

Diversion Regulations in Juvenile Court in Violent Crimes

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Abstract. *Diversion formulation can be implemented at all levels of examination, from investigation, prosecution, and court hearings to the implementation of the verdict. The objectives of this study are: 1) to determine the diversion regulations in juvenile justice for violent crimes; 2) to identify the weaknesses of diversion regulations in juvenile justice for violent crimes. This study uses a normative juridical approach with a descriptive analytical research method. The data used are primary and secondary data, which will be analyzed qualitatively. The research problem is analyzed using legal objectives theory and punishment theory. The results of the study conclude that: 1) Diversion regulations in juvenile justice for violent crimes, through a restorative justice approach, are a form of legal protection that aims to protect children from the negative impacts of the criminal justice system and emphasizes victim recovery and balancing the interests of all parties. Based on Articles 6 and 7 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law), diversion is mandatory in cases of children who are threatened with imprisonment of less than 7 years and does not constitute a repeat offense. Its implementation involves a deliberation process with law enforcement officials, victims, families, and community leaders to reach a just solution. However, the implementation of diversion still faces various challenges, such as a lack of public understanding, limited resources, and a lack of clear technical regulations. Therefore, further efforts are needed to optimize its effectiveness in the juvenile criminal justice system. 2). Weaknesses in diversion regulations in juvenile justice for violent crimes, namely the limited authority of law enforcement officials and the lack of sanction mechanisms for non-compliance, are major obstacles to the effective implementation of diversion. Furthermore, a lack of resources, lengthy administrative processes, and limited training for law enforcement officials also hamper the implementation of diversion in the field.*

Keywords: *Diversion; Regulation; Violent Crimes.*

1. Introduction

Indonesia is a country based on law that adheres to the principle of legality in its criminal justice system. The principle of legality is explained in Article 1 paragraph (1) of the Criminal Code which states that "An act cannot be punished, except based on the strength of existing criminal law provisions." Before a comparison is made of the wording of the article, it is clear that the principle of legality applies to the criminal justice system in Indonesia, meaning that an act can only be punished if there are already rules that regulate the act beforehand.

Laws are created and enforced to regulate and protect the interests of citizens to prevent conflict and to protect human rights. Law is a set of rules, regulations, and regulations, both written and unwritten, relating to the regulation of relations between citizens in society.¹

Today, empirical evidence indicates that acts of physical, psychological, and sexual violence, as well as domestic neglect, are widespread. This can be observed directly and through mass media, both print and electronic. This empirical evidence demonstrates a gap between the law on the books and the law in action, which requires attention from all parties and constitutes a problem that requires resolution through scientific research.

Indonesia has a Criminal Law which aims to protect the interests of individuals or human rights and society.²The Criminal Code (KUHP) regulates criminal acts committed by any person (general criminal law) and the criminal sanctions imposed for crimes and/or violations.³The Criminal Code regulates material criminal acts in Indonesia that are general in nature, one of which regulates Crimes against Morality which is regulated in CHAPTER XIV concerning criminal acts committed by means of violence or threats of violence related to morality which are stated in Articles 284 to 294. A complete description of the Articles is Adultery, Article 284; Rape, Article 285; Sexual intercourse with underage women, Articles 286 to 288; Molestation, Articles 289 to 294; Criminal acts against decency and morality, Articles 281 to 283.⁴As time goes by, sexual violence is increasingly prevalent, with various motives. Consequently, the legal

¹Yahya Harahap, 2015, Discussion of Problems and Application of the Criminal Procedure Code (Court Hearing, Appeal, Cassation, and Judicial Review), Jakarta: Sinar Grafika, p. 1

²Alfons, M. 2017. Implementation of intellectual property rights from the perspective of a state of law. Indonesian Legislation Journal, 14(3), 301–311.

³Arief, A. 2019. Problems of Imposing the Death Penalty from the Perspective of Human Rights and Criminal Law. Kosmik Hukum, 19(1). 10.30595/kosmikhukum.v19i1.4086

⁴Asmadi, E. 2021. Formulation of Crimes and Punishment for Criminal Acts of Defamation on Social Media. De Lega Lata: Journal of Legal Studies, 6(1), 16–32. <https://doi.org/10.30596/dll.v6i1.4910>

framework governing sexual violence is deemed out of step with current developments and societal needs.⁵

Children are a trust from God Almighty, who are inherently endowed with the dignity and worth of a complete human being. Every child has dignity and worth that should be upheld, and every child born must receive their rights without the child asking for them. This is in accordance with the provisions of the Convention on the Rights of the Child, which was ratified by the Indonesian government through Presidential Decree Number 36 of 1990, and then also stipulated in Law Number 4 of 1979 concerning Child Welfare and Law Number 23 of 2002 concerning Child Protection, all of which put forward general principles of child protection, namely non-discrimination, the best interests of the child, survival and development, and respect for child participation.

The Indonesian government has guaranteed this in Law Number 34 of 2014 concerning Child Protection. The role of children as the successors to life is not accompanied by the role of parents or adults in guiding their children to become good individuals. Meanwhile, parents and adults often take on their roles unwisely. Some unwise parental actions include physical punishment.

The diversion formulation policy can be implemented at all levels of the investigation, prosecution, court hearings, and even the execution of the verdict. This formulation policy is intended to mitigate the negative impact of children's involvement in the judicial process.⁶

Diversion programs benefit the community by providing early and rapid response to deviant behavior. This early intervention also saves costs incurred by local police. Children who commit crimes are provided with guidance by the police, criminal justice counselors, justice department officials, and schools. The children then voluntarily participate in counseling, appropriate education, and community outreach activities. If the child is successful in the program, the prosecutor will not prosecute the case and the offense will not be recorded in the case file.⁷

The provisions of the law in Indonesia that stipulate diversion measures for the implementation of handling cases against children who commit crimes in Article 5 of Law Number 11 of 2012 concerning the Child Criminal Justice System, in line with this matter based on the discretionary authority regulated in Article 16

⁵Anggraini, RD 2022. Analysis of the Concept of Secularization from the Perspective of Nurcholish Madjid. *Islamic Thought of Nurcholish Madjid*, 147

⁶Purniati, Mamik Sri Supatmi, and Ni Made Martini Tinduk, 2003, Analysis of the Situation of the Juvenile Justice System in Indonesia, Department of Criminology, University of Indonesia & UNICEF, p. 4.

⁷Dwi Hapsari Retnaningrum, 2008, Protection of Children Who Commit Crimes (Study of Non-Litigation Settlement in Child Criminal Cases in Banyumas, Purbalingga, Banjarnegara, Kebumen, and Cilacap Districts), Research Report, FH UNSOED, Purwokerto, p. 59.

paragraph (1) letter I of Law Number 2 of 2002 concerning the Republic of Indonesia Police which states: "In order to carry out the duties as referred to in Articles 13 and 14 in the field of criminal proceedings, the Republic of Indonesia National Police has the authority to: carry out other actions according to responsible law". And paragraph (2) which states: Other actions as referred to in paragraph (1) letter I are investigative and investigative actions carried out if they meet the following requirements:

1. Not contrary to any legal regulations;
2. In accordance with the legal obligations that require such action to be taken;
3. Must be appropriate, reasonable, and within the scope of his/her position;
4. Reasonable consideration based on compelling circumstances; And
5. Respect human rights.

In addition, the Telegram Regulation of the Head of Criminal Investigation Agency Number 1124/XI/2006 concerning Guidelines for the Implementation of Diversion for the Police is directed to be a guideline in the implementation of diversion. In this Telegram it is stated that the principle of diversion contained in the Convention on the Rights of the Child, namely a transfer of the form of settlement from a formal criminal process to an alternative settlement in another form that is considered best in the interests of the child. Diversion can be returned to the parents, the child either without or accompanied by informal/formal warnings, mediation, deliberation between the perpetrator's family and the victim's family, or other forms of best resolution that are in accordance with the local community's culture. The Police are directed to develop the principle of diversion as much as possible in the restorative justice model to process criminal cases committed by children, namely by building an understanding in the local community that the actions of children in criminal acts must be understood as juvenile delinquency due to the failure/mistake of adults in educating and guiding children until adulthood. Child crimes must also be viewed as violations against humans and human relations, thus creating an obligation for all parties or all components of society to continue to strive and make things better through the involvement of all parties to take a role in finding the best solution, both for the benefit of the parties who are victims and also for the benefit of children as perpetrators in the present and in the future.

In addition, there is the latest Regulation of the Republic of Indonesia National Police, namely the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice which also serves as a guideline for the implementation of the principle of diversion in this case for criminal cases committed by children. The Regulation on Handling of Criminal Acts based on Restorative Justice is a step by the National

Police in realizing the resolution of criminal acts by prioritizing Restorative Justice which emphasizes restoration to the original state and balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards punishment is a legal need in society as a solution while providing legal certainty especially the benefits and sense of justice of the community, in order to answer the development of legal needs of the community that fulfills the sense of justice of all parties, which is a manifestation of the authority of the National Police in accordance with Article 16 and Article 18 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia.

In Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law), diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system (Article 1 number 7 of the SPPA Law). Diversion is regulated in Articles 6 to 15 of the SPPA Law. 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 (Article 8 paragraph (1) of the SPPA Law). This diversion process can only be carried out for crimes that carry a criminal penalty of under 7 years and are not a repetition of the crime (Article 7 paragraph (2) of the SPPA Law). However, this SPPA Law will only come into effect after 2 years from its enactment, or will only come into effect around August 2014 (Article 108 of the SPPA Law). The Juvenile Court Law has laid the foundation for differential treatment in dealing with and resolving crimes committed by children. This distinction aims to better protect and nurture children so they can face their long-term futures. Furthermore, this distinction is intended to provide children with the opportunity to develop their identity through guidance, becoming independent, responsible, and useful individuals for themselves, their families, their communities, their nation, and their country.

Article 7 paragraph (2) of the SPPA Law is discriminatory by providing different treatment in terms of handling cases of children in conflict with the law. The attitude of the formation of the SPPA Law is contrary to the considerations in the SPPA Law and does not reflect the principles of the SPPA Law, namely Article 2 letter a, namely the principle of protection, letter b the principle of justice, letter c is the principle of non-discrimination, letter d is the best interests of the child, letter h is the principle of proportionality, letter i is the principle of deprivation of liberty is a last resort and letter j is the principle of avoiding retaliation (Erwadi, 2020). In reality, not all criminal acts committed by children in conflict with the law can be carried out with diversion efforts. Normatively, Article 7 paragraph (1) of the SPPA Law stipulates that at the level of investigation, prosecution, and examination of children's cases in the District Court, it is mandatory to seek diversion. Furthermore, paragraph (2) stipulates that diversion as referred to in paragraph (1) is carried out in the event that the crime is committed:

- a. the threat of imprisonment of less than 7 (seven) years; and
- b. not a repeat of the crime.

Based on the principles of the SPPA Law as described above, diversion does not need to limit the threat of imprisonment to under 7 (seven) years and not a repetition of the crime, but diversion efforts must be implemented for all crimes committed by children. Legal treatment of children must not be differentiated as regulated in Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which stipulates that everyone has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law (Ernis, 2017). Based on the SPPA Law, the Government is required to create six materials in the form of Government Regulations and two materials in the form of Presidential Regulations. However, until now, the supporting regulations are still not all available. The Government has only completed the substance in the Government Regulation (PP No. 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 12 (Twelve) Years of Age) and the Presidential Regulation concerning Training of Law Enforcement Officers. (Presidential Regulation of the Republic of Indonesia No. 175 of 2014 concerning Integrated Education and Training for Law Enforcement Officers and Related Parties Concerning the Juvenile Criminal Justice System)

Based on the description above, the author is interested in conducting research with the title "Diversion Regulations in Juvenile Justice in Violent Crimes".

2. Research Methods

The type of research used in completing this thesis is the descriptive research method, namely research conducted by examining library materials (secondary data) or library law research.⁸

3. Results and Discussion

3.1. Diversion Regulations in Juvenile Justice for Violent Crimes

Children who commit violations of the law are greatly influenced by several factors other than the child themselves. To protect children from the influence of the formal processes of the criminal justice system, the idea arose among humans or legal experts to create formal rules for removing a child suspected of having committed a violation of the law or committing a crime from the general criminal justice process by providing other alternatives that are considered better for the child. Based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, diversion is the transfer of the resolution of a child's

⁸Ediwarman, 2010, Monograph, Legal Research Methodology, Postgraduate Program, Muhammadiyah University of North Sumatra, Medan, p. 24.

case from the criminal justice process to a process outside the criminal justice system.

The implementation of diversion is motivated by the desire to avoid the negative effects of the criminal justice system on the mental and developmental well-being of children in conflict with the law. The implementation of diversion by law enforcement officers is based on the authority of law enforcement officers, known as discretion.⁹By implementing the concept of diversion, existing formal justice systems prioritize protecting children from imprisonment. Furthermore, it is clear that child protection through diversion policies can be implemented at all levels of justice, starting with the community before a crime occurs, through preventative measures. If a child commits a crime, they do not need to be processed by the police. The main principle of diversion implementation is persuasive action or a non-penal approach and providing an opportunity for individuals to correct their mistakes.

Diversion seeks to provide justice for children who have already committed crimes, even before law enforcement. Second, this justice is explained through an examination of the circumstances and situations to determine appropriate sanctions or actions. Article 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System stipulates that the objectives of diversion are:

- a. Achieving peace between victims and children;
- b. Resolving children's cases outside the judicial process;
- c. Prevent children from being deprived of liberty;
- d. Encourage the community to participate; and
- e. Instill a sense of responsibility in children.

The conditions for diversion are listed in Article 8 and Article 9 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which consist of:

(1) The diversion process is carried out through deliberation involving the child and his/her parents/guardians, community counselors and professional social workers based on a restorative justice approach.

(2) If necessary, the deliberations referred to in paragraph (1) may involve social welfare workers and/or the community.

Regulations regarding children have essentially been expressly regulated in the Indonesian constitution, namely in relation to the regulation of Human Rights as regulated in Article 28B number 2 of the 1945 Constitution which regulates the

⁹Marlina, *Juvenile Criminal Justice in Indonesia (Development of the Concept of Diversion and Restorative Justice)* (Bandung: Refika Aditama, 2009), p. 2.

right of children to grow and develop and receive protection. This paradigm has been adopted by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter abbreviated as Law No. 11 of 2012), namely Restorative Justice through a diversion mechanism. Article 1 number to Law No. 11 of 2012 states that Restorative Justice 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 solution by emphasizing restoration to the original state, and not retaliation. Meanwhile, Article 1 number 7 states that diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system (Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, 2012).

The treatment of children who commit crimes is extremely concerning. Many children facing criminal cases are confined to a single facility, far beyond the capacity of existing juvenile correctional facilities. It is therefore not surprising that some juvenile inmates are placed in adult prisons. This violates human rights law, which requires the separation of male, female, and juvenile inmates. Failure to adhere to this legal norm seriously has serious implications for children. Upon release, they are likely to become more violent after serving their sentences.¹⁰ Criminology studies show that correctional institutions are places where people learn to commit crimes, a negative effect of incarceration. This situation is the result of a juvenile criminal justice system that still uses the concept of justice based on retaliation for children who break the law; this paradigm is no longer in line with current developments. Due to the numerous negative impacts of criminalization, children are avoided from formal legal proceedings whenever possible, but instead use alternatives, such as out-of-court dispute resolution.¹¹

Law enforcement officials, particularly the Indonesian National Police Child Investigators, have handled cases involving children. Police investigators often reach a settlement to prevent cases from being prosecuted. However, this settlement is not the desired diversion mechanism, as it fails to consider the child's best interests. Furthermore, current practices ignore legal aspects, such as diversion only for minor offenses with light penalties.¹²

¹⁰Harefa, B. (2015). DIVERSION AS LEGAL PROTECTION OF CHILDREN'S HUMAN RIGHTS IN THE JUVENILE CRIMINAL JUSTICE SYSTEM IN INDONESIA. *Journal of Legal Communication (JKH)*, 1(1). <https://doi.org/10.23887/jkh.v1i1.5009>

¹¹Hidaya, WA (2019). Implementation of Diversion in the Juvenile Criminal Justice System. *JUSTISI*, 5(2). <https://doi.org/10.33506/js.v5i2.543>

¹²Triwati, A., & Kridasaksana, D. (2021). A FOUNDATION ON THE NEED FOR DIVERSION FOR CHILDREN IN REPEATED CRIMINAL OFFENDERS. *USM LAW REVIEW JOURNAL*, 4(2). <https://doi.org/10.26623/julr.v4i2.3787>

Law enforcement officers must achieve peace regardless of the severity of a case. Such cases do not qualify as diversion, constituting illegal diversion. This is understandable, given that law enforcement officers lack an umbrella provision for diversion as intended. Furthermore, there are no operational or technical guidelines for implementing diversion for children facing criminal cases.¹³

In national law, legal harmonization is specifically implemented through Law No. 23 of 2002 concerning Child Protection and Law No. 3 of 1997 concerning Juvenile Justice. The primary goal of this legal harmonization is to seek uniformity or common ground among the fundamental principles of various existing legal systems. This uniformity can be seen in the content of each existing law concerning child protection, particularly child perpetrators of crimes.¹⁴

Law Number 23 of 2002 requires the state, in particular, to provide special protection for children in conflict with the law, which is implemented through humane treatment in accordance with children's rights, the provision of special companions from an early age, the provision of special facilities and infrastructure, the imposition of appropriate sanctions in the best interests of the child, continuous monitoring and recording of the development of children in conflict with the law, guarantees to maintain relationships with parents or family and protection from excessive media coverage and labeling in society.¹⁵

For the prosecution process of children in conflict with the law, before Law Number 11 of 2012 Indonesia had enacted Law Number 3 of 1997 concerning Juvenile Courts. In this law it is regulated that the examination of children must be in a family atmosphere, every child has the right to be accompanied by a legal advisor, the place of detention must be separate from adult detention, detention is carried out after carefully considering the interests of the child and/or the interests of society, the punishment given does not have to be imprisonment/detention but can be in the form of punishment by returning the child to his parents or guardian.¹⁶In practice, the implementation of this law is still far from expectations.

¹³Sidrat, M., Hidayat, S., & Herman, H. (2019). Diversion Requirements for Children in Conflict with the Law in the Concept of Criminalization. *Halu Oleo Legal Research*, 1(2). <https://doi.org/10.33772/holresch.v1i2.6569>

¹⁴Hambali, AR (2019). Implementation of Diversion for Children in Conflict with the Law in the Criminal Justice System. *Scientific Journal of Legal Policy*, 13(1). <https://doi.org/10.30641/kebijakan.2019.v13.15-30>

¹⁵Rosen, A., Trauer, T., Hadzi-Pavlovic, D., Parker, G., Patton, JR, Cronin, ME, Bassett, DS, Koppel, AE, Zimpher, NL, Thurlings, M., Evers, AT, Vermeulen, M., Obanya, P., Avsec, S., Nurzarina Amran, Liu, SH, Petko, D., Aesaert, K., Van Braak, J., ... Brown, N. (2015). DIVERSION EFFORTS FOR CHILDREN IN THE JUDICIAL PROCESS. *Teaching and Teacher Education*, 12(1).

¹⁶Saputra, HD, & Miswarik, M. (2021). Implementation of Diversion in the Criminal Justice System for Children in Conflict with the Law. *INICIO LEGIS*, 2(1).

Diversion only exists during the investigation process, meaning that after the investigation process ends, the child perpetrator of the crime must go through a series of higher legal processes which no longer allow for diversion.¹⁷ Although the judge examines the case in a closed session, the court's verdict will be pronounced in a public hearing. If the judge finds the child guilty and detains him, this will undoubtedly impact the mental health of the child convicted in public. This is where labeling begins to occur when the public learns that the child is guilty.¹⁸

Crime prevention efforts can be carried out using penal and non-penal means. Penal means are efforts to prevent crime using criminal law. The use of criminal law to combat crime is operationalized through the criminal justice system. In this regard, Muladi stated that the criminal justice system aims to:¹⁹

(i) resocialization and rehabilitation of perpetrators of criminal acts;

(ii) eradication of crime;

(iii) and to achieve social welfare. Based on this thinking, the aim of the integrated juvenile criminal justice system places more emphasis on the first (resocialization and rehabilitation) and third (social welfare) efforts.

The criminal justice system contains systemic movements from subsystems, namely: the Police, the Prosecutor's Office, the Courts and Correctional Institutions (Penitentiaries), which as a whole are a single unit that strives to transform inputs into outputs, in the form of short-term goals, medium-term goals and long-term goals of the criminal justice system. The short-term goal of the criminal justice system is the resocialization of criminal offenders, the medium-term goal is crime prevention, and the long-term goal is social welfare.²⁰

The aim of the criminal justice system is to resocialize the offender, because the implementation of criminal justice is useful for the development of the offender so that when he has completed his sentence, the offender when he returns to society has become a truly good person.²¹

¹⁷Hiariej, EOS (2020). Introduction to Indonesian Criminal Procedure Law. In Criminal Procedure Law.

¹⁸Siregar, ZA, Malik, I., & Suwanti. (2022). Diversion as a Form of Settlement of Juvenile Criminal Cases Through a Restorative Justice Approach. Syntax Literate: Indonesian Scientific Journal, 7(1).

¹⁹Darmini, D. (2019). IMPLEMENTATION OF DIVERSION IN THE JUVENILE JUSTICE SYSTEM. QAWWAM, 13(1). <https://doi.org/10.20414/qawwam.v13i1.1436>

²⁰Hirdayadi, I., & Susanti, H. (2018). DIVERSION IN THE JUVENILE CRIMINAL JUSTICE SYSTEM IN INDONESIA AND ITS REVIEW ACCORDING TO ISLAMIC LAW. LEGITIMASI: Journal of Criminal Law and Legal Politics, 6(2)

²¹Hirdayadi, I., & Susanti, H. (2018). DIVERSION IN THE JUVENILE CRIMINAL JUSTICE SYSTEM IN INDONESIA AND ITS REVIEW ACCORDING TO ISLAMIC LAW. LEGITIMASI: Journal of Criminal Law and Legal Politics, 6(2)

Meanwhile, the goal of crime prevention, means that the criminal court decision can prevent the perpetrator from committing a crime, both by actually preventing the perpetrator, and can function as a preventative for society in general to not commit crimes. The long-term goal of the criminal justice system is social welfare, because the implementation of criminal justice functions to protect society from evil acts that disturb the general public.²²

In a juvenile criminal justice system with an individual development paradigm, the emphasis is on the resulting harm/detriment. This responsibility rests with the system's responsibility to meet the needs of the perpetrator. Sanctions imposed in a juvenile criminal justice system with an individual development paradigm are irrelevant, incidental, and generally inappropriate. The achievement of sanction objectives is emphasized by indicators related to whether the perpetrator needs to be identified, whether the perpetrator has been requested to be rehabilitated in a special development program, and the extent to which the program has been completed.²³

The decision emphasizes the provision of a program of therapy and services. The primary focus is on identifying the offender and developing a positive approach to correcting the problem. The delinquency status is established for the purpose of developing the offender. The offender is considered incompetent and unable to act rationally without therapeutic intervention. Generally, offenders need to be developed, as they will benefit from therapeutic intervention.²⁴

Achievement of goals can be seen by whether the perpetrator can comply with the rules of the Supervisor, whether the perpetrator is present and participates in the guidance, whether the perpetrator can control himself (self-control), whether there is progress in interactions with family and society. The priority in practice is group and family counseling; probation work packages have been prepared, and activities with an individual guidance paradigm, so the aspect of direct community protection, not the function of child protection. There is an assumption in the juvenile criminal justice system with a restorative paradigm, that in achieving the goal of imposing sanctions, the inclusion of victims to have the right to actively participate in the judicial process.

Indicators of the achievement of the objectives of imposing criminal sanctions are seen by looking at whether the victim has been restored, the victim's

²²Budiastuti, SR, & Samadi, WM (2021). Implementation of Diversion Sanctions as an Alternative to Imprisonment for Child Criminals. RESEARCH FAIR UNISRI, 5(1). <https://doi.org/10.33061/rsfu.v5i1.4578>

²³Hasan, H. (2013). IMPLEMENTATION OF RESTORATIVE JUSTICE IN THE JUVENILE CRIMINAL JUSTICE SYSTEM IN INDONESIA. Journal of Law and Justice, 2(2). <https://doi.org/10.25216/jhp.2.2.2013.247-262>

²⁴Hanum, C. (2021). PROSPECTS OF RESTORATIVE JUSTICE IN LEGISLATION IN INDONESIA. VERITAS, 7(1).

satisfaction, the amount of compensation, the perpetrator's awareness of their actions, the number of reparation agreements made, the quality of work services and the overall process that occurs. The forms of sanctions imposed are: restitution, mediation between the perpetrator and victim, victim services, community restoration, direct services to the victim or restorative fines.²⁵

The concept of restorative justice emerged over twenty years ago as an alternative resolution for juvenile criminal cases. The United Nations (UN) Working Group on Juvenile Justice defines restorative justice as a process in which all parties involved in a particular crime come together to solve the problem and consider how to address its future consequences. This process is primarily carried out through discretion and diversion, which is the transfer of the criminal court process to a non-formal process for resolution through deliberation.²⁶ The restorative justice process is essentially carried out through discretion and diversion, which is the transfer of the criminal justice process outside the formal process to be resolved through deliberation. Settlement through deliberation is actually nothing new for the Indonesian people. Before the Dutch occupation, our nation already had its own law, namely customary law. Customary law does not differentiate between criminal and civil cases; all cases can be resolved through deliberation with the aim of achieving balance or restoring the situation.²⁷

The main requirement for resolution through restorative deliberation is an admission from the perpetrator and the agreement of the perpetrator, his/her family, and the victim to resolve the case through restorative deliberation. Deliberation must not be based on coercion. If the parties do not want a resolution through restorative deliberation, then the judicial process will only begin. If the judicial process must continue, the process that is expected is a process that can restore. This means that the case is truly handled by law enforcement officers who have an interest, concern, dedication, and understanding of children's issues, and have participated in restorative justice training, and detention is carried out as a last resort by heeding the basic principles of the Convention on the Rights of the Child that have been adopted into the Child Protection Law. If a child must be detained, the detention must be

²⁵Rado, RH (2019). Restorative Justice Concept in the Integrated Criminal Justice System. *Journal of Restorative Justice*, 3.

²⁶Pertiwi, YW, & Saimima, IDS (2022). THE ROLE OF SOCIAL CONTROL AND OPTIMIZATION OF RESTORATIVE JUSTICE POLICY FOR CHILD OFFENDERS OF CRIMINALS. *Journal of Law and Justice*. 11(1).

²⁷Setyorini, EH, Sumiati, S., & Utomo, P. (2020). THE CONCEPT OF RESTORATIVE JUSTICE FOR CHILDREN IN CONFLICT WITH THE LAW IN THE CHILD CRIMINAL JUSTICE SYSTEM. *DiH: Journal of Legal Studies*, 16(2)

in a special juvenile detention center, and if a prison sentence must be imposed, the child must be placed in a juvenile correctional facility.²⁸

Whether in detention centers or prisons, children must still attend school and receive their basic rights in accordance with the Beijing Rules (UN Standard Minimum Rules Concerning the Administration of Justice for Children) so that they can face a bright future, because ignoring children's rights is also ignoring the future of the nation and state.

According to Romli, the recent disasters in legal life in Indonesia, such as trials of judges and abuse of power by law enforcement officers and friction arising in society as a result of law enforcement, do not (necessarily) always have to be attributed to the mentality of law enforcement officers as is commonly expressed by the public, but there is also the possibility that they are caused by the fact that the values of justice contained in the current laws and regulations are far from adequate, and even contradict the public's opinion and sense of justice.²⁹

As is known, the use of the term criminal justice system in the implementation of criminal justice in Indonesia is common and widely used by both legal experts and practitioners in the criminal proceedings in Indonesia. Law Number 8 of 1981 (KUHAP) has regulated the criminal procedure process in Indonesia. The stages of criminal justice are a process that must be undergone by the perpetrator of a criminal act starting from being suspected of committing a crime, then being charged by the court for his actions, until he serves a criminal sentence that has been determined or has permanent legal force by the court for the crime he committed and has been proven guilty of the crime.³⁰ The criminal justice system in Indonesia according to the Criminal Procedure Code is a series of procedures undertaken by perpetrators of criminal acts through several institutions as components of criminal justice, namely starting from the police, prosecutors, courts and correctional institutions.³¹

The four components of criminal justice in this procedure are almost the same as those mentioned by Reid in his book "Criminal Justice, Procedures and Issues",

²⁸Setyorini, EH, Sumiati, S., & Utomo, P. (2020). THE CONCEPT OF RESTORATIVE JUSTICE FOR CHILDREN IN CONFLICT WITH THE LAW IN THE CHILD CRIMINAL JUSTICE SYSTEM. *DiH: Journal of Legal Studies*, 16(2)

²⁹Subroto, W. (2022). THE NEED FOR RESTORATIVE JUSTICE IN THE JUVENILE JUSTICE SYSTEM TOWARDS JUVENILE DELINQUENCY. *Jurnal Kelola: Jurnal Ilmu Sosial*, 5(1).

³⁰Hiariej, EOS (2020). Introduction to Indonesian Criminal Procedure Law. In *Criminal Procedure Law*.

³¹Pangaribuan, A.M.A., Mufti, A., & Zikry, I. (2017). Introduction to Criminal Procedure Law in Indonesia, Jakarta: PT. Raja Grafindo.

where he states that "the system of criminal justice" includes 3 (three) things, namely as procedures, as issues/problems, and as a system of effects.³²

With the concept of criminal justice, the state acts as a representative of society, especially victims of crimes. This assumption is based on the theory of retributive justice. The retributive view holds that victims or their families have the right to treat convicts in the same way they treated the victims. This theory holds that only the guilty can be punished, or that the guilty can only be punished by extending their punishment. Thus, law enforcement and the goal of achieving justice focus solely on the perpetrators of crimes and the punishments that can be applied to them.³³ Even though this theory originates from the aim of fulfilling the rights of victims, the rights represented by the State do not aim to fulfill concrete rights but only as a symbol, namely that if the perpetrator of the crime has been punished, the victim's rights have been fulfilled.

The theory of retributive justice in the criminal justice system stems from a view of the concept of law in relation to the idea of achieving perfect justice. This basic concept of justice was proposed by Plato, who essentially emphasized that law is a moral and ethical order and prioritizes only the public interest.³⁴

The public interest referred to in this concept is the participation of all people in the ideas and efforts to achieve justice through their representation in state institutions, so that justice will be achieved perfectly. The consequence of this concept is that the state establishes norms of justice, the state forms and implements mechanisms for seeking justice, and in turn, the state also decides or provides justice.³⁵

This basic concept ultimately becomes one of the fundamental weaknesses in the criminal justice system. This concept leaves the victim and the community in a precarious position, thus neglecting the interests of both. In conventional criminal proceedings, if reconciliation has been achieved between the perpetrator and victim, and the victim has forgiven the perpetrator, this will not affect the authority of law enforcement to continue the case to the criminal realm, which will ultimately result in the perpetrator's conviction. The formal criminal process, which is lengthy and offers no certainty for either the perpetrator or the victim, certainly does not immediately fulfill or restore the relationship between the victim and the perpetrator. The concept of restorative

³²Tolib, E. (2014). Basics of Criminal Procedure Law: Development and Updates in Indonesia. Paper Knowledge. Toward a Media History of Documents

³³C Djisman, S. (2013). A Handful of Criminal Procedure Law. A Handful of Criminal Procedure Law.

³⁴Uke, LOMIAA (2017). Contemporary Justice Theory (A Study of Legal Theory). AL 'Adl, 10(1).

³⁵Ramimpi, EF, & Joko Setiyono, J. (2022). RESTORATIVE JUSTICE AS PROTECTION FOR CHILDREN IN CONFLICT WITH THE LAW IN THE SETTLEMENT OF CRIMINAL CASES. Journal of Legal Communication (JKH), 8(1). <https://doi.org/10.23887/jkh.v8i1.44376>

justice offers a healing process that directly involves the perpetrator and victim in resolving the problem.³⁶The conventional criminal process only makes the victim a witness in the trial stage which does not have much influence on the sentencing decision, the prosecution task is still given to the Prosecutor who only receives the investigation files to be processed into the basis for the criminal charges, without knowing and understanding the real conditions of the problem, and the perpetrator is in the defendant's chair ready to accept the sentence that will be imposed on him.³⁷

The authority to dismiss a criminal case is known as a manifestation of the principle of opportunity, held exclusively by the Attorney General. In practice, at the investigative level, police often encounter obstacles to formal criminal procedure when attempting to dismiss a criminal case. The police's discretion does not extend to determining whether a case should be continued or discontinued. The determination is limited to sufficient evidence of a crime. If there is evidence of a crime, the police will proceed with the case.³⁸The model for resolving criminal cases using a restorative justice approach requires the active role of both parties to be important in addition to the role of the perpetrator.

Restorative justice requires a balance of attention between the interests of the perpetrator and the victim, while also taking into account the impact of the criminal case resolution on society. Restorative justice is a process in which all parties involved in a particular crime work together to solve the problem of how to handle its consequences in the future. Viewed through the lens of restorative justice, a crime is a violation of human beings and human relationships. A crime creates an obligation to make things better by involving the victim, perpetrator, and community in finding solutions for repair, reconciliation, and reassurance.³⁹Victims, from a restorative justice perspective, include those who are the object or target of a crime, their family members, witnesses, the perpetrator's family members, and the community at large. Criminal acts give rise to obligations. Perpetrators must be helped to become aware of the loss or damage they have incurred and assisted in fulfilling their obligations to maximally redress the loss or damage resulting from their actions.

The awareness that arises, the desire to recover, and the implementation of recovery for losses or damages are expected to arise because of the willingness

³⁶Lubis, F. (2020). Contemporary Criminal Procedure Law. Criminal Procedure Law.

³⁷Panjaitan, BS (2018). Development of Indonesian criminal procedure law. In Jurnal Keadilan.

³⁸Panjaitan, BS (2018). Development of Indonesian criminal procedure law. In Jurnal Keadilan.

³⁹Putera R, RA (2021). A Paradigmatic Study of the Differences and Similarities of Procedural Law in the Criminal Procedure Code and the Juvenile Criminal Justice System Law. Verstek, 9(1). <https://doi.org/10.20961/jv.v9i1.50006>

of the perpetrator of the crime, not because of coercion from other parties.⁴⁰ On the other hand, society also has an obligation to victims and perpetrators of crimes by reintegrating them into society and ensuring ample opportunities for perpetrators to improve themselves and return to active participation in society. The needs and safety of victims are the primary concerns of the restorative justice process. Victims must be supported and directly involved in determining their needs and the final outcome of their criminal cases. However, this does not mean that the needs of perpetrators are ignored. Perpetrators of criminal acts must be rehabilitated and reintegrated into society.

The consequences of this condition result in the need for a direct exchange of information between the victim and the perpetrator of the crime and the occurrence of a mutually beneficial agreement between the two as the final result of the crime that occurred.⁴¹ The concept/foundation of restorative justice is based on the principles of due process that highly respect the legal rights of suspects, such as the right to be treated as innocent until a court verdict determines so, the right to defend oneself and receive punishment proportionate to the crime committed. In addition, through this model, the interests of victims are highly considered which are translated through compensation or restitution mechanisms, while still paying attention to the human rights of children suspected of having committed criminal law violations. The role of the government is substantially reduced in monopolizing the current judicial process.⁴²

Restorative justice requires cooperative efforts from the community and government to create conditions where victims and perpetrators can reconcile their conflicts and repair their old wounds. In addition, it also seeks to restore the victim's security, personal respect, dignity, and more importantly, a sense of control. By using the concept of restorative justice, the expected results are a reduction in the number of children arrested, detained, and sentenced to prison; eliminating stigma/labels and returning children to normal human beings so that they are expected to be useful in the future, child criminals can realize their mistakes, so they do not repeat their actions; reduce the workload of the police, prosecutors, detention centers, courts, and prisons; save state finances, do not cause resentment because the perpetrator has been forgiven by the victim,

⁴⁰Sumangkut, GMG, Mawuntu, RJ, & Karwur, GM . (2022). The Existence of the Juvenile Criminal Justice System and Legal Protection for Child Criminals According to Law Number 11 of 2012. *Lex Crimen*, XI(1).

⁴¹Kusuma, WA, Hayatuddin, K., & Mahfuz, AL (2023). Legal Protection for Child Criminals When Tried and Over 18 Years of Age Based on the Juvenile Criminal Justice System Law. *Jurnal Tana Mana*, 3(2). <https://doi.org/10.33648/jtm.v3i2.241>

⁴²Mufidah, L., & Khasanah, U. (2019). Implications of diversion in shaping children's responsibility towards restorative justice. *Legislatif*, 11.

quickly receive compensation; empower parents and the community in dealing with juvenile delinquency and reintegrate children into society.⁴³

3.2. Weaknesses of Diversion Regulations in Juvenile Justice for Violent Crimes

Children are part of the citizens who must be protected because they are the nation's generation who in the future will continue the leadership of the Indonesian nation.⁴⁴ Every child, besides being obliged to receive formal education such as school, is also obliged to receive moral education so that they can grow into useful figures for the nation and state. In accordance with the provisions of the Convention on the Rights of the Child which was ratified by the Indonesian government through Presidential Decree Number 36 of 1990, then also stated in Law Number 4 of 1979 concerning Child Welfare and Law Number 23 of 2002 concerning Child Protection and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, all of which put forward general principles of child protection, namely non-discrimination, the best interests of the child, survival and growth and respect for child participation. Indonesia in particular has made Law No. 11 of 2012 which has regulated the concept of diversion and restorative justice.

According to the Child Criminal Justice System Law, Diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system. The existence of diversion in Indonesia has been recognized through the Child Criminal Justice System Law which was passed on July 30, 2012 and came into effect 2 (two) years later. Article 7 paragraph (1) states that "At the level of investigation, prosecution and examination of children's cases in the district court, diversion must be attempted." The conditions or criteria for criminal acts that can be diverted are as explained in Article 7 paragraph (2) which reads "Diversion is implemented in the case of criminal acts committed:

- a) Threatened with imprisonment of less than 7 (seven) years; and
- b) Not a repetition of the crime.⁴⁵

External factors of the prosecutor's office, namely:

- 1) Legal perspectives on criminal acts: Another factor that can hinder the diversion process comes from the community itself. The community here is

⁴³Lushiana Primasari. (2018). Restorative Justice for Children in Conflict with the Law. Sebelas Maret University, 9.

⁴⁴Macawalang, CP, Elias, RF, & Rompis, T. (2021). The Implementation and Effect of Restorative Justice as an Alternative for Resolving Criminal Acts in the Criminal Justice System in Indonesia. LEX CRIMEN, 10(5).

⁴⁵Kadek Widya Dharma Putra, IMS (2018). Legal Protection for Children in Conflict with the Law from the Perspective of Indonesian Positive Law. Kerta Wicana Journal, 7(3).

positioned as a party to the victim's family or the perpetrator's family who are unwilling or refuse to carry out the diversion process offered by the public prosecutor in the prosecution stage for children in conflict with the law. This refusal is due to the high egos of the parties to resolve the problem through the judicial process. The lack of willingness from the community and the lack of awareness of the importance of the objectives of diversion can make it difficult for the public prosecutor at the Banyuwangi District Attorney's Office to reach an agreement in the diversion process. Most people still prioritize their own egos, and still see the goal of revenge for a crime committed by a child, so the diversion process fails and continues to the stage of file examination in court.

2) the existence of weaknesses in Law Number 11 of 2012 concerning the juvenile criminal justice system: Law Number 11 of 2012 concerning the juvenile criminal justice system, if we pay more attention to the contents of the Law, there are still weaknesses in it. The weaknesses or deficiencies contained in Law Number 11 of 2012 concerning the juvenile criminal justice system can be a factor that hinders the implementation of diversion, especially in the district attorney's office, such as Law Number 11 of 2012 concerning the juvenile criminal justice system which regulates the requirements for this diversion, where in reality many cases of children facing the law that occur in the area have the threat of criminal charges above 7 years in prison and the perpetrator is a recidivist diversion should not be limited by the requirements for the length of the criminal threat.

4. Conclusion

1. Diversion regulations in juvenile justice for violent crimes, namely through a restorative justice approach, are a form of legal protection that aims to prevent children from the negative impacts of the criminal justice system and emphasizes victim recovery and balance the interests of all parties. Based on Articles 6 and 7 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law), diversion is mandatory in cases of children who are threatened with imprisonment of less than 7 years and are not a repeat of the crime. Its implementation involves a deliberation process with law enforcement officials, victims, families, and community leaders to reach a fair solution. However, the implementation of diversion still faces various challenges, such as a lack of public understanding, limited resources, and a lack of clear technical regulations, so further efforts are needed to optimize its effectiveness in the juvenile criminal justice system. 2. The weaknesses of diversion regulations in juvenile justice for violent crimes, namely the limited authority of law enforcement officers and the lack of sanction mechanisms for non-compliance, are major obstacles to the effective implementation of diversion. Furthermore, a lack of resources, lengthy administrative processes, and limited training for law enforcement officers also hamper the implementation of diversion in the field. From a social perspective,

limited public understanding, rejection by victims, and stigma against children undergoing diversion are factors that undermine its effectiveness.

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