. Article 3 letter g of the UU SPPA affirms that a child has the right not to be arrested, detained, or imprisoned except as a measure of last resort and for the shortest

Indonesia, 2012), 12. See too, Jimly Asshiddiqie, *Struktur Hukum dan Hukum Struktural Indonesia*, In Dinal Fedrian et al., *Dialektika Pembaruan Sistem Hukum Indonesia* (Jakarta: Komisi Yudisial Republik Indonesia, 2012), 32; Wicipto Setiadi, *Arti Penting Lembaga-Lembaga Hukum di Indonesia dalam Merespon Perubahan Sosial*. In Dinal Fedrian et al., *Dialektika Pembaruan Sistem Hukum Indonesia* (Jakarta: Komisi Yudisial Republik Indonesia, 2012), 34.

¹⁸ Mahendra Ridwanul Ghoni, and Pujiyono Pujiyono, "Perlindungan hukum terhadap anak yang berhadapan dengan hukum melalui implementasi diversi di indonesia," *Jurnal Pembangunan Hukum Indonesia* 2, no. 3 (2020): 334.

¹⁹ BPHN, *Pengkajian Hukum Lembaga Penempatan Anak Sementara* (Jakarta: Badan Pembinaan Hukum Nasional, 2013), 21. See too, Azhary Ramadhan, Kamarusdiana Kamarusdiana, and Soefyanto Soefyanto, "Penyelesaian Kasus Tindak Pidana Anak Melalui Diversi Dalam Perspektif Sistem Peradilan Pidana Anak," *Journal of Legal Research* 3, no. 1 (2021): 131; Adi Herlambang, and Diah Aju Wisnuwardhani, "Analisa Penerapan Restorative Justice pada Perkara Pencurian oleh Anak yang Berhadapan dengan Hukum," *MLJ Merdeka Law Journal* 4, no. 1 (2023): 3.

possible duration.²⁰ The arrest of a child may only be carried out if necessary for the investigation, with due regard for the principle of child protection; it must be conducted humanely and last no longer than 24 hours. An arrested child must be placed in a special child service room or, if such a facility is unavailable, entrusted to a Social Welfare Implementation Institution (*Lembaga Penyelenggaraan Kesejahteraan Sosial/LPKS*).

Detention of a child is also strictly limited. The UU SPPA stipulates that detention may only be carried out if the child is 14 years of age or older and is suspected of committing a criminal offense punishable by imprisonment of 7 years or more. Detention cannot be imposed if there is a guarantee from the parents/guardians or an institution that the child will not flee, destroy evidence, or repeat the offense. During the detention period, the child's physical, spiritual, and social needs must be met, and detention must be carried out in a Temporary Child Placement Institution (*Lembaga Penempatan Anak Sementara/LPAS*) or an LPKS if an LPAS is unavailable. The detention period at the investigation stage is a maximum of 7 days and may be extended by the Public Prosecutor for a maximum of 8 days. Furthermore, an children in conflict with the law is entitled to legal assistance and accompaniment at every stage of the examination. Officials carrying out an arrest or detention are required to inform the child and their parents/guardians of this right. Failure to fulfill this obligation renders the arrest or detention null and void by operation of law (Law Number 11 of 2012; Law Number 16 of 2011 concerning Legal Aid).

A key characteristic of juvenile criminal case resolution is the mandatory application of diversion. Under the Juvenile Criminal Justice System Law (UU SPPA), diversion entails the transfer of a juvenile case from the formal criminal justice process to a non-judicial process and must be conducted using a restorative justice approach. Investigators, public prosecutors, and judges are required to pursue diversion if the offense committed by the juvenile carries a penalty of less than seven years of imprisonment and is not a repeat offense. At the investigation stage, diversion efforts must commence no later than seven days after the investigation begins and be concluded within a maximum of 30 days. Failure to fulfill the obligation to conduct diversion may result in criminal sanctions for law enforcement officials, as stipulated in the UU SPPA. The implementation of diversion must prioritize the victim's interests, the juvenile's well-being, the avoidance of negative stigma, the prevention of retaliation, and community harmony, while also taking into account the

²⁰ Mega Dewi Ambarwati, "Implementasi UU SPPA Dalam Menangani Anak Yang Sedang Berhadapan Dengan Hukum," *Jurnal Ilmiah Penelitian Mahasiswa 2*, no. 6 (2024): 417. See too, Muh Rijal, Sufirman Rahman, and Baharuddin Baharu, "Implementasi Konsep Keadilan Restoratif Dalam Perkara Anak Yang Berkonflik Dengan Hukum Di Kepolisian Resort Kota Besar Makassar," *The Juris 4*, no. 2 (2020): 89.

category of the offense, the juvenile's age, the results of the social inquiry report, and support from the family and community.

Since the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), the Indonesian National Police (Polri) have endeavored to implement diversion mechanisms in the resolution of juvenile criminal cases. Institutionally, juvenile cases are handled by the Women and Children Service Unit (*Unit Pelayanan Perempuan dan Anak/UPPA*), a unit tasked with providing protection for women and children who are victims of crime and enforcing the law against children in conflict with the law (Chief of National Police Regulation Number 3 of 2008, Article 1, point 9). Investigations into juvenile cases are conducted within the Special Service Room (*Ruang Pelayanan Khusus/RPK*) as a space designed to be safe and comfortable for witnesses, victims, and suspects requiring special treatment, including children in contact with the law (Chief of National Police Regulation Number 3 of 2008).

Diversion holds a strategic position at the investigation stage because the police are the first law enforcement agency to interact directly with the child. Implementing diversion as early as the investigation stage allows the child to avoid the negative impacts of the criminal justice process as soon as possible. In addition to possessing an institutional network extending to the sub-district and village levels, Polri has a relatively larger number of personnel compared to other law enforcement agencies, thereby possessing greater capacity to pursue the resolution of juvenile cases through a restorative approach.²¹

Field research findings indicate that Polri has generally made efforts to apply diversion to juvenile cases. Data from the General Criminal Investigation Directorate of the Jakarta Metro Police (Polda Metro Jaya) for the period of 2017 through October 2018 show that a number of juvenile cases were successfully resolved through diversion involving various forms of agreements, such as returning the child to their parents, rehabilitation, education/training, and compensation. At the Resort Police (*Kepolisian Resor/Polres*) level, for instance, the South Jakarta Metro Police recorded 14 cases successfully resolved by returning the child to their parents, while the Bekasi Metro Police and Bekasi City Police (*Kepolisian Resor Kota/Polresta*) recorded 4 cases each. Nevertheless, there remain cases where diversion agreements were not successfully reached. Similar findings were observed in data regarding "Children in Conflict with the Law" at the Koja Sector Police (North Jakarta Metro Police) for the 2020–2021 period. Of the five cases handled, three were

²¹ Koesno Adi, *Diversi Sebagai Upaya Alternatif Penanggulangan Tindak Pidana Narkotika oleh Anak* (Malang: UMM Press, 2009), 121. See too, Ahmad Rizal Roby Ananta, Demas Brian Wicaksono, Devi Tri Berliansyah, and Dewi Lestari, "Criminal Limitations on Diversion of Children Against the Law Based on the Juvenile Criminal Justice System from a Comparative Perspective," *Jurnal Penegakan Hukum Dan Keadilan* 6, no. 2 (2025): 133.

successfully directed toward diversion or rehabilitation mechanisms, specifically, two narcotics cases (via rehabilitation/diversion) and two theft cases (via diversion), while one case of aggravated theft proceeded to standard legal proceedings.

Although the implementation of diversion is underway, it still faces various obstacles. Based on an interview with Hasiaty Lawole, Deputy Head of the Criminal Investigation Unit at the Bekasi Regency Metro Police, the primary challenges stem from conflicting interests between the victim and the perpetrator, time constraints faced by the parties involved, and diversion procedures that are considered overly bureaucratic. Victims often seek resolution through punishment, whereas the diversion mechanism requires the involvement of multiple parties, such as the child's family, the victim, community guidance officers, social workers, and other relevant stakeholders.

According to Hasiaty Lawole:

"Diversion is regulated under Law Number 11 of 2012. However, the reality on the ground is that victims generally demand justice. The implementation procedures for Law Number 11 of 2012 are highly bureaucratic, involving numerous bureaucratic stages that must be navigated... Involving so many elements in the mediation process creates administrative difficulties." (Interview with Hasiaty Lawole, Deputy Head of the Criminal Investigation Unit at the Bekasi Regency Metro Police, July 23, 2021).

Although Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) clearly mandates the application of diversion, field practices reveal a gap between legal norms and their actual implementation. According to Hasiaty Lawole, Deputy Head of the Criminal Investigation Unit at the Bekasi Regency Metro Police, applying diversion is often not as straightforward as the normative concept in the law suggests, due to conflicting interests among the victim, the child, and relevant parties. Hasiaty believes that investigators should be granted broader discretionary power to resolve cases effectively without involving an excessive number of administrative and community elements.

"Police should be granted the discretion to resolve cases without involving too many community elements. Such discretionary authority is intended to safeguard the interests of both parties." (Interview with Hasiaty Lawole, Deputy Head of the Criminal Investigation Unit at the Bekasi Regency Metro Police, July 23, 2021).

Field research indicates that the primary obstacles to implementing diversion at the investigation stage include victims' reluctance to resolve cases through deliberation, law enforcement officers' limited understanding of the diversion concept, suboptimal inter-agency coordination, and a lack of supporting facilities and infrastructure. In the investigative practice of the Women and Children Services Unit (*Peradilan Pidana Anak/PPA*) of the Jakarta Metropolitan Police (Polda Metro Jaya), several constraints were identified: (1) suboptimal stakeholder responsibility in diversion implementation; (2) delays in issuing forensic medical examination reports (*visum*); (3) the limited detention period for children, 7 days, extendable by another 8 days under Article 33 of the Juvenile Criminal Justice System Law (UU SPPA); (4) the scarcity of Temporary Child Placement Institutions (LPAS) and Child Social Protection Houses (RPSA); (5) a shortage of professional social workers; and (6) weak supervision of children placed in social protection institutions.

Institutional issues are a dominant factor hindering the effectiveness of diversion. The UU SPPA mandates the establishment of several supporting institutions: Special Child Development Institutions (*Lembaga Pembinaan Khusus Anak/LPKA*), Temporary Child Placement Institutions (LPAS), Social Welfare Implementation Institutions for Children (LPKS), and Special Child Service Rooms (*Ruang Pelayanan Khusus Anak/RPKA*). The LPKA serves as the facility where children serve their sentences; the LPAS acts as a temporary placement during judicial proceedings; the LPKS provides social welfare services for children; and the RPKA serves as a holding facility for arrested children for a period of 24 hours.

However, the availability of these institutions remains limited. According to records from the Institute for Criminal Justice Reform (ICJR), Indonesia has 33 LPKAs, comprising 7 Class I and 26 Class II-B facilities, yet some still utilize facilities intended for adult correctional institutions. Meanwhile, LPAS, LPKS, and RPKA facilities are not yet evenly distributed across Indonesia. Consequently, in practice, children risk being placed in detention centers or institutions that do not align with child protection principles.

The limited availability of RPSA facilities also poses a significant obstacle to the implementation of diversion. RPSAs serve as temporary shelters providing recovery, rehabilitation, advocacy, reunification, and reintegration services for children requiring special protection. However, the availability of RPSAs remains very limited. Data from the Directorate of Child Social Services indicates that in 2011, there were only 15 RPSAs spread across 13 provinces, while in 2016, there were approximately 16 RPSAs managed by the Ministry of Social Affairs. Beyond their limited numbers, the majority of RPSAs also fail

to meet standards regarding facilities, management, human resources, and service programs.²²

This situation demonstrates that the success of diversion is not determined solely by the existence of legal norms but relies heavily on the readiness of the legal structure supporting its implementation. Drawing on Lawrence M. Friedman's legal system theory, legal effectiveness is influenced by three key components: legal structure, legal substance, and legal culture.²³ Legal structure encompasses the agencies and institutions that administer the law; legal substance comprises the applicable rules; and legal culture relates to the attitudes, values, and behaviors of society regarding the law.

In the context of diversion, substantive reform through the Juvenile Criminal Justice System Law (UU SPPA) has not been fully matched by structural legal reform.²⁴ A shortage of facilities, such as LPAS (Special Placement Institutions for Children), LPKS (Child Welfare Institutions), and RPSA (Child Protection Centers), as well as a lack of professional social workers and Community Correctional Officers, has hindered the optimal implementation of diversion. Consequently, obstacles to implementing diversion during the investigation stage stem not only from regulatory issues but also from weak institutional support and a lack of the resources necessary to operate a restorative justice-based juvenile criminal justice system.²⁵

In the practical application of diversion under Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), Indonesian National Police (Polri) investigators often encounter a gap between normative concepts and the reality of implementation in the field. Although the UU SPPA aims to provide the best protection for children in conflict with the law, implementation procedures are still considered overly bureaucratic due to the involvement of numerous stages and institutions. According to Hasiaty Lawole, Deputy Head of the Criminal Investigation Unit at the Bekasi Regency Metro Police, the involvement of various supporting institutions mandated by the UU

²² Nurdin Widodo, *Evaluasi Program Perlindungan Anak Melalui Rumah Perlindungan Sosial Anak (RPSA) 2011* (Jakarta: P3KS Press, 2011), 21. See too, Harian Nasional, "Rumah Perlindungan Sosial Mayoritas Belum Sesuai Standar," *Harian Nasional*, November 10, 2020, <http://www.harnas.co/2016/03/29/rumah-perlindungan-sosial-mayoritas-belum-sesuai-standar>, Accessed on July 10, 2026.

²³ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russel Sage Foundation, 1975), 34. See too, Sarwadi, and Bambang Tri Bawono, "Restorative Justice Approach in Diversion System for Settlement of Criminal Cases for Children in Indonesia," *Jurnal Daulat Hukum* 3, no. 4 (2021): 454384.

²⁴ Anak Agung Ngurah Adhi Wibisana, Anak Agung Gede Oka Wisnumurti, I Nyoman Putu Budiarta, and Anak Agung Sagung Laksmi Dewi, "Legal Reform on the Concept of Restorative Justice in the Criminal Justice System," *Jurnal Pembaharuan Hukum* 11, No 2 (2024): 264.

²⁵ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russel Sage Foundation, 1975), 36. See too, Dyah Listyarini, "Juvenile Justice System Through Diversion and Restorative Justice Policy," *Diponegoro Law Review* 2, no. 1 (2017): 171.

SPPA can, in certain situations, actually slow down case resolution through diversion.

Hasiaty explained that the primary goal of investigators is not to disregard the criminal offenses committed by children, but rather to provide a resolution capable of restoring relationships among the offender, the victim, and the community.

“There is a gap between theory and practice in the field. On one hand, the law stipulates certain requirements; on the other, putting them into practice is not as simple as imagined. This does not mean we trivialize the offenses committed by children in conflict with the law; rather, we aim to provide the best possible resolution for the child’s future. Therefore, the police must apply Law Number 11 of 2012 flexibly.” (Interview with Hasiaty Lawole, Deputy Head of the Criminal Investigation Unit at the Bekasi Regency Metro Police, July 23, 2021).

According to Hasiaty, investigators should be granted broader discretionary authority to resolve cases involving children without involving an excessive number of parties, provided the circumstances of the case allow for it. Such discretion is essential to safeguard the interests of both the victim and the child offender. In her view, if the victim’s objectives are met through the child and their family acknowledging wrongdoing, offering an apology, and committing to behavioral change, then resolution via a restorative mechanism may prove to be a more effective option.

This perspective reflects Lawrence M. Friedman’s²⁶ concept of legal culture, which holds that legal effectiveness depends not only on legal substance and institutional structures but also on societal values, attitudes, and practices. In the context of diversion, the Juvenile Criminal Justice System Law (UU SPPA) tends to establish formal institutions without fully incorporating community-based conflict-resolution traditions rooted in deliberation and reconciliation. Consequently, implementation may face institutional limitations, coordination problems, and administrative complexity. This approach is consistent with the United Nations’ view of restorative justice as a flexible, responsive, and recovery-oriented process that may incorporate informal justice mechanisms while safeguarding children’s rights. Community-based mechanisms can improve access to justice, support rehabilitation, and facilitate direct engagement among children, victims, families, and communities. However, their implementation requires formal-system oversight, human

²⁶ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russel Sage Foundation, 1975), 37.

rights compliance, rehabilitation alternatives, and access to formal justice when informal resolution is unsuccessful.²⁷

From this perspective, the implementation of diversion within the juvenile justice system should not be viewed merely as an administrative procedure, but rather as a restorative justice mechanism requiring flexibility.²⁸ Police discretion is particularly crucial in areas lacking adequate child protection infrastructure. Given the Indonesian National Police's position as a law enforcement agency with a network extending to the village level, the police possess the capacity to facilitate case resolution through a restorative approach. In regions where customary law remains strong, the resolution of juvenile cases can be channeled through local reconciliation mechanisms or informal justice systems, with the police maintaining a role as supervisors and facilitators. Thus, the success of diversion depends not only on the existence of formal regulations but also on the legal system's ability to accommodate community cultural values and provide avenues for resolution that align with the best interests of the child.

2. Police Discretion in Implementing Diversion for Children in Conflict with the Law: A Progressive Law and Restorative Justice Perspective

The implementation of diversion in the resolution of juvenile criminal cases still faces challenges regarding legal substance, particularly concerning the sentencing thresholds that serve as mandatory prerequisites for diversion. Under Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), diversion must be pursued if the offense committed by the juvenile meets two criteria: it carries a penalty of less than seven years of imprisonment, and it does not constitute a repeat offense (Article 7, UU SPPA). This provision is further reinforced by Government Regulation (PP) Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 12 Years of Age, which restricts the application of diversion solely to offenses punishable by less than seven years of imprisonment (Article 3, PP Number 65 of 2015).

However, there is a divergence in approach between the UU SPPA and Supreme Court Regulation (Perma) Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System.

²⁷ Irma Cahyaningtyas, "Criminal Justice System Toward Children with Legal Conflict Seen in Justice Restorative Prespective," *Jurnal Hukum Prasada* 7, no. 1 (2020): 19. See too, Muhammad Ansori Lubis, "Discretion of Law Enforcement Officials in Handling Children Who Commit Crimes: A Study of Compliance with the Principles of Restorative Justice," *Jurnal Ilmiah METADATA* 7, no. 3 (2025): 287.

²⁸ Yul Ernis, "Diversi Dan Keadilan Restoratif Dalam Penyelesaian Perkara Tindak Pidana Anak di Indonesia (Diversion and Restorative Justice in Case Settlement of Juvenile Justice System in Indonesia)," *Jurnal Ilmiah Kebijakan Hukum* 10, no. 2 (2016): 168. See too, Nur Indah Setyoningrum, and Anis Mashdurohatun, "Restorative Justice in Children's Criminal Jurisdiction System through Diversion," *Law Development Journal* 2: 575.

The regulation allows judges to pursue diversion in juvenile cases carrying a penalty of seven years or more if the indictment is structured using subsidiary, alternative, cumulative, or combined charges. Article 3 of Perma Number 4 of 2014 mandates that juvenile court judges pursue diversion under such circumstances.

Normatively, Perma Number 4 of 2014 aligns more closely with restorative justice principles, as it provides greater scope for deliberation to consider the best interests of the child. Nevertheless, this regulation cannot serve as a direct legal basis for Indonesian National Police investigators during the investigation stage, as its applicability is binding only within the judicial system under the Supreme Court. A Perma is a form of internal Supreme Court regulation established pursuant to the regulatory authority granted by Article 79 of Law Number 3 of 2009 concerning the Supreme Court.²⁹ In investigative practice, the restriction of diversion to offenses carrying a penalty of less than seven years often poses an obstacle for investigators handling juvenile cases that could substantively still be resolved through a restorative approach. Some National Police investigators hold the view that juvenile cases involving offenses punishable by more than seven years should still be eligible for resolution via diversion, based on police discretionary authority.

First Inspector Wahyudi, Head of the Criminal Investigation Unit at the Koja Sector Police in North Jakarta, stated that certain cases, such as brawls involving sharp weapons, should be considered for diversion through the exercise of police discretion.

According to Wahyudi:

"Personally, I am of the opinion that such cases can be diverted, as this falls under police discretion, and we adhere to the principles of speedy and low-cost justice... This discretion is in accordance with Article 18 of Law Number 2 of 2002, which stipulates that, in the public interest, officers of the Indonesian National Police may act based on their own judgment while carrying out their duties and authority." (Interview with Iptu Wahyudi, S.H., M.H., Head of the Criminal Investigation Unit, Koja Sector Police, North Jakarta, July 23, 2021).

A similar view was expressed by Hasiaty Lawole, who explained that, in practice, there have been cases involving juveniles facing potential sentences

²⁹ Jimly Asshiddiqie, *Struktur Hukum dan Hukum Struktural Indonesia*, In Dinal Fedrian et al., *Dialektika Pembaruan Sistem Hukum Indonesia* (Jakarta: Komisi Yudisial Republik Indonesia, 2012), 34. See too, Ahmad Rizal Roby Ananta, Demas Brian Wicaksono, Devi Tri Berliansyah, and Dewi Lestari, "Criminal Limitations on Diversion of Children Against the Law Based on the Juvenile Criminal Justice System from a Comparative Perspective," *Jurnal Penegakan Hukum Dan Keadilan* 6, no. 2 (2025): 137.

exceeding seven years that were resolved through the use of discretion. In one such instance, the perpetrator was a relative of the victim, and the victim's parents requested that the case be dropped because they did not want their child imprisoned.

Hasiaty explained:

"We once handled a criminal case carrying a potential sentence of over seven years. The perpetrator was a relative of the victim, specifically, the victim's younger sibling, and the person who filed the report was their parent. During the proceedings, the parent asked for the case to be discontinued because they did not want their child to go to prison... Ultimately, we drafted a formal statement. In situations like this, we are required to be flexible rather than rigid in handling cases." (Interview with Hasiaty Lawole, Deputy Head of the Criminal Investigation Unit, Bekasi Regency Metro Police, July 23, 2021).

According to Hasiaty, exercising such discretion does not mean disregarding the law; rather, it is an effort to achieve the primary goal of restorative justice: restoring the situation among the perpetrator, the victim, and the community. In specific cases, particularly when the victim has accepted an apology, desires reconciliation, and considers the juvenile's future, investigators need to view the case within a broader context.

This issue highlights a dilemma between legal certainty and the protection of the child's best interests. On one hand, the Juvenile Criminal Justice System Law (UU SPPA) strictly mandates diversion only for criminal offenses carrying a penalty of less than seven years of imprisonment.³⁰ On the other hand, the principle of restorative justice calls for flexible resolutions that take into account the child's individual circumstances, the background of the offense, the relationship between the perpetrator and the victim, and the social impact of the criminal proceedings.

Therefore, police discretion can be viewed as a potential instrument to strengthen the application of restorative justice, provided it is exercised responsibly, prioritizes the child's best interests, does not infringe upon the victim's rights, and remains within the legal authority granted to the Indonesian National Police. In certain contexts, particularly in regions with limited child protection infrastructure, flexibility through discretion can offer a solution to more effectively achieve the primary objectives of the UU SPPA: the protection, rehabilitation, and social reintegration of the child.

³⁰ Yoga Ristama, and Hibnu Nugroho, "Diversion Process as a Transformative Reform of the Criminal Justice System for Children in Conflict with the Law," *Jurnal IUS Kajian Hukum dan Keadilan* 14, no. 1 (2026): 58.

Statements from First Inspector Wahyudi and Hasiaty Lawole illustrate the dilemma faced by police investigators when applying diversion to juvenile cases involving offenses punishable by more than seven years of imprisonment. Although the police possess discretionary authority under Article 18 paragraph (1) of Law Number 2 of 2002 concerning the Indonesian National Police, its application is often constrained by Article 7 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), which limits the mandatory application of diversion to offenses carrying a penalty of less than seven years of imprisonment.

From a progressive legal perspective, the use of police discretion in juvenile cases is justifiable because law is not merely understood as a collection of written rules, but as a means to achieve substantive justice. Progressive law prioritizes legal objectives and social context over mere textual adherence to rules. Thomas Aaron defines discretion as the authority granted by law to act based on judgment and moral conscience, rather than solely on formal provisions (Aaron, 1960). In line with this, Weston states that discretionary decision-making is the process of selecting the course of action deemed most appropriate, practical, and satisfactory for dealing with a specific situation.³¹

Discretion is necessary because legal norms are often general in nature and cannot always address the complexities of concrete situations. According to Doorn, as cited by Satjipto Rahardjo,³² legal objectives, such as justice, certainty, and harmony, are frequently formulated in abstract terms, thereby allowing law enforcement officials to interpret them in light of the specific conditions they face. Consequently, the presence of wise, creative, and socially sensitive law enforcement officials is crucial to ensuring that the law achieves its ultimate goals.

In the context of cases involving juveniles, the application of police discretion rests on a strong philosophical foundation within the restorative justice paradigm.³³ This paradigm emerged as a critique of the traditional criminal justice system, which emphasizes punishing the offender rather than restoring relationships among the offender, the victim, and the community. Wright³⁴ explains that conventional criminal justice systems often appropriate the conflict from those who directly suffered the harm, thereby depriving both

³¹ Paul M. Weston, *Supervision in the Administration of Justice Police Corrections Cours* (Springfield: Charles D. Thomas, 1965), 21. See too, Claudia Carolina Indra Putri, "Juridical Review of Restorative Justice in the Juvenile Justice System through Diversion," *IJCLS (Indonesian Journal of Criminal Law Studies)* 4, no. 1 (2019): 7.

³² Satjipto Rahardjo, *Masalah Penegakan Hukum* (Bandung: Sinar Baru, 1983), 12.

³³ Dyah Listyarini, "Juvenile Justice System Through Diversion and Restorative Justice Policy," *Diponegoro Law Review* 2, no. 1 (2017): 173.

³⁴ Martin Wright, *Making Good: Prisons, Punishment and Beyond* (London: Burnett Books, 1982), 32.

victim and offender of the opportunity to understand the consequences of the act and to seek a mutually agreeable resolution.

Restorative justice does not eliminate the aspect of criminal accountability; rather, it shifts the orientation of sentencing from retribution to restoration. Eglash³⁵ distinguishes between three primary paradigms in the criminal justice system: retributive justice, which focuses on punishment; distributive justice, which emphasizes offender rehabilitation; and restorative justice, which focuses on restitution or repairing the harm suffered by the victim. Under the restorative approach, offenders are still held accountable for their actions, but the resolution is directed toward restoring social relationships and addressing the victim's interests.

This perspective is reinforced by Zehr,³⁶ who asserts that crime is not merely a violation of state law but also a form of damage to human relationships (viewing crime as a violation of people and interpersonal relationships). Restorative justice views criminal acts as conflicts that must be resolved through dialogue, accountability, healing, and the repair of social relationships. Unlike the retributive paradigm, which focuses on wrongdoing and punishment, the restorative paradigm positions the victim, the offender, and the community as active participants in the resolution process.

In the context of children in conflict with the law, a restorative approach is increasingly relevant because children possess psychological developmental characteristics that differ from those of adults. Rigid penal processes risk negatively impacting a child's development, whereas restorative approaches offer space for rehabilitation and social reintegration. Zehr³⁷ emphasizes that the core values of restorative justice include dialogue, responsibility, honesty, healing, reparation, and the restoration of social relationships.

This perspective aligns with the concept of diversion, which has gained international traction.³⁸ Restorative justice can be applied at various stages of the criminal process, including arrest, investigation, prosecution, trial, and the post-sentencing phase. These mechanisms allow law enforcement officials,

³⁵ Albert Eglash, "Creative Restitution: Some Suggestions for Prison Rehabilitation Programs," *American Journal of Correction* 20 (1958): 454. See too, Esther Wita Simanjuntak, 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* 2, no. 2 (2021): 314.

³⁶ Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Scottsdale, Pennsylvania, and Waterloo, Ontario: Herald Press, 1990), 23.

³⁷ Howard Zehr, and Harry Mika, "Fundamental Concepts of Restorative Justice," *Contemporary Justice Review* 1, no. 1 (1998): 242.

³⁸ Azwad Rachmat Hambali, and Zainuddin Zainuddin, "Implementation of Diversion for Children in Conflict with the Law by the National Police of Indonesia," *European Journal of Law and Political Science (EJ-POLITICS)* 2, no. 6 (2023): 18. See too, Yoga Ristama, and Hibnu Nugroho, "Diversion Process as a Transformative Reform of the Criminal Justice System for Children in Conflict with the Law," *Jurnal IUS Kajian Hukum dan Keadilan* 14, no. 1 (2026): 59.

including the police, to divert cases away from formal judicial proceedings if a restorative resolution is deemed more appropriate for the interests of both the victim and the offender.³⁹

From a restorative justice perspective, criminal cases need not be resolved solely through formal judicial proceedings; they can also be addressed through restorative mechanisms involving the offender, the victim, their families, and the community. Within the criminal justice system, restorative justice can be implemented at four key stages: investigation (pre-charge), prosecution (post-charge/pre-conviction), the trial phase prior to sentencing (post-conviction/pre-sentence), and the correctional phase (post-sentence/pre-reintegration). At each of these stages, authorized officials have the discretion to direct a case toward restorative mechanisms based on the specific characteristics of the case and the needs of the parties involved.⁴⁰

Van Dijk and DeWaard⁴¹ identify three primary models of restorative justice for juvenile offenders: the victim-oriented model, the offender-oriented model, and the place-oriented model. The victim-oriented model emphasizes victim recovery through support, the prevention of revictimization, and compensation. The offender-oriented model focuses on education and the prevention of criminal behavior, whereas the place-oriented model emphasizes community involvement through mechanisms such as community mediation.

Various international bodies classify restorative justice models into several forms, such as victim-offender mediation, family group conferencing, restorative circles, and community boards and panels.⁴² Among these models, the three primary forms most widely implemented are mediation, restorative circles, and restorative conferencing.⁴³

³⁹ Daniel W. Van Ness, and Karen Heetderks Strong, *Restoring Justice: An Introduction to Restorative Justice*. 4th Edition, (New Providence, NJ: Matthew Bender & Company, Inc., 2010), 11. See too, Claudia Carolina Indra Putri, "Juridical Review of Restorative Justice in the Juvenile Justice System through Diversion," *IJCLS (Indonesian Journal of Criminal Law Studies)* 4, no. 1 (2019): 7.

⁴⁰ UNODC, *Handbook on Restorative Justice Programmes* (New York: United Nations Publication, 2006), 12.

⁴¹ J. Van Dijk, and J. DeWaard, "A Two-Dimensional Typology of Crime Prevention Projects: With a Bibliography," *Criminal Justice Abstracts* 23 (1991): 756.

⁴² Mara Schiff, *Models, Challenges and the Promise of Restorative Conferencing Strategies*, In Andrew Von Hirsch et al., *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Oxford and Portland: Hart Publishing, 2003), 32. See too, Daniel W. Van Ness, and Karen Heetderks Strong, *Restoring Justice: An Introduction to Restorative Justice*. 4th Edition, (New Providence, NJ: Matthew Bender & Company, Inc., 2010), 12; Margarita Zernova, *Restorative Justice: Ideals and Realities* (Hampshire and Burlington: Ashgate, 2007), 232.

⁴³ Paul McCold, *The Recent History of Restorative Justice: Mediation, Circles, and Conferencing*, In Dennis Sullivan and Larry Tifft, *Handbook of Restorative Justice: A Global Perspective* (London and New York: Routledge, 2006), 131. See too, Sarwadi, and Bambang Tri Bawono, "Restorative Justice Approach in Diversion System for Settlement of Criminal Cases for Children in Indonesia," *Jurnal Daulat Hukum* 3, no. 4 (2021): 454385.

Restorative mediation is an early form of restorative justice that brings victims and offenders together with a neutral mediator to discuss harm, develop reparation agreements, and determine follow-up actions. The Victim-Offender Mediation (VOM) model, commonly applied in juvenile and minor cases, depends on safety, preparation, voluntary participation, direct meetings, and follow-up.⁴⁴ Complementing this approach, restorative circles draw from indigenous practices emphasizing deliberation, social balance, and collective conflict resolution. They involve victims, offenders, families, communities, and law enforcement in addressing harm and accountability. Unlike conventional restorative models, circles can be applied across different stages of criminal proceedings and to offenses ranging from minor to serious. Their distinctive features include active participation of affected parties, repairing harm, respecting individual dignity, creating safe spaces for dialogue, strengthening relationships, sharing emotional and social experiences, identifying underlying causes, and using facilitators as participants within the group. Thus, restorative circles prioritize repairing relationships rather than punishment alone.⁴⁵

The third model is restorative conferencing, a mechanism involving all stakeholders to determine the best way to address the impact of a criminal offense. This model has evolved into various forms, including Family Group Conferences (FGC), Family Group Decision-Making (FGDM), Family Unity Meetings (FUM), police conferencing, and community conferencing.⁴⁶ FGC and FGDM originated in New Zealand with the aim of strengthening family involvement in child protection, building family networks, and ensuring the continuity of care. Meanwhile, FUM, which developed in Oregon, emphasizes collaboration between families and social workers in child protection planning. Police conferencing, which emerged in Australia, is a form of restorative conferencing that involves the police in case resolution through an approach based on dialogue and offender accountability. Community conferencing extends restorative mechanisms to neighborhoods, schools, workplaces, and social organizations, emphasizing community-based conflict resolution.

⁴⁴ Mark S. Umbreit, *Victim Offender Mediation: An Evolving Evidence-Based Practice*, In Dennis Sullivan and Larry Tifft, *Handbook of Restorative Justice: A Global Perspective* (London and New York: Routledge, 2006), 31. See too, Claudia Carolina Indra Putri, "Juridical Review of Restorative Justice in the Juvenile Justice System through Diversion," *IJCLS (Indonesian Journal of Criminal Law Studies)* 4, no. 1 (2019): 9.

⁴⁵ Daniel W. Van Ness, and Karen Heetderks Strong, *Restoring Justice: An Introduction to Restorative Justice*. 4th Edition, (New Providence, NJ: Matthew Bender & Company, Inc., 2010), 18. See too, Barry Stuart, and Kay Pranis, *Peacemaking Circles: Reflections on Principal Features and Primary Outcomes*, In Dennis Sullivan and Larry Tifft, *Handbook of Restorative Justice: A Global Perspective* (London and New York: Routledge, 2006), 12.

⁴⁶ Paul McCold, *The Recent History of Restorative Justice: Mediation, Circles, and Conferencing*, In Dennis Sullivan and Larry Tifft, *Handbook of Restorative Justice: A Global Perspective* (London and New York: Routledge, 2006), 133.

The diversity of restorative justice models demonstrates that implementation must be tailored to the social, cultural, and legal contexts, as well as the institutional capacity, of each country. Consequently, there is no single model that can be applied universally; rather, flexibility is required to ensure that restorative mechanisms meet the needs of victims, offenders, and the community.

Sociologically, restorative justice is not a new concept but rather a conflict resolution practice long recognized in various traditional societies. Liebmann notes that restorative principles have been employed in the traditions of indigenous peoples, such as the Aboriginal, Māori, and Native American communities, as well as groups in Africa and Asia.⁴⁷ In Indonesia, restorative values are reflected in the cultures of deliberation and forgiveness that have long existed within customary law (*adat*). The Batak Karo community (through the *purpur* sage institution) and the Lampung Menggala community (through the *mewari* concept) demonstrate that conflict resolution based on peace, the restoration of relationships, and the re-establishment of social balance has long been part of local legal practices.⁴⁸

The people of Aceh, for instance, utilize customary law-based peace mechanisms through institutions known as *tuha peut* and *sayam*. The *tuha peut* functions as a community deliberative body for resolving disputes, while *sayam* serves as a peace mechanism for cases involving bloodshed or other criminal offenses.⁴⁹ Such practices demonstrate that restorative justice values have long been embedded in Indonesian societal traditions. Zulfa⁵⁰ explains that the relationship between restorative justice and the criminal justice system can be developed through three models: (1) as part of the criminal justice system, where reconciliation serves as a basis for mitigating or waiving punishment; (2) outside the criminal justice system, through the termination of legal proceedings based on reconciliation; and (3) through the expansion of law enforcement discretion by diverting cases to alternative resolution mechanisms.

The application of restorative justice in Indonesia also reflects a blend of formal and informal mechanisms.⁵¹ Practices among the people of Maluku

⁴⁷ Marian Liebmann, *Restorative Justice: How It Works* (London and Philadelphia: Jessica Kingsley Publishers, 2007), 123.

⁴⁸ Hilman Hadikusuma, *Masyarakat dan Adat Budaya Lampung* (Bandung: Mandar Maju, 1989), 321. See too, Natangsa Surbakti, *Peradilan Restoratif Dalam Bingkai Empiris, Teori dan Kebijakan* (Yogyakarta: Genta Publishing, 2015), 232.

⁴⁹ Natangsa Surbakti, *Peradilan Restoratif Dalam Bingkai Empiris, Teori dan Kebijakan* (Yogyakarta: Genta Publishing, 2015), 237.

⁵⁰ Eva Achjani Zulfa, *Keadilan Restoratif di Indonesia: Studi Tentang Kemungkinan Penerapan Pendekatan Keadilan Restoratif Dalam Praktik Penegakan Hukum Pidana* (Dissertation, Doctoral Program in Law, Faculty of Law, University of Indonesia, 2009), 11.

⁵¹ Irma Cahyaningtyas, "Criminal Justice System Toward Children with Legal Conflict Seen in Justice Restorative Prespective," *Jurnal Hukum Prasada* 7, no. 1 (2020): 19. See too, Muhammad

in Makariki Village, for example, show that cases involving children are first resolved through customary deliberation at the *baileu* (traditional meeting house) before the formal justice system is engaged. This phenomenon aligns with Eugene Ehrlich's⁵² theory of "living law," which emphasizes that effective law must harmonize with the values and practices alive within a society. Therefore, the application of diversion for children in conflict with the law should consider local cultures of reconciliation as a basis for exercising police discretion, particularly to alleviate the mounting burden on the formal criminal justice system.

The inquiry and investigation processes constitute the initial stages that determine the course of criminal case resolution, including cases involving children in conflict with the law. Under Article 7 of the Juvenile Criminal Justice System Law (UU SPPA), investigators, public prosecutors, and judges are required to pursue diversion for criminal offenses punishable by less than seven years of imprisonment, provided the offense is not a repeat offense. However, these restrictions create problems because many cases involving serious offenses committed by children still end up in the formal justice system, leading to an increase in the number of children in correctional facilities. Yet, UN studies indicate that restorative justice can also be applied to child offenders who have committed serious crimes, provided that the child's specific circumstances and the characteristics of the case are taken into account.

In the Indonesian context, the application of diversion to juvenile offenses carrying a penalty of more than seven years remains possible through the discretionary authority of law enforcement officials.⁵³ The Juvenile Criminal Justice System Law (UU SPPA) does not explicitly prohibit diversion in such cases; rather, it merely establishes the limits regarding the obligation to apply diversion. This approach is reinforced by Supreme Court Regulation (*Peraturan Mahkamah Agung/Perma*) Number 4 of 2014, which allows judges to pursue diversion in specific cases involving potential penalties of seven years or more. These provisions reflect a progressive legal approach that prioritizes the best interests of the child, restorative justice, and rehabilitation as the primary objectives of case resolution. At the investigation stage, the legal basis for the

Ansori Lubis, "Discretion of Law Enforcement Officials in Handling Children Who Commit Crimes: A Study of Compliance with the Principles of Restorative Justice," *Jurnal Ilmiah METADATA* 7, no. 3 (2025): 288.

⁵² Eugene Ehrlich, *Fundamental Principles of the Sociology of Law* (Cambridge: Harvard University Press, 1936), 122.

⁵³ Azwad Rachmat Hambali, and Zainuddin Zainuddin, "Implementation of Diversion for Children in Conflict with the Law by the National Police of Indonesia," *European Journal of Law and Political Science (EJ-POLITICS)* 2, no. 6 (2023): 19. See too, Claudia Carolina Indra Putri, "Juridical Review of Restorative Justice in the Juvenile Justice System through Diversion," *IJCLS (Indonesian Journal of Criminal Law Studies)* 4, no. 1 (2019): 10.

exercise of discretion by National Police investigators is found in Article 16 paragraph (1) letter l in conjunction with Article 18 of the Police Law, which grants authority to take action based on considerations of the public interest and responsible legal practice.⁵⁴

Police discretion serves as a vital instrument in criminal case resolution, as it allows officials to take actions that are more effective, proportionate, and community-oriented. The exercise of discretion is grounded in the premise that certain resolution mechanisms may yield greater benefits than the rigid application of formal law. In practice, discretion may be employed when resolution through local customary mechanisms or alternative approaches is deemed more effective and more acceptable to the offender, the victim, and the community, provided it does not conflict with the public interest.⁵⁵ However, because discretion affords officials room for subjective judgment, its application must be constrained by principles of necessity, purpose, the objectives of police duties, and a balance between the action taken and the issue at hand.⁵⁶

Regarding diversion for children in conflict with the law, a restorative approach remains applicable even to serious offenses, provided the child's specific circumstances are taken into account.⁵⁷ International instruments indicate that a restorative justice approach can be applied to child offenders, including in serious cases, provided there are adequate mechanisms for rehabilitation and support.⁵⁸ Research also shows that restorative justice can have a positive impact by reducing recidivism and increasing the satisfaction of the parties involved.

Therefore, the implementation of diversion through police discretion must be based on specific criteria, such as the child's age, the existence of an agreement between the parties, the responsibility to redress the victim's loss, and the requirement that the child is neither a repeat offender nor the principal perpetrator. This approach aligns with the principle of criminal liability, which

⁵⁴ Anton Susanto F., *Kepolisian dalam Upaya Penegakan Hukum di Indonesia*, (Jakarta: Rineka Cipta, 2004), 12. See too, H.R. Abdussalam, *Hukum Kepolisian Sebagai Hukum Positif dalam Disiplin Hukum* (Jakarta: Restu Agung, 2009), 21; Faal M., *Penyaringan Perkara Pidana Oleh Polisi (Diskresi Kepolisian)* (Jakarta: Pradnya Paramita, 1991), 232.

⁵⁵ Faal M., *Penyaringan Perkara Pidana Oleh Polisi (Diskresi Kepolisian)* (Jakarta: Pradnya Paramita, 1991), 234.

⁵⁶ Satjipto Rahardjo, *Masalah Penegakan Hukum* (Bandung: Sinar Baru, 1983), 16.

⁵⁷ Yoga Ristama, and Hibnu Nugroho, "Diversion Process as a Transformative Reform of the Criminal Justice System for Children in Conflict with the Law," *Jurnal IUS Kajian Hukum dan Keadilan* 14, no. 1 (2026): 61.

⁵⁸ Carolyn Hamilton, *Guidance for Legislative Reform on Juvenile Justice* (New York: Child Protection Section UNICEF, 2011), 11. See too, OHCHR, "United Nations Rules for the Protection of Juveniles Deprived of their Liberty," OHCHR, June 20, 2021, <https://www.ohchr.org/en/professionalinterest/pages/juvenilesdeprivedofliberty.aspx>, Accessed on July 10, 2026.

emphasizes the importance of the relationship between the act and the perpetrator's moral culpability.⁵⁹

Criminal liability for offenses resulting from negligence remains a subject of debate between subjectivist and objectivist paradigms. The subjectivist paradigm argues that an individual cannot be held criminally liable absent subjective awareness regarding the circumstances and consequences of their actions. From this perspective, *mens rea* encompasses only forms of culpability involving intention or recklessness, as negligence does not demonstrate the presence of will or awareness regarding the consequences prohibited by law.⁶⁰ Conversely, the objectivist paradigm holds that criminal liability does not necessarily depend on the perpetrator's moral culpability, but rather on the legislative intent regarding the mental element of an offense. Thus, if the law stipulates that negligence is subject to criminal sanctions, liability may still be imposed on the perpetrator.⁶¹

In the context of cases involving children who commit serious offenses due to negligence or without subjective awareness, a restorative justice approach can serve as a middle ground between these two paradigms. This approach does not absolve the perpetrator of responsibility but shifts the orientation of sentencing from retribution to restoration which is achieved through restitution, social responsibility, and the repair of relationships among the perpetrator, the victim, and the community. Consequently, diversion through police discretion may be implemented while adhering to specific criteria, including the exclusion of offenses such as terrorism, threats to state security, corruption, or crimes against life. The mechanism must remain guided by police policy on restorative justice to ensure alignment with the principles of legality, legal certainty, and the best interests of the child.

D. CONCLUSION

This study indicates that the application of diversion for children in conflict with the law during the investigation stage has, in principle, been carried out in accordance with the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. However, its implementation has not been fully effective due to various obstacles, including the refusal of victims or their families to reach a settlement, limited inter-agency coordination, a lack of supporting facilities such as Temporary Child Placement Institutions (*Lembaga Penempatan Anak Sementara/LPAS*), and relatively

⁵⁹ Wayne LaFave, and Austin W. Scott Jr., *Handbook on Criminal Law* (Minnesota: West Publishing, 1986), 32.

⁶⁰ Donald Davidson, "Agency." In Donald Davidson, *Essays on Actions and Events* (Oxford: Clarendon Press, 1980), 12. See too, George P. Fletcher, *Rethinking Criminal Law* (Boston: Little, Brown and Company, 1978), 122.

⁶¹ J.C. Smith, and B. Hogan, *Criminal Law*. 7th Edition (London: Butterworths, 1992), 11.

bureaucratic diversion procedures. These conditions demonstrate that the success of diversion is determined not only by the existence of legal norms but also by the readiness of legal structures, institutions, and a legal culture that supports the consistent implementation of restorative justice.

The study also finds that limiting diversion solely to offenses carrying a penalty of less than seven years as stipulated in Article 7 paragraph (2) of the Juvenile Criminal Justice System Law, does not fully reflect the principle of the best interests of the child or the values of restorative justice. From a progressive legal perspective, police discretionary authority can serve as an instrument to allow for restorative resolutions in certain cases carrying penalties exceeding seven years, provided such authority is exercised accountably and proportionately, and is guided by clear criteria. The application of this discretion must take into account the offender's age, the existence of a peace agreement between the parties, the commitment to redress the victim's losses, the offender's status as a first-time offender, the level of the offender's involvement in the crime, and exclusions for serious offenses. Furthermore, the exercise of discretion must adhere to internal police policies to ensure legal certainty, prevent the abuse of authority, and guarantee that the protection of children's rights remains the primary focus in the resolution of criminal cases.

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