

## **Effectiveness of Termination of Prosecution of Child Offenders Who Commit Crimes Based on Restorative Justice**

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**Abstract.** *With the authority to discontinue prosecution based on restorative justice principles, the Prosecutor's Office can play a crucial role in reducing the caseload in courts while promoting restorative justice. The purpose of this study is to examine and analyze the effectiveness of discontinuing prosecutions against child offenders who commit crimes based on restorative justice. To examine and analyze law enforcement against child offenders who commit crimes in the future. This legal research employs empirical legal research methods. Empirical legal research, that is, legal research that utilizes legal principles and principles to review, observe, and analyze problems, in research, and also examines the implementation of the law in practice. Ideally, handling juvenile cases should be directed towards a more humanistic and restorative approach, placing children as subjects whose future must be protected. The effectiveness of restorative justice-based prosecution termination, as emphasized by Soerjono Soekanto, is strongly influenced by clear regulations, the competence of officers, the availability of rehabilitation facilities, and support from the community's legal culture. However, practice in Indonesia is still hampered by a retributive paradigm, limited facilities, weak coordination, and public pressure. Lessons learned from the Netherlands, Canada, and Australia show that the success of juvenile justice depends on a combination of pedagogical interventions, restorative mediation, the role of families and communities, the professionalization of officers, and the use of prison as a last resort. By adopting the flexibility of Dutch judges, Canadian diversion standards, and Australian community conferences, Indonesia can strengthen diversion, improve social infrastructure and data systems, and increase public legal literacy so that child protection runs optimally without neglecting justice for victims and the community.*

**Keywords:** *Children; Discontinuation; Prosecution; Restorative.*

## 1. Introduction

Law enforcement is not only limited to the articles contained in the laws and regulations in force in Indonesia, but also concerns various factors that influence it such as perpetrators of crimes, victims of crimes, and law enforcement officers who are part of the juvenile justice system, one example of the application of law is the diversion process in handling cases of children who are in conflict with the law. Children are the potential fate of humanity in the future they are the ones who play a role in determining the history of the nation and are a reflection of the nation's attitude in the future.<sup>1</sup>

Protecting children from the harmful effects of the criminal justice system is the primary goal of the Juvenile Criminal Justice System (SPPA/Law No. 11 of 2012). Restorative justice is the primary approach within the SPPA during the pre-adjudication, adjudication/prosecution, and post-adjudication stages. Restorative justice benefits victims, communities, and children in conflict with the law through diversion mechanisms, alternative sentencing, and child rehabilitation and reintegration programs.

Avoiding deterrence and imprisonment is the last resort in the SPPA, yet imprisonment remains the most common sentence imposed by district court judges in juvenile cases. Over time, obstacles to handling children in conflict with the law (AKH) continue to emerge, such as the lack of programs and responsibilities for rehabilitation and social reintegration for AKH following diversion agreements or imprisonment.<sup>2</sup>

Based on data from the infographic on children in conflict with the law, the number of criminal cases involving children in District Courts in 2023 was 5,192. According to data from the Directorate General of Corrections, Ministry of Law and Human Rights, as of August 26, 2023, nearly 2,000 children were in conflict with the law. This shows an increasing trend from 2020 to 2023. The Indonesian Child Protection Commission (KPAI) recorded 54 children in conflict with the law in 2022. The number of children in conflict with the law is spread across various crimes such as possession of sharp weapons, assault, theft, murder, traffic accidents, drug abuse, pornography crimes, and rape. Meanwhile, based on information from the Head of the Traffic Corps.<sup>3</sup>

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<sup>1</sup>Wigiati Sutedjo, 2005, *Criminal Law for Children*, Bandung: Refika Aditama, p. 5

<sup>2</sup>Abi Salam, Raihan, and B. Farhana Kurnia Lestari. "Criminal Responsibility for Children Acting as Narcotics Couriers: (Case Study in the Mataram Police Area)." *Unizar Recht Journal (URJ)* 4, no. 2 (2025): pp. 265-274.

<sup>3</sup>and the State" accessed September 16, 2024, <https://www.kompas.id/baca/riset/2023/08/28/meningkatnyakusus-anak-berkonflik-hukum-alarm-bagi-masyarakat-dan-negara2023>.

It is stated in the Convention on the Rights of the Child, Article 40 paragraph 1 that states parties recognize the right of every child who is accused of, or recognized as having violated the criminal law, to be treated in a manner consistent with the promotion of the child's sense of respect and dignity, which reinforces the child's respect for the human rights and fundamental freedoms of others, taking into account the child's age and the desirability of promoting the child's reintegration and the child's adoption of a constructive role in society.<sup>4</sup> This shows that from the conclusion of the article, the restorative justice approach is in line with the various provisions mentioned in the article.

Fair and effective law enforcement is a primary goal of Indonesia's criminal justice system. However, conventional justice processes often focus solely on imposing sanctions on perpetrators without considering the needs of victims and efforts to reconcile both parties. This approach has drawn criticism for failing to fully fulfill the principle of justice, which should be the foundation of the legal system.<sup>5</sup> Then, the principle of restorative justice emerged as an alternative that offers a more holistic approach to case resolution and is oriented towards restoring relationships between perpetrators, victims, and the community.

The urgency of implementing restorative justice principles is increasingly relevant given the complexity of the problems faced in resolving criminal cases in Indonesia. This approach emphasizes dialogue and mediation to reach a resolution that benefits all parties. Restorative justice not only reduces the burden on the criminal justice system but also provides a more humane solution by prioritizing the perpetrator's moral responsibility towards the victim. This principle is becoming increasingly important to apply in various minor to moderate criminal cases, especially those that do not have a widespread impact on society.<sup>6</sup>

However, the implementation of restorative justice in Indonesia faces various challenges, particularly in terms of regulations and the authority of law enforcement institutions such as the Attorney General's Office, one of the main actors in the criminal justice system that plays a role in determining the direction of criminal case resolution. The prosecutor's authority to terminate a prosecution based on restorative justice principles is stipulated in the Attorney General's internal guidelines, but its implementation still requires adjustments to the social and cultural conditions of Indonesian society.<sup>7</sup> Therefore, it is important to further

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<sup>4</sup>Marhayani, Cik, Anis Rindiani, Wijayono Hadi Sukrisno, Husni Thamrin, and M. Imanuddin. "A legal analysis of the definition of children in positive law in Indonesia." *Jurnal Legalitas* 2, no. 2 (2024): pp. 60-72.

<sup>5</sup>Bambang Waluyo, *Law Enforcement in Indonesia*, Sinar Grafika, Jakarta, 2014, p.153.

<sup>6</sup>Ryan Aditama and Novia Yolanda, *Implementation of Restorative Justice in Juvenile Criminal Justice related to Criminal Law Reform in Indonesia*, *Jurnal Wajah Hukum*, Vol.4, No.2 (October 2020), p.483.

<sup>7</sup>Isroni Muhammad Miraj Mirza et al., *Strategy for Internalizing the Principles of Restorative Justice in the Indonesian Judicial System*, *Pancasila Jurnal Keindonesiaan*, Vol.2, No.2 (2022), p.149.

examine how this authority can be optimized to support the principle of restorative justice.

As an institution at the forefront of law enforcement, the Prosecutor's Office has a responsibility to ensure that termination of prosecutions does not conflict with the principles of criminal law and the principle of justice. However, in practice, the implementation of restorative justice often faces obstacles such as a lack of understanding of this principle among prosecutors, resistance from certain parties, and a lack of clear operational guidelines. Therefore, strengthening regulations and training are needed to increase the capacity of prosecutors to consistently apply this approach.<sup>8</sup>

As part of the criminal justice system, the Prosecutor's Office has a strategic position in driving transformation towards a legal system that is more inclusive and responsive to the needs of society.<sup>9</sup>With the authority to discontinue prosecution based on restorative justice principles, the Prosecutor's Office can play a crucial role in reducing the court caseload while promoting restorative justice. This aligns with the goal of the criminal justice system, which is not only to punish the perpetrator but also to restore social relationships disrupted by crime.

In Article 1 number (1) of the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020, it can be stated that restorative justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other parties to jointly seek a just solution by emphasizing restoration to the original state, and not revenge. Efforts to implement restorative justice continue to be echoed by the government, including by the Attorney General. The Indonesian Prosecutor's Office has a central and strategic position as a law enforcement institution in Indonesia. In order to realize a sense of justice for the community, the prosecutor's office must be more professional and dynamic in keeping with developments in the times and social life. Restorative justice can be a solution to the inconsistencies in legal settlements that often occur, therefore the prosecutor's office is an important instrument in realizing this alternative legal settlement effort.<sup>10</sup>

One example of a case whose prosecution was stopped occurred in Pagar Jati Village, Kikim Selatan District, Lahat Regency, precisely in front of SMP Negeri 1 Kikim Selatan, where a case of alleged criminal violence occurred which resulted

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<sup>8</sup>Fitri, Icha Cahyaning, and Alif Rizki Budi Cahyono. "The Position of the Prosecutor's Office in Law Enforcement in Indonesia Based on the Criminal Procedure Code." *National Multidisciplinary Sciences* 4, no. 3 (2025): pp. 41-51.

<sup>9</sup>Septiani, Veni, and Dika Ratu Marfuatun. "The Urgency of Strengthening the Role of Public Prosecutors in the Indonesian Criminal Justice System." *KRAKATAU (Indonesian Journal of Multidisciplinary Journals)* 1, no. 1 (2023): pp. 9-14.

<sup>10</sup>Ramadhani, Gita Santika. "The Role of the Prosecutor's Office in Realizing Restorative Justice as a Crime Prevention Effort." *PROGRESSIVE: Journal of Law* 15, no. 1 (2021): pp. 77-91.

in injuries to the Child Victim (Kendy Novinza), which occurred on Wednesday, June 22, 2022, under the name of the suspect Juanda Saputra bin Puzaimi (deceased), and is suspected of committing a crime as regulated in Article 80 paragraph (2) in conjunction with Article 76C of the UUPA. The Lahat District Attorney's Office, based on the provisions of Article 7 paragraph (1) of the UUPA, is seeking to resolve the Child's case through a diversion process, which begins with the implementation of a diversion deliberation on Wednesday, July 7, 2022, with the agreement that the Child Victim has forgiven the Child, and the Child will be responsible for all medical costs incurred by the Child Victim. The agreement was then established by the Lahat District Court on July 13, 2022, with Determination Letter Number: 3/Pen.Div/2022/PN Lht., which essentially granted the Public Prosecutor's request and implemented the diversion agreement. The court's determination then ended with the issuance of the Determination Letter for Termination of Prosecution Number: TAP1334/L.6.14/Aoh.2.Anak/07/2022 against the child.<sup>11</sup>

## **2. Research Methods**

This legal research uses an empirical legal research method. Empirical legal research is legal research that uses legal principles and principles to review, observe, and analyze problems in the research, as well as reviewing the implementation of the law in practice.<sup>12</sup> The empirical research method combines doctrinal and empirical legal research methods. Therefore, the researcher conducted document studies accompanied by field studies. The document study in this research involved literature review using statutory regulations.

## **3. Results and Discussion**

### **3.1. The Effectiveness of Termination of Prosecution of Child Offenders Who Commit Crimes Based on Restorative Justice**

The movement and development of child protection has occurred not only in Indonesia but also in countries around the world, including Chicago. The movement and development of child protection in Chicago has been ongoing since the establishment of juvenile justice in Illinois in 1899.<sup>13</sup> From then on, the focus was on child welfare. The separation of juvenile and adult justice processes was intended to protect children from the application of adult law.<sup>14</sup> The principles of

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<sup>11</sup>Yosalida, Rindu. "The Failure of Child Prosecution Through Diversion at the Lahat District Attorney's Office." *Lex LATA Scientific Journal of Law*, 6, No. 1 (2024). Pp. 30-50

<sup>12</sup>Ronny Hanitijo Soemitro, *Legal Research Methodology and Jurimetry*, Ghalia Indonesia, Jakarta, 1990, p. 33.

<sup>13</sup>Marlina, *Juvenile Criminal Justice in Indonesia: Development of the Concept of Diversity and Actorative Justice*; Bandung, Refika Adituma, 2009, pp. 42-43

<sup>14</sup>Anthony M Platt, *The Child Savers; the Invention of Delinquency*. Chicago and London, The University of Chicago Press, Second Edition, 1977, p 54.

child protection in the juvenile criminal justice system are regulated by national laws and regulations.

In practice, it turns out that children as perpetrators of criminal acts experience a development in both the quality and quantity of the crimes they commit, because children as perpetrators of unlawful acts or crimes committed by them are equal to or exceed those of adults and the threat of punishment is more than 7 years, even a repetition of the crime.

Criminal sanctions for children as perpetrators of crimes do not have a deterrent effect, instead there is a tendency for children to gain more experience and become more professional so that this has an impact on improving the quality of children as perpetrators of crimes and the deterrent effect is not fulfilled, then this norm tends to be more about revenge or prioritizes individualistic theory rather than monodualistic theory, namely the balance between the perpetrator and the victim.

Child protection is implemented in all aspects of life, including in juvenile criminal justice. Juvenile criminal justice emphasizes children's rights, whether as suspects, victims, defendants, or prisoners. The goal of juvenile criminal justice is not only to prioritize sentencing but also to protect children's psychological futures by providing care, guidance, and education.<sup>15</sup> The existence of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the Juvenile Criminal Justice System Law), contains several important changes, one of the solutions that can be taken in handling juvenile criminal cases is a restorative justice approach implemented by means of diversion so as to minimize children from negative stigma due to facing the legal process. Restorative justice is a resolution process carried out outside the criminal justice system by involving victims, perpetrators, families of victims and perpetrators, the community and parties interested in a crime that occurred to reach an agreement and resolution.

Restorative justice is considered a new way of thinking/paradigm in viewing a crime committed by an individual. Restorative justice is a diversion process where all parties involved in a particular crime work together to solve the problem by involving the child victim, the child, and the community in finding solutions for repair, reconciliation, and reassurance that are not based on retaliation. However, in essence, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System regulates the entire process of resolving cases of children in conflict with the law, from the investigation stage to the guidance stage after serving their sentence.<sup>16</sup>

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<sup>15</sup>Maidin Gultom, *Legal Protection for Children in the Juvenile Criminal Justice System in Indonesia*, Bandung, PT Refika Aditama, 2014, p. 93

<sup>16</sup>Santi Kusumaningrum, *Use of Diversion for Children in Conflict with the Law*, <http://www.idlo.int/bandaacehawareness.html>, accessed on October 30, 2025

According to the Juvenile Criminal Justice System Law, Restorative Justice itself is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just resolution by emphasizing restoration to the original state, not retaliation. Closely related to Restorative Justice, Muladi explains in detail the characteristics of Restorative Justice as follows:

- 1) A crime is defined as a violation by one person against another and is seen as a conflict.
- 2) Focus attention on solving problems of accountability and obligations for the future.
- 3) Normative nature is built on the basis of dialogue and negotiation.
- 4) Restitution as a means for the parties, reconciliation and restoration are the main goals.
- 5) Justice is defined as the relationship between rights, assessed on the basis of results.
- 6) The focus of attention is directed at repairing social wounds resulting from criminal acts.
- 7) The community is a facilitator in the restorative process.
- 8) The roles of both victims and perpetrators are recognized, both in defining the problem and addressing the victims' rights and needs. They should be encouraged to take responsibility.
- 9) The perpetrator's responsibility is formulated as the impact of understanding his actions and is directed to participate in deciding what is best.
- 10) Criminal acts are understood in a comprehensive, moral, social and economic context.
- 11) Stigma can be removed through restorative<sup>17</sup>.

According to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, more emphasis is placed on diversion. The diversion implementation process adheres to the principle of restorative justice, which pays close attention to the interests of victims and the welfare of children. The handling of cases involving children as perpetrators of various crimes, with varying numbers and forms, has encouraged the Government to pay special attention to this matter.

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<sup>17</sup>Muladi, *Selected Chapters on the Criminal Justice System*, Semarang: BP Diponegoro University, 1995, p. 129

One of these is the enactment of Law Number 3 of 1997 concerning Juvenile Courts, which has now been amended to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The Government's efforts to provide special attention through the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System are an effort to continue upholding justice from the legal objectives themselves with children as perpetrators of crimes.

With the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, diversion is mandatory for every examination of a child's case, starting from the investigation, prosecution, to the examination at trial. Based on several theories of punishment that have been explained in the previous chapter, it can be said that basically restorative justice has relevance to the purpose of child punishment, which is seen as the deprivation of liberty against children, whether in the form of imprisonment or in other forms of deprivation through the criminal justice mechanism, giving a traumatic experience to children, so that their development and mental growth are disturbed. The bitter experience of coming into contact with the world of justice will be a dark shadow in the child's life that is not easily forgotten. PERMA Number 4 of 2014 states that it is necessary to hold a deliberation involving several elements to achieve restorative justice. Restorative justice can be carried out through deliberation between the perpetrator and the victim, reparation by the perpetrator to repair everything that was damaged, victim-perpetrator conferences involving families from both parties and community leaders and victim awareness work (an effort by the perpetrator to be more concerned about the impact of his actions).

The implementation of restorative justice policies towards children as perpetrators of crimes has not been fair. In the considerations of Law Number 23 of 2002 concerning Child Protection (hereinafter referred to as the Child Protection Law) it is stated that children are a mandate and gift from God Almighty, who are inherent in their dignity and worth as whole human beings. From this understanding, children are placed in a noble position as a mandate from God Almighty who has a strategic role and guarantees the continued existence of this country. Through the Child Protection Law, children's rights are guaranteed, even the State has established an Indonesian Child Protection Commission (KPAI) which has the responsibility to increase the effectiveness of child protection.

However, in the definition of a child, an age limit must still be determined. In Indonesian legislation, there are various definitions of the age limit for children in several laws, including:

- 1) Law Number 1 of 1974 concerning Marriage stipulates that the marriage age is 16 (sixteen) years for women and 19 (nineteen) years for men,

2) Law Number 4 of 1979 concerning Child Welfare defines a child aged 21 (twenty one) years and has never been married,

3) Law Number 3 of 1997 concerning Juvenile Courts defines a child as a person who in juvenile delinquency cases has reached the age of 8 (eight) years but has not reached the age of 18 (eighteen) years and has never been married.

4) Law Number 39 of 1999 concerning Human Rights states that a child is someone who is not yet 18 (eighteen) years old and has never been married.

These various definitions indicate a disharmony in existing legislation. Therefore, Article 1 of the Child Protection Law states that a child is anyone under 18 (eighteen) years of age, including unborn children. Indonesia has many regulations that explicitly provide protection for children, including:

a. 1945 Constitution, Article 34 states that the poor and neglected children are cared for by the State and also Article 28B paragraph (2) states that every child has the right to survive, grow and develop, and receive protection from violence and discrimination.

b. Law Number 4 of 1979 concerning Child Welfare,

c. The 1989 Convention on the Rights of the Child, which was later ratified through Presidential Decree Number 36 of 1990,

d. Law Number 3 of 1997 concerning Juvenile Courts,

e. Law Number 23 of 2002 concerning Child Protection,

f. Law Number 20 of 2003 concerning the National Education System,

g. Law Number 23 of 2004 concerning the Elimination of Domestic Violence,

h. Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking,

i. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, and many other laws and regulations. The Juvenile Court Law states that problematic children are categorized under the term juvenile delinquency and are referred to as delinquent children. After the enactment of the Child Protection Law, the term delinquent children changed to children in conflict with the law and this term is also used in the Law.

Juvenile Criminal Justice System. There are two categories of child behavior that could result in them having to deal with the law, namely:

- a. Status offense is juvenile delinquency that, if committed by an adult, would not be considered a crime, such as disobedience, truancy from school or running away from home.
- b. Juvenile delinquency is juvenile delinquency which, if committed by an adult, would be considered a criminal act or violation of the law.<sup>18</sup>.

The definition of Juvenile Delinquency according to Kartini Kartono is evil/immoral behavior, or criminal/delinquent acts by young people, which are symptoms of social illness (pathology) in children and adolescents caused by a form of social neglect, so that they develop a form of neglect of deviant behavior.<sup>19</sup>.

The Juvenile Criminal Justice System Law replaces Law Number 3 of 1997 concerning Juvenile Courts ("Juvenile Court Law"), which aims to establish a justice system that truly guarantees the protection of the best interests of children in conflict with the law. The Juvenile Court Law is considered no longer appropriate to the legal needs of society and does not comprehensively provide special protection to children in conflict with the law.

The substance regulated in the SPPA Law includes the placement of children undergoing judicial proceedings, which can be placed in Special Child Development Institutions (LPKA). The most fundamental substance in this Law is the explicit regulation of Restorative Justice and Diversion, which aims to prevent children from being excluded from the judicial process, thus avoiding stigmatization of children in conflict with the law and hopefully allowing children to return to their social environment normally.

Every child who commits a crime who enters the criminal justice system must be treated humanely as regulated in the provisions of Law No. 35 of 2014, an amendment to Law No. 23 of 2002 concerning Child Protection, namely non-discrimination, the best interests of the child, the right to life, life and development, and respect for the child's opinion, with the provisions regarding children as perpetrators of crimes, then in Law No. 11 of 2012 concerning the Child Criminal Justice System, there is a recognition of Diversion efforts. Diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system.<sup>20</sup> Diversion efforts are mandatory at the investigation, prosecution, and examination levels of juvenile cases in the District Court. Implementation of diversion at each level of examination remains

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<sup>18</sup>Purnianti, Mamik Sri Supatmi, and Ni Made Martini Tinduk, citing Harry E. Allen and Clifford E. Simmons, in *Correction in America: An Introduction, Situation Analysis of the Juvenile Justice System in Indonesia*, UNICEF, Indonesia, 2003, p. 2

<sup>19</sup>Kartini Kartono, *Social Pathology, Juvenile Delinquency*, Jakarta: Rajawali Pers, 1992, p. 7

<sup>20</sup> Bangun, Rudy, Kristiawanto Kristiawanto, and Diah Sulastris Dewi. "Implementation of Diversion as Legal Protection for Child Perpetrators of Theft in the Juvenile Criminal Justice System." *Dikmas: Journal of Community Education and Community Service* 2, no. 2 (2022): pp. 391-402.

hampered because the concept of diversion is new in Indonesia, and each level of examination lacks provisions on appropriate actions for implementing diversion efforts for juveniles as perpetrators of crimes.

Regarding the regulation of Diversion, it is specifically regulated in Article 5 paragraph (3), which states that in the juvenile criminal justice system, diversion efforts must be made. Furthermore, Article 8 paragraph (1) of the SPPA Law also regulates that the diversion process is carried out through deliberation involving the child and his/her parents/guardians, the victim and/or his/her parents/guardians, community counselors, and professional social workers based on a restorative justice approach. The conditions stipulated in this law for the implementation of diversion are clearly regulated in Article 7 paragraph (2), namely:

- a. Threatened with imprisonment of less than 7 (seven) years; and
- b. Not a repetition of the crime.

Soerjono Soekanto emphasized that law is effective when its norms truly work in society and create social conditions consistent with the law's objectives. In the context of juvenile justice, this effectiveness is seen when restorative justice mechanisms are able to significantly restore relationships, protect children from stigma, and provide proportional legal protection.

Termination of prosecution of children is a crucial instrument offered by the Juvenile Justice and Child Protection Law (SPPA) as a form of special protection for children in conflict with the law. The effectiveness of this mechanism depends heavily on law enforcement officials' awareness that the primary goal of handling children's cases is rehabilitative, not retributive. When officials prioritize recovery, the restorative justice process becomes more easily achieved.

In Soerjono Soekanto's theory, one of the elements of effectiveness is the legal factor itself.<sup>21</sup> Regulations regarding restorative justice-based prosecution termination are stipulated in Article 7 letter j and Article 9 of the SPPA Law, and reinforced by Regulation No. 15 of 2020. If these norms are clear, unambiguous, and provide adequate implementation guidelines, their implementation will be more effective. Conversely, overly general regulations can lead to differing perceptions, thus slowing down the prosecution termination process.

Another obstacle that must be addressed in relation to the objectives of Law No. 11 of 2012 is the inadequate rehabilitation facilities for child offenders. The primary goal, which is to rehabilitate the offender for their own good, is futile if the rehabilitation process is ineffective. The rehabilitation process will have no

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<sup>21</sup> Orlando, Galih. "The Effectiveness of Law and the Function of Law in Indonesia." *Tarbiyah bil Qalam: Journal of Religious Education and Science* 6, no. 1 (2022): pp. 49-58.

impact on the child's understanding or psychological well-being. This is feared to increase the risk that the child will repeat the offense later in life.

There are still many areas that need improvement and attention regarding the effectiveness of Law No. 11 of 2012, the regulation used in the juvenile justice system. While the purpose of this regulation is to ensure justice for both victims and perpetrators, if it is not implemented effectively, it will harm the victims.

Effectiveness also depends on the law enforcement personnel implementing it. Prosecutors handling juvenile cases must understand the psychological characteristics of children, the principle of the child's best interests, and penal mediation techniques. The preparedness of law enforcement officers determines whether a termination of prosecution can be implemented quickly, humanely, and in accordance with restorative values. Lack of training and understanding can hinder the desired goal of restorative justice.

Facilities and infrastructure factors also influence the effectiveness of stopping prosecution of children.<sup>22</sup> Restorative justice requires a comfortable mediation space, professional counselors, social workers, and support from juvenile correctional institutions. When these resources are lacking, the dialogue between the child, victim, and family becomes less conducive, thus undermining RJ's essence as a forum for social restoration.

Soerjono Soekanto also emphasized the importance of societal factors in determining the functioning of legal regulations. Termination of prosecution based on RJ will be more effective if the community accepts a non-punitive approach as a means of resolving juvenile cases. However, if the community still views juvenile actions solely as crimes that must be meted out with punishment, acceptance of this mechanism will be low.

According to Soekanto, legal culture is another factor that serves as a benchmark for effectiveness. The retributive legal culture of officials and the public is often a major obstacle to implementing termination of prosecution. A paradigm shift is needed, emphasizing that child protection does not only involve punishment but also provides opportunities for self-improvement through dialogue, accountability, and rehabilitation.

The effectiveness of a prosecution discontinuation can be measured by the extent to which this mechanism is able to prevent children from undergoing lengthy formal judicial processes. Children facing trial can potentially experience trauma

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<sup>22</sup> Jamaludin, Ahmad, and Risti Dea Nuraeni. "The Effectiveness of Diversion Implementation in Resolving Cases of Children as Perpetrators of Abuse and Assault in West Java." *JCIC: Journal of the CIC Institute for Social Research and Consulting* 7, no. 2 (2025): pp. 129-144.

and stigma. When the prosecution discontinuation process is swift and effective, it demonstrates that the rule of law is working to protect children's rights.

Implementing mediation within a restorative justice framework allows victims to express their losses and hopes for restitution. If this process fosters a sense of justice for the victim, then the termination of prosecution can be considered effective from a sociological perspective. Justice is not measured solely by sanctions, but by the restoration of damaged social relations.

The success of a prosecution termination can also be measured by changes in a child's behavior after undergoing the RJ process. When a child demonstrates remorse, understands the impact of their actions, and returns to their social environment without stigma, the effectiveness of the legal process is achieved, as Soekanto taught: the law must be able to create positive social change.

In practice, the effectiveness of this mechanism is often hampered by a lack of coordination between the prosecutor's office, the police, the Corruption Eradication Committee (Bapas), and community leaders. However, according to Soerjono Soekanto, a structure that doesn't function harmoniously can prevent the law from achieving its objectives. Synergy between institutions is essential for the comprehensive operation of restorative justice mechanisms.

Effectiveness can also be evaluated by reducing the recidivism rate of juveniles. When the suspension of prosecution provides educational opportunities for children and improves their relationships with their families and communities, this mechanism serves as a crime prevention tool. Thus, restorative value not only restores the present but also prevents future deviations.

From a criminological perspective, children processed through a restorative approach are better able to internalize moral values due to their direct involvement in conflict resolution. This aligns with Soekanto's concept that the effectiveness of law can be measured by its impact on community behavior. If children are able to reflect on their actions, the legal process has had a significant pedagogical effect.

The effectiveness of prosecution termination can also be analyzed through the satisfaction of the parties. When the victim feels respected, the child feels supported, and the family feels the resolution process was fair, the legal system is functioning responsively. This demonstrates that the social dimension of restoration is achieved through the utilization of established norms.

In many cases, the effectiveness of this mechanism is determined by the quality of the mediation facilitator. A mediator who can foster a dialogical atmosphere will produce a more sincere peace agreement. Soekanto emphasized that the human resources who enforce the law are a key variable in determining effectiveness. Therefore, improving the capacity of mediators is crucial.

Children from harmonious families and supportive communities tend to respond better to restorative processes. Conversely, children who return to an unfavorable environment are more likely to reoffend. This demonstrates that legal effectiveness is also influenced by external factors beyond regulation.

*Restorative justice* Providing space for victims to receive not only material reparations but also psychological ones. When victims feel acknowledged and heard, this creates a broader sense of substantive justice than formal punishment. The effectiveness of the law becomes evident when emotions, social relationships, and public trust are restored.

The mechanism for terminating prosecutions for children can be seen in the reduced caseload in the courts. When certain cases can be resolved through RJ without compromising the quality of law enforcement, the justice system operates more efficiently. This efficiency is also an indicator of the functioning of a legal system.

In practice, the termination of prosecution is often tested by the community's acceptance of the child's return to their community. If the community is able to accept and provide space for the child to improve themselves, then the law has successfully fulfilled its integrative function, as explained by Soekanto. This social acceptance is proof that the RJ mechanism not only resolves cases but also restructures social relations.

Support from social institutions such as schools, youth organizations, and child protection agencies is a crucial factor in determining the effectiveness of a prosecution termination. Children need an adequate ecosystem to thrive after undergoing the RJ process. When this support is in place, the effectiveness of the law is enhanced by creating an environment that encourages recovery and rehabilitation.

Restorative justice-based discontinuation of prosecution requires an understanding that the primary goal of juvenile justice is the best interests of the child. As long as law enforcement officials embrace this principle as a foundation, the effectiveness of the law can be achieved. Soerjono Soekanto emphasized that the functioning of the law is determined by harmony between regulations, officials, society, and legal culture. When all four are working in the same direction, the discontinuation of prosecution of children can be implemented optimally.<sup>23</sup>

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<sup>23</sup> Suryawan, Ketut Bobby. "Understanding the Functions and Purposes of Law in Introduction to Legal Studies." *Consensus: Journal of Defense, Law, and Communication Studies* 2, no. 3 (2025): pp. 226-236.

### 3.1. Law Enforcement Against Child Offenders Who Commit Crimes in the Future

Children are not adults in tiny bodies. They have very different ways of thinking, feeling, and understanding the world. However, when a child is involved in a legal incident, the public often doesn't understand how the juvenile justice system should work. Yet, children in conflict with the law need not only justice but also protection.

The juvenile justice system in Indonesia has a fairly clear legal basis, one of which is through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.<sup>24</sup> It emphasizes that the approach used is restorative justice. This means that child cases are resolved by involving the victim, perpetrator, family, and community, so that all parties can achieve healing, not just punishment.

In every criminal case involving a juvenile offender, the public, who have been monitoring the case from beginning to end, naturally anticipates a resolution. There's a dilemma between the justice provided to the victim and the conflicting criminal system imposed based on existing regulations. This is especially true considering that juvenile offenders will not receive as harsh a sentence as adults.

One of the applicable child criminal regulations in Indonesia is Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). The SPPA Law aims to protect the rights of children in conflict with the law, including establishing a minimum age limit for criminal responsibility for children in Indonesia. According to the SPPA Law, a Child in Conflict with the Law (ABH) is a child who is 12 years old but under 18 years old who is suspected of committing a crime. This policy aims to provide protection to children who are perpetrators of a crime from legal processes that are considered too harsh for a child, as well as providing an opportunity for these children to receive rehabilitation in addition to the legal sanctions that will be imposed.<sup>25</sup>

Based on the provisions of the Child Protection and Child Protection Law, Diversion must be prioritized in the Child Protection and Child Protection and Child Protection Law. Diversion itself is the transfer of the resolution of cases of children suspected of committing certain crimes from the formal criminal process to a peaceful settlement between the suspect/defendant/perpetrator of the crime and the victim facilitated by the family and/or community, Child Community Guidance, the police, prosecutors, or judges. The main purpose of the diversion

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<sup>24</sup> Simatupang, Rajarif Syah Akbar. "Implementation of the Juvenile Criminal Justice System in Indonesia: A Justice Values Perspective." *Journal of Jurisprudence* 11, no. 1 (2024): pp. 54-63.

<sup>25</sup> Simatupang, Rajarif Syah Akbar. "Implementation of the Juvenile Criminal Justice System in Indonesia: A Justice Values Perspective." *Journal of Jurisprudence* 11, no. 1 (2024): pp. 54-63.

process is to protect and keep children away from judicial processes that can affect their development and prevent fatal consequences for the child's future.<sup>26</sup>

In every juvenile justice case, efforts are made to achieve restorative justice. Restorative justice is the resolution of minor criminal cases carried out by investigators during the investigation stage or by judges from the beginning of the trial, involving the perpetrator, victim, family, perpetrator/victim, and relevant community leaders to jointly seek a just resolution with an emphasis on restoration to the original state. In principle, in restorative justice, the victim and perpetrator together seek a solution and settlement that is fair and balanced for both parties, prioritizing restoration to the original state. The process itself is generally carried out through mediation and dialogue, and involves community participation.

However, while the Juvenile Justice and Child Protection Law (SPPA) seems theoretically a very appropriate and ideal regulation for application in criminal cases involving juvenile offenders, several gaps and obstacles remain in its effectiveness. While the diversion process and restorative justice concept may prevent the negative impacts on juvenile offenders resulting from an overly burdensome judicial process, several obstacles remain that make the implementation of this regulation ineffective and even create injustice for victims.<sup>27</sup>

Law enforcement against child offenders who commit crimes in the future can no longer rely solely on a punishment paradigm. Children in conflict with the law are always vulnerable, psychologically, socially, and economically. Therefore, the direction of reforming child criminal justice policy must be based on an approach of protection, rehabilitation, and social reintegration, without neglecting the interests of victims and the community's sense of justice. Looking ahead, Indonesia must be open to good practices in countries that have already developed modern and humane juvenile justice systems.

Indonesia's experience, through the Juvenile Criminal Justice System Law, has introduced the concepts of diversion, restorative justice, and age restrictions and the threat of imprisonment for children. However, practice still demonstrates a dominant retributive perspective. Many juvenile cases that qualify for out-of-court resolution are nevertheless referred to court due to concerns about being perceived as indecisive, pressure from public opinion, or limited understanding by authorities. At this point, comparisons with juvenile justice systems in other countries are crucial as a foundation for future reconstruction.

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<sup>26</sup> Seventiani, Elma. "Efforts to Strengthen the Implementation of Diversion by Public Prosecutors for Children in Conflict with the Law." *Lex LATA* 7, no. 2 (2025): 50-63.

<sup>27</sup> Yasim, Sulastri, and Muh Chairul Anwar. "The Concept of Diversion and Restorative Justice in Juvenile Criminal Justice." *Unsulbar Law Journal* 6, no. 2 (2023): pp. 72-89.

The Netherlands has a long tradition of treating child offenders with a relatively lenient yet structured approach. The country implements a juvenile justice system that prioritizes pedagogical interventions through a combination of sanctions and development programs designed to encourage behavioral change. Children are viewed as developing subjects, so imprisonment is always a last resort. In many cases, treatment involves community service, intensive counseling, and supervision by child protection authorities.<sup>28</sup>

What's interesting about the Netherlands is the flexibility judges have in choosing legal responses to juvenile crimes. Judges can combine various forms of non-custodial intervention, such as mentoring by social workers, mandatory participation in specific programs, and mediation mechanisms between perpetrators and victims. Furthermore, family and community involvement is an integral part of the juvenile care process. This approach demonstrates that the primary goal is not simply to impose punishment, but rather to break the cycle of delinquency and prevent children from coming into conflict with the law again.

The Netherlands has also developed mechanisms to facilitate the use of restorative approaches, both through formal mediation and agreements facilitated by relevant institutions. In many cases, the presence of victims in the dialogue process helps children understand the real impact of their actions. This fosters a moral awareness that often fails to emerge when cases are resolved solely through formal court proceedings. This model serves as a relevant example for Indonesia, which is currently promoting the institutionalization of restorative justice.

In Canada, juvenile justice is regulated through a legal framework that emphasizes proportionate accountability, prevention of reoffending, and rehabilitation.<sup>29</sup> This country views children as individuals who must be held accountable, but always within the limits of their age, maturity, and social circumstances. Law enforcement is aimed at ensuring that any criminal response to children maintains a balance between protecting society and the child's future. This policy is implemented through a network of diversion programs and family conferences involving relevant parties.

One of the strengths of Canada's approach is its robust and relatively uniform institutional diversion program, both at the police and prosecutorial levels. Law enforcement officials have clear guidelines on when juvenile cases should be diverted to informal mechanisms, such as youth conferences, mediation, or

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<sup>28</sup> Höfte, S. Kuiper, G. H. P. Van der Helm, S. M. De Valk, and G. J. M. Stams. "Children's rights in secure residential youth care in the Netherlands." *The International Journal of Children's Rights* 29, no. 4 (2021): p. 946-971.

<sup>29</sup> Giesbrecht, Crystal J. "The need for a Canadian Criminal Code offense of coercive control." *Journal of Community Safety and Well-Being* 9, no. 1 (2024): p. 33-39.

community programs. This way, minor and moderate cases don't overcrowd the courts, while juveniles remain accountable.

Canada also places victims in a more than passive position. In restorative forums, victims are given space to explain the consequences they experienced, express hopes for recovery, and participate in designing the form of child accountability. This involvement lends moral weight to the legal process that is difficult to replace with a written decision. This demonstrates that law enforcement is not solely a matter for the state and the perpetrator, but also a means of healing fractured social relations.

Australia offers another example of how a juvenile justice system can be designed to be robust yet humane. In some jurisdictions, such as New South Wales and Queensland, youth justice conferences have become a crucial tool for resolving juvenile cases outside of court.<sup>30</sup> These conferences bring together children, victims, families, authorities, and sometimes community leaders to formulate a viable reparation agreement. The primary emphasis is placed on the child's personal responsibility, willingness to repair the damage, and environmental support to prevent recurrence.

What stands out about Australian practice is the significant role it gives local communities and social institutions in supporting children in conflict with the law. The state does not work alone, but collaborates with non-governmental organizations, educational institutions, and local indigenous groups. In the context of regions with strong indigenous communities, the inclusion of traditional values and processes is seen as a legitimate part of restorative justice. This approach is interesting to observe in Indonesia, which is also rich in social structures and local wisdom.

A closer look reveals a common thread in law enforcement against child offenders in these three countries. Imprisonment is considered a last resort, while various alternative sanctions and social programs are optimized to restore children and victims. Law enforcement officials are given broad authority to use diversion mechanisms and restorative conferences, but within a clear regulatory framework. Furthermore, the social and institutional infrastructure is in place to ensure these mechanisms are effectively implemented.

Indonesia can adopt the perspective that the future of juvenile criminal justice is not simply regulated by law but must be supported by concrete and measurable operational standards. From the Netherlands, Indonesia can learn the importance of the role of judges and social workers in formulating appropriate legal responses for each child, not simply referring to the type of crime. From Canada, emphasis

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<sup>30</sup> Malvaso, Catia, Andrew Day, Katherine McLachlan, Rick Sarre, John Lynch, and Rhiannon Pilkington. "Welfare, justice, child development and human rights: A review of the objects of youth justice legislation in Australia." *Current Issues in Criminal Justice* 36, no. 4 (2024): p. 451-471.

can be placed on strengthening diversion guidelines at the police and prosecutorial levels to eliminate loopholes for multiple interpretations that undermine the courage of authorities to use non-litigation channels.

From Australia, Indonesia can adapt the child justice conference model, which structuredly involves families, victims, and communities. This deliberation mechanism aligns with local cultures, which favor consensus and community-based peaceful resolution. Going forward, implementing regulations need to more explicitly regulate the procedures for child justice conferences, standards for facilitators, and parameters for successful recovery, so that the practice does not rely solely on sporadic initiatives in specific regions.

Strengthening law enforcement in the future also requires the development of a roadmap for law enforcement officers specifically targeting children's issues. Judges, prosecutors, police, Bapas officers, and social workers need ongoing training in child development psychology, mediation techniques, and restorative approaches. In comparison countries, such training is not seen as supplementary, but as a foundation that determines the quality of verdicts and case management decisions.

Furthermore, improving data and information systems on juvenile cases is an urgent need to develop evidence-based policies. The Netherlands, Canada, and Australia rely on detailed statistics on case type, child age, social background, and the outcomes of selected interventions. With a robust database, countries can evaluate whether diversion, conferencing, or conventional sentencing mechanisms are truly effective in reducing recidivism and improving children's quality of life.

Going forward, Indonesia could also consider establishing specialized juvenile justice units within the police and prosecutors' offices, with different standards of practice than those for adults. In several foreign jurisdictions, such units have proven helpful in ensuring that every law enforcement decision regarding children is screened through a child protection lens. This can act as a bulwark against children being easily dragged into overly serious criminal proceedings.

Developing regulations that better support restorative justice for children requires political courage and a strong vision. Changes should not only affect the text of the law but also target how institutions operate. Learning from comparative practice, the transition to a more restorative system is usually gradual, starting with pilot projects, periodic evaluations, and regulatory adjustments. Indonesia can follow a similar path by utilizing regions that are already relatively advanced in implementing diversion as policy laboratories.

In socio-cultural terms, future law enforcement against child offenders needs to more seriously integrate local values aligned with the spirit of protection. Many communities in Indonesia actually have traditions of conflict resolution through

deliberation, involving family and traditional leaders. If these patterns are recognized and established within a clear formal legal framework, restorative justice will not simply be an imported concept but will be rooted in the nation's own historical experience.

Another equally important aspect is public legal literacy. Comparative countries generally prioritize public education as part of their policies for dealing with children in conflict with the law. The public is taught that not all crimes committed by children require imprisonment, and that rehabilitation can provide better outcomes for both victims and perpetrators. Without a shift in public perception, any effort to strengthen restorative mechanisms in Indonesia will inevitably face demands for harsher penalties.

Future law enforcement against child offenders should ideally move toward a responsive, adaptive, and evidence-based system, while drawing on the experiences of other countries as a model. The Netherlands offers a strong model of the importance of a pedagogical orientation, Canada emphasizes the need for a clear and comprehensive diversion framework, and Australia demonstrates how juvenile justice conferences and community engagement can be systematically implemented. Of these three, Indonesia has ample material to formulate a new direction for juvenile law enforcement policy that considers not only culpability but also really care about their future.

#### **4. Conclusion**

Children are seen as subjects whose future must be protected, so that certain cases must be resolved outside the courts by involving the perpetrator, victim, family, community, and related parties to restore losses and eliminate stigma, not simply retaliate against the act. According to Soerjono Soekanto, the effectiveness of restorative justice-based prosecution termination depends on clear regulations (the SPPA Law, PERMA, Perja), the competence and paradigm of officials who understand child psychology and mediation techniques, the availability of appropriate rehabilitation facilities and mediation spaces, community support for a non-punitive approach, and a shift in legal culture from a retributive to a rehabilitative one. As long as rehabilitation facilities are minimal, inter-institutional coordination is weak, and the community tends to demand harsh sentences, the implementation of prosecution termination will not be fully effective, despite its great potential to prevent trauma, reduce recidivism, improve social relations, reduce the burden on the courts, and balance the interests of victims, perpetrators, and the community. Law enforcement against child offenders in the future demands a paradigm shift from a retributive approach to a more humane, restorative, and protection-based system. The Child Protection Act (SPPA) provides a foundation for diversion and restorative justice, but its practice remains hampered by the perspectives of officials, public pressure, limited resources, and unequal public understanding. Lessons learned from the

Netherlands, Canada, and Australia demonstrate that successful juvenile justice handling relies heavily on a combination of pedagogical interventions, restorative mediation and conference mechanisms, family and community involvement, clear diversion guidelines, and the professionalization of officials in understanding children's psychology and developmental needs. These three countries also prioritize imprisonment as a last resort, strengthen the role of social workers, and provide adequate social infrastructure to prevent recidivism and restore victim-offender relationships. Indonesia could adopt judicial flexibility like the Netherlands, strict diversion standards like Canada, and community conferences like Australia, along with improvements to data systems, the establishment of juvenile justice units, the integration of local values, and increased public legal literacy so that the juvenile justice system can truly protect children's futures without neglecting the sense of justice for victims and the community.

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