

The Concept of Restorative Justice in Child Cases, Reviewed From The Perspective of Benefit

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Abstract. *Children are the future generation of the nation who have the right to receive special protection in every aspect of life, including when they come into conflict with the law. The handling of juvenile cases requires criminal law policies that are not solely oriented toward law enforcement, but also take into account the best interests of the child, recovery, guidance, and benefits for the child's future. Therefore, it is necessary to examine how the current criminal law policies regulate the handling of juvenile cases and to what extent these policies reflect the value of utility within the juvenile justice system. The objectives of this research are to identify and analyze: (1) the positive criminal law policy (ius constitutum) governing the handling of juvenile cases in Indonesia; (2) the implementation of criminal law policies in resolving juvenile cases from the perspective of utility; and (3) the ideal criminal law policy (ius constituendum) for handling juvenile cases in the future. This research employs a normative legal research method using statutory and conceptual approaches. The research specification is descriptive-analytical. The data used are secondary data obtained through library research consisting of primary, secondary, and tertiary legal materials. All data were analyzed qualitatively to draw conclusions relevant to the research problems. The results of this study indicate that: (1) the current positive criminal law policy governing juvenile cases is regulated under Law Number 35 of 2014 concerning Child Protection, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Law Number 1 of 2023 concerning the Criminal Code, and Law Number 20 of 2025 concerning the Criminal Procedure Code, all of which child protection and the best interests of the child; (2) the implementation of criminal law policies in juvenile cases has accommodated restorative justice and diversion approaches as methods of case resolution that provide greater benefits for children compared to repressive punitive approaches; and (3) future criminal law policies should continue to strengthen the principle of child protection, expand the application of diversion and restorative justice, and enhance coordination among law enforcement agencies in*

order to establish a juvenile justice system that is more oriented toward utility, rehabilitation, and the social reintegration of children.

Keywords: *Criminal Law Policy; Diversion; Juvenile Cases; Restorative Justice; Utility.*

1. Introduction

Children are a gift and a trust from God Almighty, possessing the dignity and worth of a complete human being. Children possess inherent potential, unique characteristics, and traits that distinguish them from adults. As the next generation of the nation's struggle for independence, children play a strategic role in ensuring the continued existence of the nation and state in the future. Therefore, every child has the right to survive, grow, and develop, as well as to be protected from violence, exploitation, and discrimination. The commitment to providing the highest level of protection for children is not only a moral and social responsibility but also a legal obligation mandated by international and national legal instruments.¹

Children are also legal subjects with special characteristics and vulnerabilities, requiring different protection mechanisms than adults. This commitment to protection has become a universal legal norm through the Convention on the Rights of the Child,² and adopted in national law, which emphasizes the principle of the best interests of the child as a primary consideration. However, reality shows that a number of children are forced to face the law as perpetrators of criminal acts (ABH). The main theme of this research is an evaluation of the effectiveness and benefits of implementing the concept of restorative justice (Restorative Justice) in handling ABH cases in Indonesia, as mandated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA).

Children are also national assets, successors to the ideals of the nation's struggle, who have fundamental rights that must be protected, one of which is the right to receive legal protection, especially when dealing with the criminal justice system.³ The conventional criminal justice paradigm, which focuses on a retributive approach, where perpetrators are punished commensurate with their actions, often fails to provide solutions that are in the best interests of children.

¹Romli Atmasasmita, *Contemporary Criminal Justice System*, (Jakarta: Kencana Prenada Media Group, 2011), p. 78.

²United Nations, *Convention on the Rights of the Child*, Article 3(1), 1989.

³Romli Atmasasmita, *Contemporary Criminal Justice System*, (Jakarta: Kencana Prenada Media Group, 2011), p. 78.

Imprisonment, while intended to provide a deterrent effect, can actually backfire on children's psychological and social development. In juvenile correctional institutions (Lapas Anak), for example, children are potentially exposed to harsh environments, social stigma, and the loss of opportunities to continue their education. This disrupts the chain of rehabilitation and reintegration into society, ultimately leading to recidivism. This situation demonstrates an imbalance between the objectives of punishment and child protection efforts, which should be a top priority. Therefore, a paradigm shift is needed from a punishment-focused approach to one focused on rehabilitation.

Problems arise when the conventional criminal justice system, with its retributive paradigm, is applied to children. This system has proven ineffective and often counterproductive. The stigmatizing process can cause psychological trauma, and placement in Special Child Development Institutions (LPKA) risks becoming "schools of crime," increasing recidivism rates.⁴In response, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System introduced restorative justice through the diversion mechanism as the main route.

The concept of restorative justice emerged as a solution to these problems. Restorative justice is an approach that emphasizes restoring relationships and accountability, rather than simply imposing sanctions. This process involves all parties affected by the crime, particularly the victim, the perpetrator, and the community, in a dialogue to reach a resolution focused on repairing the harm and preventing recurrence. This commitment to restorative justice is also reflected at the police level through specific regulations governing procedures for terminating investigations based on restorative justice.⁵

The relevance of resolving this central theme for the development of legal science is significant. First, this research will empirically test the effectiveness of a modern legal paradigm (restorative justice) in the Indonesian socio-cultural context. Second, it will enrich the study of legal philosophy by applying the theory of utility (utilitarianism) as a benchmark for the success of criminal law policy, going beyond mere normative-procedural analysis.

Many studies have been conducted on this theme. Previous research, such as that conducted by Marlina (2012),⁶ tend to focus on identifying normative and structural obstacles in implementing diversion. Recent scientific journals also

⁴Eva Achjani Zulfa, *Restorative Justice and Juvenile Justice*, (Jakarta: Publishing Agency of the Faculty of Law, University of Indonesia, 2015), p. 45.

⁵Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice.

⁶Marlina, *Juvenile Criminal Justice in Indonesia: Development of the Concept of Diversion and Restorative Justice*, (Bandung: Refika Aditama, 2012), p. 155.

frequently highlight the quantitative success rate of diversion. However, the issue that prompted this research was the lack of analysis that measures the success of restorative justice from a holistic perspective of benefits. There are few studies that in-depth and qualitatively evaluate the impact of restorative justice on all three main actors simultaneously: the benefits for psychological recovery and de-stigmatization of children, the benefits for reparation of losses and a sense of justice for victims, and the benefits for system efficiency and the restoration of social harmony in society/the state.

To fill this gap, this research will utilize a case study within the jurisdiction of the District Court, which has a significant and well-documented volume of juvenile cases handled through diversion. The rationale for selecting this case is scientific, namely because it represents a data-rich case for testing how the theory of expediency operates in practice. The uniqueness of this case lies in its attempt to look beyond the success rate of diversion and explore the "story" behind it, whether the agreement reached is truly restorative and beneficial, or merely a formal dismissal of the case.

In Indonesia, the spirit of restorative justice has been explicitly incorporated into Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the "Juvenile Criminal Justice System Law"). This law mandates diversion, the transfer of juvenile cases from the criminal justice process to an out-of-court process. Diversion aims to achieve reconciliation between victims and perpetrators, resolve criminal liability, and prevent children from entering the formal justice system.

Along with the development of criminal law in Indonesia, the enactment of Law Number 1 of 2023 concerning the Criminal Code (KUHP 2023) has strengthened the child protection framework. One of the important changes in the KUHP 2023 is clearer provisions regarding children who commit crimes, including the age limit for criminal responsibility, diversion, actions, and types of punishment that can be imposed on children. Although it does not directly detail the types of sanctions for children, the KUHP 2023 lays out a fundamental principle in Article 40, which states that criminal responsibility cannot be imposed on children under 12 years of age.⁷ Furthermore, Article 70 paragraph (1) letter a of the 2023 Criminal Code states that as far as possible, prison sentences should not be imposed on children.

More importantly, the 2023 Criminal Code explicitly states that the juvenile justice system refers to the applicable special law, namely Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Therefore, the types of sanctions for children still refer to Law Number 11 of 2012 concerning the

⁷Law Number 1 of 2023 concerning the Criminal Code, Article 40.

Juvenile Criminal Justice System, which divides them into two main categories: Actions and Criminal. Actions, which are of a developmental nature, such as returning to parents or requiring them to attend training, are the primary options.⁸This is in line with the principle of implementing restorative justice as regulated in Article 41 of the 2023 Criminal Code. Meanwhile, criminal penalties such as warnings, job training, and imprisonment are only used as a last resort (*ultimum remedium*) and with a maximum penalty of half the penalty for adults.⁹This regulation demonstrates the consistency of Indonesian criminal law policy in prioritizing a restorative and rehabilitative approach rather than a punitive one for children.

Universally, protection of children has been recognized in the Convention on the Rights of the Child, which has been ratified by Indonesia through Presidential Decree Number 36 of 1990. This convention emphasizes that the best interests of the child must be the primary consideration in all actions concerning children, whether carried out by government or private social welfare institutions, courts, *wladz administracyjnych*, or legislative bodies.¹⁰This mandate was then internalized into the national legal system, one of which was through the Republic of Indonesia Law Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law.

However, in social reality, not all children can grow and develop in a conducive environment. Some of them, due to various internal and external factors, are forced to come into contact with the law, either as witnesses, victims, or perpetrators of crimes. When children become perpetrators of crimes, they are known as Children in Conflict with the Law (ABH). Handling ABH requires a fundamentally different approach than handling adult perpetrators. This is based on psychological, sociological, and pedagogical considerations that recognize that children are still in the process of forming their identity, have limited ability to understand the consequences of their actions, and are highly vulnerable to negative influences from their surroundings.

Conventional criminal justice systems, oriented toward retributive justice (retribution), often prove ineffective and even counterproductive when applied to children. The retributive paradigm, which emphasizes the imposition of criminal sanctions as a form of retribution for the perpetrator's wrongdoing,

⁸Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 82 paragraph (1).

⁹*Ibid.*, Article 71 paragraph (1) and Article 79 paragraph (2).

¹⁰United Nations, Convention on the Rights of the Child, Article 3(1), 1989.

tends to neglect the specific needs of children.¹¹A formalistic, rigid, and stigmatizing judicial process, from investigation to prosecution to trial, can cause profound psychological trauma for children. Labeling a child as "criminal" or "evil" can damage their self-concept, disrupt their education, and hinder their reintegration into society.

Furthermore, the imposition of criminal sanctions that deprive children of their liberty, such as placement in a Special Juvenile Development Institution (LPKA), often becomes a "school of crime." Within these institutions, children are vulnerable to exposure to more serious criminal values and behavior from other children or even from officers, increasing the risk of recidivism after their release.¹²The failure of the conventional criminal justice system to rehabilitate children and repair the victims' losses has given rise to the search for an alternative paradigm that is more humane, educational, and recovery-oriented.

In response to the weaknesses of the retributive paradigm, the concept of restorative justice emerged. Restorative justice offers a fundamental shift in how we view and respond to crime. While retributive justice asks, "What law was broken? Who was the perpetrator? What punishment is appropriate?", restorative justice asks different questions: "Who was hurt? What are their needs? Who has an obligation to meet them, and how?"¹³

According to Howard Zehr, often referred to as the "grandfather" of restorative justice, the concept is a process of involving as far as possible all parties involved in a particular offense and collectively identifying and addressing harms, needs, and obligations, in order to restore order and repair damage.¹⁴The focus is no longer on punishing the perpetrator, but rather on restoring the losses experienced by the victim (reparation), restoring the relationship between the perpetrator, victim, and society (reconciliation), and restoring the perpetrator himself so that he can return to being a productive member of society (reintegration).

In Indonesia, the spirit of restorative justice has been formally adopted as the primary foundation for handling juvenile cases through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). This law explicitly mandates that juvenile cases must be resolved first through a diversion

¹¹Barda Nawawi Arief, *Anthology of Criminal Law Policy: Developments in the Drafting of the 2023 Criminal Code*, (Jakarta: Kencana Prenada Media Group, 2010), p. 121.

¹²Eva Achjani Zulfa, *Restorative Justice and Juvenile Justice*, (Jakarta: Publishing Agency of the Faculty of Law, University of Indonesia, 2015), p. 45.

¹³Howard Zehr, *The Little Book of Restorative Justice*, (Intercourse, PA: Good Books, 2002), p. 21.

¹⁴*Ibid.*, p. 37.

mechanism, which involves transferring juvenile cases from the criminal justice process to a process outside the criminal justice system.¹⁵ Diversion implemented within the framework of restorative justice involves the child and his/her parents/guardians, the victim and/or his/her parents/guardians, community counselors, and other related parties to jointly seek a just solution with an emphasis on restoration to the original state, and not revenge.

The enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, with its concept of restorative justice, represents a progressive leap in the Indonesian criminal justice system. Normatively, this law promises a system that better aligns with the best interests of children. However, after more than a decade of implementation, a crucial question arises: to what extent does this ideal concept of restorative justice truly translate into benefits in practice? Benefit, in this context, is not simply measured by the reduction in the number of children entering the formal justice system, but must be viewed from a broader perspective, encompassing the benefits for all parties involved.

The utility perspective, which is rooted in the legal theory of utilitarianism, states that the purpose of law is to create the greatest possible happiness or benefit for the greatest number of people.¹⁶ In the context of this research, "benefit" is analyzed from three main perspectives:

1. Benefits for Children (Perpetrators): Does the restorative justice process truly protect children from negative stigma? Is the process capable of fostering a sense of responsibility, remorse, and empathy in children? Are the results more effective in preventing children from repeating their actions (recidivism) compared to conventional justice processes?
2. Benefits for Victims: Do victims feel involved and heard in the settlement process? Are the material and immaterial losses they suffered adequately redressed? Does this process provide a sense of justice and aid in the trauma recovery process for victims, something they often lack in perpetrator-focused court proceedings?
3. Benefits for Society and the State: Can the implementation of restorative justice restore social harmony disrupted by criminal acts? In terms of efficiency, can this approach reduce the workload of law enforcement officers and the justice system (overload capacity) and save the state money on the judicial process and guidance at the LPKA (Coroner's Correctional Institution).

¹⁵Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 1 number 7 and Article 5 paragraph (1).

¹⁶Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, (Oxford: Clarendon Press, 1789).

Although theoretically and normatively, the concept of restorative justice promises many benefits, its implementation in the field faces various challenges. These challenges include differences in perception and understanding among law enforcement officials (police, prosecutors, judges) regarding the philosophy of restorative justice.¹⁷ resistance from some communities who still have punitive views, limited resources and capacity of trained facilitators, and difficulties in reaching a sincere peace agreement between the parties.¹⁸ Failure to address these challenges has the potential to result in the diversion process becoming merely an administrative formality to avoid formal justice, without truly achieving the essence of recovery and benefit that is its goal.¹⁹ Using restorative justice practices in juvenile criminal law as a diversionary tactic is a clear way to transform the justice system so that it better meets the developmental needs of children and places a stronger emphasis on rehabilitation and restoration.²⁰

The above phenomenon demonstrates a gap between *das sollen* (the ideal law) as mandated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and *das sein* (the actual law) that occurs in the practice of restorative justice. Previous studies may have extensively discussed the juridical-normative aspects of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System or identified general obstacles. However, research that specifically and in-depth analyzes the concept of restorative justice from the perspective of benefits for the three main actors (children, victims, and society/state) is still limited. Through collaborative efforts involving community members, victims, and family members, the restorative justice model gives offenders a second chance to atone for their offenses. The fundamental idea of this more compassionate approach to dealing with juvenile offenders is to emphasize rehabilitation and reconciliation rather than retribution. As a result, the restorative justice diversion process can help children avoid the harmful effects of a harsh legal system, find more positive solutions, and reintegrate into society more easily.²¹ Analysis from this perspective is important to holistically measure

¹⁷Ira Alia Maerani & Siti Rodhiyah Dwi Istinah, The Formulation of the Idea of Forgiveness in Indonesian Criminal Law Policy (A Study Based on Restorative Justice & Pancasila Values), "Jurnal Sovereign Law" Volume 5, Issue 4, December 2022, p. 306.

¹⁸Marlina, Juvenile Criminal Justice in Indonesia: Development of the Concept of Diversion and Restorative Justice, (Bandung: Refika Aditama, 2012), p. 155

¹⁹Haekal Amalin and Ermania Widjajanti, Reforming Juvenile Criminal Law Through the Implementation of Restorative Justice in Indonesia, *Locus Journal of Academic Literature Review*, Volume 4 Number 2, May 2025, p. 72.

²⁰*Ibid.*

²¹*Ibid.*

the success or failure of the implementation of restorative justice, not only as a legal procedure, but as a philosophy that aims to create the common good.

This research focuses on the utility of implementing restorative justice in juvenile cases. This utility perspective is crucial for evaluating whether the recovery-oriented process truly provides optimal benefits for all parties, especially children in conflict with the law, victims, and the community. This evaluation includes how restorative justice can repair victims' losses, prevent social stigma against children, and help children reintegrate into society as productive individuals.

Considering the complexity of the above issues, this research is highly relevant. This research will not only examine the normative aspects of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, but will also analyze the extent to which the benefits of restorative justice are truly felt. Based on the background description, the author is interested in conducting a more in-depth research in the form of a thesis with the title: "The Concept of Restorative Justice in Juvenile Cases Reviewed from a Benefit Perspective." This research is expected to provide a comprehensive picture of the realization of the principle of benefit in the application of restorative justice in juvenile cases, as well as provide constructive recommendations for the realization of true protection and justice for Indonesian children.

2. Research Methods

Legal research is basically a scientific activity based on certain methods, systematics and thinking which aims to study one or several specific legal phenomena by analyzing them, apart from that, an in-depth examination of the legal facts is also carried out to then try to find a solution to the problems that arise in the phenomenon in question.²²Research is a (scientific) suggestion for the development of science and technology, so the research methodology applied must always be adapted to the science that is its parent.²³The research method used by the author in this research is.

3. Results and Discussion

3.1. Current Positive Criminal Law Policy (*Ius Constitutum*) Regulates Criminal Acts Against Children

Positive criminal law policies in regulating juvenile crimes demonstrate a different orientation from the conventional, repressive penal system. The state positions children as legal subjects with unique characteristics, thus addressing

²²Bambang Sunggono, *Legal Research Methodology*, Rajawali Pers, Jakarta, 2010, p. 38.

²³Soerjono Soekanto, *Normative Legal Research*, PT. Raja Grafindo Persada, Jakarta, 2007, p. 1.

children in conflict with the law through a protective, developmental, and restorative justice approach.

Through the 2023 Criminal Code, the state affirms its commitment to treating children in conflict with the law not merely as perpetrators of criminal acts, but as subjects who must be nurtured, protected, and restored, by prioritizing the principles of restorative justice, limiting criminal penalties, and imposing educational and rehabilitative sanctions.

The positive criminal law policy (*ius constitutum*) that regulates juvenile crimes in Indonesia is currently not only based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 35 of 2014 concerning Child Protection, but has also been updated through Law Number 1 of 2023 concerning the Criminal Code which serves as the basis for national criminal law. The presence of the 2023 Criminal Code indicates a paradigm shift in the criminal justice system which is no longer solely oriented towards retributive justice, but also pays attention to aspects of protection, guidance, and rehabilitation for perpetrators of criminal acts, including children in conflict with the law.

One of the important reforms in the 2023 Criminal Code is the adoption of a double-track system, a system that accommodates two types of sanctions: criminal sanctions (*poena*) and disciplinary sanctions (*maatregel*). Criminal sanctions aim to inflict suffering or a deterrent effect on the perpetrator as a consequence of their actions, while disciplinary sanctions focus more on the aspects of guidance, care, rehabilitation, and protection of the perpetrator. Through this system, criminal law functions not only as a means of punishment but also as an instrument of social improvement and reintegration. The implementation of the double-track system has strong relevance in handling juvenile cases.²⁴ This is because children who commit crimes are viewed as individuals still in the developmental stage and therefore require guidance rather than punishment. Therefore, in addition to criminal penalties, judges can impose measures aimed at correcting the child's behavior and preparing them to return to a positive role in society. This approach aligns with the principle of the best interests of the child, which underpins the juvenile criminal justice system.

The 2023 Criminal Code regulates juvenile criminal law policy by emphasizing the distinction between children and adults in criminal liability. This reform is reflected in limiting the age of criminal liability, reducing the potential for criminal penalties, and prioritizing the imposition of sanctions in the form of non-imprisonment measures and penalties. Thus, criminalizing children is no longer positioned as a means of retribution, but rather as a developmental tool aimed

²⁴Gita Santika Ramadhani, Barda Nawawi Arief, Purwoto, "Criminal System and the "Double Track System" Action in Criminal Law in Indonesia", *Diponegoro Law Review*, Volume 1, Number 4, 2012, p. 5

at preventing recurrence of criminal acts, restoring social relationships, and ensuring optimal child growth and development.

The 2023 Criminal Code regulates that the objectives of criminal punishment as regulated in Article 51 of the 2023 Criminal Code include the following:²⁵

1. prevent criminal acts by enforcing legal norms for the protection and care of society;
2. socialize convicts by providing guidance and mentoring so that they become good and useful people;
3. resolving conflicts arising from criminal acts, restoring balance, and bringing a sense of security and peace to society; and
4. foster a sense of regret and free the convict from guilt.

This article serves as the philosophical basis for restorative, rather than repressive, punishment for children. A restorative approach to child punishment positions criminal acts not merely as violations against the state that must be meted out with punishment, but rather as social conflicts that cause harm to victims, perpetrators, and society.²⁶ Therefore, restorative punishment aims to restore the original situation through dialogue, the perpetrator's responsibility, and restitution of the victim's losses, without neglecting the best interests of the child.

As stated in Article 40 of the 2023 Criminal Code, criminal responsibility cannot be imposed on children who are under 12 (twelve) years of age at the time of committing the crime. The determination of the 12 (twelve) year age limit is based on psychological considerations, namely the child's emotional, intellectual, and mental maturity. Children under 12 (twelve) years of age cannot be held criminally responsible and therefore the handling of their cases is carried out in accordance with the provisions of laws and regulations governing the juvenile criminal justice system.²⁷ For children who at the time of committing a crime are 12 (twelve) years old but have not yet reached the age of 18 (eighteen), the 2023 Criminal Code opens the possibility of being subject to criminal liability with special provisions and limitations, the implementation of which still prioritizes the diversion mechanism as a manifestation of the restorative justice approach.

²⁵Article 51 of Law Number 1 of 2023 concerning the Criminal Code

²⁶Rajarif Syah Akbar Simatupang, "Implementation of the Juvenile Criminal Justice System in Indonesia from the Perspective of Justice Values", *Jurnal Juridical*, Volume 11, Number 1, June 2024, pp. 58-59.

²⁷Jakarta Special Region High Prosecutor's Office, *Review of the 2023 Criminal Code*, Jakarta: Jakarta Special Region High Prosecutor's Office, 2025, p. 43.

Diversion is seen as the main instrument to prevent children from formal judicial processes and imprisonment, by encouraging the resolution of cases through deliberations involving the child, parents or guardians, victims, and law enforcement officials, in order to achieve recovery, responsibility, and social reintegration of children.

The provisions for diversion are stated in Articles 112 to 117 of the 2023 Criminal Code. Article 112 of the 2023 Criminal Code stipulates that children who commit crimes that are punishable by imprisonment of less than 7 (seven) years and are not recidivists must be given diversion.²⁸ Furthermore, Article 113 of the 2023 Criminal Code emphasizes that for children in conflict with the law, the state prioritizes the application of sanctions in the form of action rather than criminalization. This provision is reflected in the regulation of various forms of action, such as return to parents or guardians, surrender to certain parties, institutional care, mandatory education or training, and remedial measures for the consequences of criminal acts. In addition, the limitation of the maximum period of action to 1 (one) year demonstrates the caution of lawmakers in imposing sanctions on children. Furthermore, children under 14 (fourteen) years of age cannot be subject to criminal penalties and can only be subject to action, reflecting a criminal law policy oriented towards the protection and development of children, in line with the principle of the best interests of the child and a restorative justice approach.²⁹

Furthermore, Article 114 of the 2023 Criminal Code stipulates that the penalties that can be imposed on children consist of principal penalties and additional penalties. Article 115 of the 2023 Criminal Code details the types of principal penalties that can be imposed on children, including: first, a warning; second, a conditional penalty in the form of out-of-institutional guidance, community service, or supervision; third, job training; fourth, in-institutional guidance; and fifth, imprisonment.³⁰ The classification of these types of criminal offenses demonstrates a gradation of sanctions, from the lightest to the most severe, reflecting a juvenile sentencing policy that prioritizes an educational and rehabilitative approach. Article 115 of the 2023 Criminal Code stipulates additional penalties, including confiscation of profits obtained from the crime and the fulfillment of customary obligations.³¹ The confiscation of profits aims to eliminate the economic benefits of criminal acts, while the fulfillment of

²⁸Article 112 of Law Number 1 of 2023 concerning the Criminal Code

²⁹Article 113 of Law Number 1 of 2023 concerning the Criminal Code

³⁰Article 114 of Law Number 1 of 2023 concerning the Criminal Code

³¹Article 115 of Law Number 1 of 2023 concerning the Criminal Code

customary obligations reflects recognition of local wisdom values as a means of resolving conflicts and restoring social relations.³²

Normative regulation is also reflected in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System as *lex specialis*, which regulates the age limit for criminal responsibility, the obligation to implement diversion, and the types of sanctions that prioritize non-imprisonment measures and punishments. In the SPPA Law, criminalization of children is positioned as a last resort (*ultimum remedium*), so that the criminal justice process is expected to avoid negative impacts in the form of stigmatization and criminalization of children.

Furthermore, positive criminal law policy is strengthened by Law Number 17 of 2016 concerning Child Protection, which affirms the state's obligation to provide special protection to children, both as perpetrators and victims of crime. This regulation demonstrates that the handling of children's cases focuses not only on law enforcement but also on restoring children's rights and preventing violence against children. Furthermore, the technical aspects of criminal enforcement and actions against children are regulated in Government Regulation Number 58 of 2022, which provides guidelines for implementing sanctions that are proportional, educational, and development-oriented. Meanwhile, Supreme Court Regulation Number 4 of 2014 provides guidelines for judges in implementing diversion as a means of resolving children's cases outside of formal justice.

The Child Protection and Juvenile Justice Act explicitly stipulates that the implementation of the Juvenile Criminal Justice System is based on a number of principles that reflect the special characteristics of handling juvenile cases. These principles include³³The principles of protection, justice, non-discrimination, and the best interests of the child, affirm the state's obligation to position children as subjects whose rights must be protected at every stage of the criminal justice process. Furthermore, the Child Protection Act also emphasizes the principle of respect for children's opinions, their survival and development, and their guidance and counseling. These principles demonstrate that the handling of children's cases is not only oriented towards law enforcement, but also towards fulfilling children's rights to develop physically, mentally, and socially. Furthermore, the principles of proportionality, deprivation of liberty and punishment as a last resort, and avoidance of retaliation emphasize that criminal sanctions against children must be imposed carefully, limitedly, and only when non-punitive measures are deemed inadequate.

³²Jakarta Special Region High Prosecutor's Office, Review of the 2023 Criminal Code, Jakarta: Jakarta Special Region High Prosecutor's Office, 2025, p. 111.

³³Article 2 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

The Juvenile Justice System Law emphasizes that the implementation of the Juvenile Criminal Justice System must prioritize a restorative justice approach. This affirmation demonstrates that the handling of juvenile cases is not directed at retaliation through punishment, but rather at efforts to restore relationships between the child, the victim, and the community, while still considering the child's best interests. Furthermore, the Juvenile Criminal Justice System encompasses all stages of the judicial process, from investigation and prosecution, through trials in general courts, to guidance, mentoring, supervision, and support during and after the child has served his or her sentence or action.³⁴ This comprehensive regulation confirms that protection for children does not stop at court decisions, but continues to the implementation stage and the child's social reintegration.

1. Implementation of Diversion in Child Crimes

To achieve restorative justice, the Child Protection and Child Protection Law requires diversion efforts during the investigation, prosecution, and trial stages of juvenile cases. This diversion obligation is intended to protect children from formal judicial proceedings and deprivation of liberty, and to encourage case resolution through deliberation involving the child, parents or guardians, victims, and law enforcement officials, thereby achieving proportional reparation and accountability.

The application of diversion in Article 6 of the SPPA Law emphasizes that diversion has several objectives, including achieving peace between victims and children, resolving children's cases outside the judicial process, preventing children from being deprived of liberty, encouraging community participation, and instilling a sense of responsibility in children.³⁵ Article 7 paragraph (2) of the SPPA Law stipulates the conditions for implementing diversion, namely for criminal acts that are punishable by imprisonment of less than 7 (seven) years and are not a repeat of the crime. This provision indicates that diversion is prioritized for child cases with a relatively mild to moderate level of seriousness, so that children can be protected from formal judicial processes and criminal penalties that have the potential to have a negative impact on their psychological and social development. Article 8 of the SPPA Law stipulates that the diversion process is implemented through deliberation involving various interested parties, namely the child and their parents or guardians, the victim and/or the victim's parents or guardians, community counselors, and professional social workers, based on a restorative justice approach. The involvement of these various parties is intended to ensure that the resolution of children's cases is carried out in a participatory manner and is oriented towards

³⁴Article 5 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

³⁵Article 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

recovery, not solely on punishment. Furthermore, Article 8 paragraph (3) of the SPPA Law emphasizes that the diversion process must take into account the interests of the victim, the welfare and responsibility of the child, the avoidance of negative stigma and retaliation, and social harmony. In addition, the diversion process must also be implemented while upholding propriety, morality, and public order, so that the results of the settlement achieved are not only beneficial for the child and the victim, but also accepted by the wider community. Article 9 of the SPPA Law stipulates that in implementing diversion, investigators, public prosecutors, and judges must consider a number of substantive aspects, namely the category of crime, the child's age, the results of community research from the Correctional Center, and support from the family and community environment. This provision shows that the implementation of diversion is not carried out automatically, but through a comprehensive and proportional assessment of the child's condition and the impact of the crime committed. Article 9 paragraph (2) emphasizes that the diversion agreement must in principle obtain the consent of the victim and/or the child victim's family and the willingness of the child and his/her family. However, the law provides exceptions to the obligation to agree to this agreement in cases of violations, minor crimes, crimes without victims, or crimes that result in losses not exceeding the local provincial minimum wage. This regulation reflects a balance between protecting the interests of victims and efforts to avoid formal judicial proceedings against children. Meanwhile, Article 11 of the SPPA Law regulates the forms of diversion agreements that can be taken, including peace with or without compensation, the return of the child to parents or guardians, the child's participation in education or training at educational institutions or LPKS for a certain period, and community service. The various forms of settlement show that diversion is directed at the recovery and development of children, not at punishment, thus being in line with the principles of restorative justice and the best interests of children.

The application of diversion in child criminal law policy is not only normative, but has also been realized in judicial practice. One example can be seen in Diversion Determination Number 5/Pid.Sus-Anak/2016/PN.BDG. In this determination, the Panel of Judges considered that a diversion agreement had been reached on April 11, 2016, which in this case was carried out by Anak Yudi Tri Laksono. The judge considered that the clauses in the diversion agreement had fulfilled legal provisions and did not conflict with statutory regulations, so that the diversion request was reasonable to be granted. Furthermore, in this case the child was suspected of committing a crime as threatened in Article 111 paragraph (1) of Law Number 35 of 2009 concerning Narcotics and Article 62 of Law Number 5 of 1997 concerning Psychotropics. The application of diversion to the child of Yudi Tri Laksono alias Toro bin Dasanto Agus is based on the consideration that the child in question was involved in a class I narcotics crime in the form of marijuana and class IV psychotropics which are more appropriately handled through

rehabilitation efforts rather than criminalization. Based on the results of the Bandung City Correctional Center's social research, the child was deemed suitable to be entrusted and fostered at the Bahtera Social Welfare Institution (LPKS), and in the diversion hearing all parties agreed to apply diversion in accordance with Article 11 letter c of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, so that the resolution of this case meets the principles of restorative justice, benefit, and the best interests of the child. Taking into account the provisions of Article 12 and Article 52 paragraph (5) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 8 of 1981 concerning Criminal Procedure Law, the court then decided to grant the investigator's request, ordered the parties to implement the diversion agreement, and ordered the investigator to issue a letter of order to stop the investigation after the diversion agreement was fully implemented. This decision confirms that the diversion mechanism can be applied even to crimes threatened by special laws, as long as they meet the diversion requirements and consider the best interests of the child. This shows that positive criminal law policy has provided real space for resolving children's cases through a restorative justice approach, so that the criminal justice process does not always end in formal punishment, but rather in efforts to restore and develop children.

2. Sustainability in the Juvenile Criminal Justice Process

In the event that diversion efforts do not reach an agreement or are declared unsuccessful, the juvenile criminal justice process will continue in accordance with the procedural provisions of the SPPA Law. However, the continuation of the judicial process will still be carried out with attention to special protection for children. This is reflected in Article 20 of the SPPA Law which states that children who commit crimes before the age of 18 (eighteen) years will still be examined in juvenile court, even if the child has exceeded that age when the case is submitted to the court, as long as they have not reached the age of 21 (twenty-one) years. Furthermore, specifically for children under the age of 12 (twelve) years as regulated in Article 21, where the child will not be subject to criminal justice proceedings, but will be returned to their parents or participate in education, guidance, and mentoring programs.

In the case of detention, the SPPA Law provides restrictions as regulated in Article 32 to Article 35, which emphasizes that detention of children can only be carried out selectively, on the condition that the child is 14 (fourteen) years old or older and is suspected of committing a crime with a prison sentence of 7 (seven) years or more, and with a shorter period than the detention of adults. These regulations show that even if diversion is unsuccessful, the juvenile criminal justice system remains oriented towards protecting children's rights, limiting deprivation of liberty, and the best interests of children.

The provisions regarding sanctions against children in the SPPA Law are regulated in stages and proportionally. Article 71 of the SPPA Law states that the main penalties for children consist of a warning, a conditional penalty in the form of out-of-institutional guidance, community service, or supervision, job training, in-institutional guidance, and imprisonment, which may be accompanied by additional penalties in the form of confiscation of profits obtained from the crime or fulfillment of customary obligations. Furthermore, Article 72 of the SPPA Law and Article 73 of the SPPA Law explain that a warning is a minor penalty that does not restrict the child's freedom, while a conditional penalty can only be imposed if the maximum prison sentence imposed is 2 (two) years. In a conditional sentence, the judge is required to determine general conditions in the form of a prohibition on repeating the crime and special conditions that still consider the child's freedom, so that the sanctions imposed are educational and preventive. Imprisonment is strictly regulated in Article 81 of the SPPA Law, which states that imprisonment for children can only be imposed if the child's condition and actions endanger society, with a maximum sentence length of 1/2 (one-half) of the maximum sentence for adults. Guidance is carried out in the Special Child Guidance Institution (LPKA) until the child is 18 (eighteen) years old and imprisonment is placed as a last resort (*ultimum remedium*), even for crimes that are threatened with the death penalty or life imprisonment, the sentence imposed on children is limited to a maximum of 10 (ten) years. In addition to criminal penalties, the SPPA Law also regulates actions as stated in Article 82, which include return to parents or guardians, surrender to certain parties, treatment in a mental hospital or LPKS, the obligation to attend education or training, revocation of driving licenses, and corrections due to criminal acts.

Further handling of cases is still carried out by paying attention to the protection of children's rights, limitations on sentencing, and the principle of the best interests of the child, so that even though the case continues to the prosecution and examination stage in court, the approach used is not repressive, but rather prioritizes the development and rehabilitation of children.

This regulation demonstrates that although children may be subject to criminal penalties, the types and forms of such penalties remain specifically limited and distinct from those applicable to adults. This limitation is part of the juvenile criminal law policy, which places punishment as a last resort (*ultimum remedium*), after other restorative measures and mechanisms are deemed inadequate. Therefore, sentencing a child must always consider the child's best interests and the goals of development and rehabilitation.

The national criminal law policy in the 2023 Criminal Code demonstrates significant progress in regulating juvenile crimes. This reform is reflected in the explicit recognition of the age limit for criminal responsibility, limitations on the types and severity of punishments that can be imposed on children, and the

prioritization of sanctions in the form of non-imprisonment measures and penalties. This regulation places the best interests of the child as a primary principle, so that punishment is no longer oriented towards retribution, but rather towards development, rehabilitation, and social reintegration. Furthermore, the advantages of regulating juvenile crimes in the 2023 Criminal Code are further strengthened by the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which comprehensively regulates the formal and procedural aspects of handling juvenile cases. The synchronization between the 2023 Criminal Code as material criminal law and the Juvenile Justice System Law as formal criminal law creates an integrated juvenile criminal justice system, prioritizing diversion, restorative justice, and the protection of children's rights from the investigation stage to the implementation of the verdict.

Thus, the 2023 Criminal Code policy can be considered to have provided a strong and progressive normative foundation for addressing juvenile crime. The support of the SPPA Law as *lex specialis* further ensures that the treatment of children, both as perpetrators and victims of crime, is carried out humanely, proportionally, and beneficial to child development and sustainable social order.

3.2. Efforts to address child issues are reviewed from a perspective of utility.

Children in conflict with the law as perpetrators of criminal acts still receive special protection guarantees as stipulated in the legislation. Based on the SPPA Law, special protection is defined as a series of protective measures provided to children under certain conditions to ensure a sense of security from various forms of threats that have the potential to disrupt their physical, mental, and social growth and development. This protection is based on the basic principles inherent in the Juvenile Criminal Justice System, which places the best interests of the child as the primary foundation in every stage of the judicial process. In the criminal justice process, children have the right to receive humane treatment according to their age and developmental needs, including separation from adults and the provision of effective legal and other assistance. Children also have the right to engage in recreational activities and to be free from all forms of torture, punishment, or other treatment that is cruel, inhumane, or degrading to their dignity and worth. Children have the right to receive a fair trial process through an objective and impartial juvenile court, with case hearings conducted behind closed doors and guaranteeing the confidentiality of the child's identity. Other rights that must also be fulfilled include support from parents or guardians and trusted parties, obtaining social advocacy, protection of private life, special accessibility for children with disabilities, the right to education and health services, and the fulfillment of other rights in accordance with the provisions of applicable laws and regulations.

The criminal responsibility of children in criminal cases is required to be linked to the application of diversion, even if the child is a perpetrator of a crime, a legal process cannot have a negative effect on the soul and development of a child, exemplified in the case of criminalization. When diversion cannot be achieved, the principal sentence for a child who has committed a crime must be reduced by $\frac{1}{2}$ (half) of the principal sentence in accordance with the provisions of the article that the child violated. This is to lighten a sentence so that the child can serve his sentence briefly so that his right to interact with the surrounding environment can be immediately realized. This is in line with a theory in criminal law, namely the relative theory, that punishment is not a form of retribution but rather punishment must provide benefits to the perpetrator of the crime. This legal benefit must be felt by both parties after a series of rights and obligations in the trial have been carried out. A criminal law is said to be *ultimum remedium*, which means that punishment is the last resort that can be taken while there are still various processes to continue to the criminal justice process, so this process must be passed first before making the criminal process the final step that can be taken. The function of criminal law is to regulate and limit human behavior. By limiting it, a person will know what can and cannot be done, that is the material content of applicable criminal law. Legal utility is a parameter of how a punishment can provide a sense of benefit to society so that in the future the community will not violate the provisions of the elements of a crime. The juvenile criminal justice process often misses the essence of it, namely as a mechanism that must end to protect the best interests of the child.

The Child Protection and Juvenile Justice Act (SPPA) emphasizes that every child facing the law during their sentence must also be entitled to their rights to grow and develop. Children serving time have the right to visit their families, receive parole, receive assimilation, have their sentence reduced, and receive other rights as stipulated in law.

Efforts to address child cases in the criminal justice system must be understood as part of a utility-oriented criminal law policy, namely providing the greatest possible benefit not only to children in conflict with the law, but also to victims, society, and the state. From a utility perspective, criminal law functions not merely as a means of retribution, but also as a means to create social order, prevent the recurrence of criminal acts, and ensure the future of children as the nation's next generation.

The Child Protection and Child Protection Law and the 2023 Criminal Code decisively shift the paradigm of handling juvenile cases from a repressive and retributive approach to a restorative and rehabilitative one. This shift reflects the legal orientation of expediency, as children are viewed as individuals still in the process of growing and developing, and therefore are more appropriately guided and protected than subjected to punitive punishments that could potentially

damage their future. One of the primary efforts in addressing juvenile cases with high expediency is the implementation of diversion. Diversion aims to shift the resolution of juvenile cases from the formal judicial process to an out-of-court settlement involving the perpetrator, victim, parents, community counselors, and community elements. From a utilitarian perspective, diversion offers significant benefits because it can prevent children from the negative stigma of being a criminal, restore social relationships between perpetrators and victims, and reduce the burden on judicial and correctional institutions. Diversion also allows children to continue their education and social life without significant disruption.

In addition to diversion, efforts to address juvenile cases are also realized through restrictions on the use of detention and imprisonment. The Juvenile Justice and Child Protection Law and the 2023 Criminal Code explicitly place detention and imprisonment as a last resort (*ultimum remedium*). This principle reflects legal expediency, as detention of children has the potential to cause detrimental psychological, social, and moral impacts and may even encourage children to re-offend in the future. By limiting detention to specific conditions and for a short period, juvenile criminal law aims to minimize harm and maximize the benefits of rehabilitative measures. This expediency is also reflected in the regulation of types of punishment and measures that are educational and rehabilitative. Warnings, conditional sentences, out-of-institutional rehabilitative measures, community service, and job training are all forms of sanctions that provide tangible benefits for children. These sanctions aim not only to provide a deterrent effect but also to shape character, instill social responsibility, and improve children's skills so they can reintegrate into society. Thus, the goal of special prevention can be achieved without jeopardizing children's futures.

From a utilitarian perspective, child development in the Special Juvenile Development Institution (LPKA) is designed differently from the adult correctional system. LPKA emphasizes education, training, and personality development, rather than simply restricting freedom. This provides long-term benefits because children have the opportunity to improve themselves and prevent re-offending after undergoing rehabilitation. Furthermore, the role of community counselors, social workers, and social welfare institutions is a crucial part of efforts to address juvenile cases that are oriented toward utilitarianism. Through community research (*litmas*), law enforcement officers obtain a comprehensive picture of the child's social, family, and environmental background. This information serves as the basis for determining the most beneficial form of treatment for the child, ensuring that legal decisions are not rigid but rather contextual and humane. From a societal perspective, a utilitarian approach to juvenile cases also contributes to the creation of social security and order. Children who are well-guided have a greater chance of becoming productive and responsible members of society. Conversely, a repressive

approach has the potential to create child recidivism, which ultimately harms society at large. Thus, efforts to address juvenile cases from a utilitarian perspective place the best interests of the child at the center of criminal law policy, without neglecting the interests of victims and society. This approach aligns with the goals of modern criminal law, namely achieving a balance between justice, legal certainty, and utilitarianism, so that the juvenile criminal justice system not only punishes but also educates, protects, and rehabilitates.

4. Conclusion

1. Positive criminal law policy (*ius constitutum*) in handling juvenile crimes in Indonesia is oriented towards protection, development, and restorative justice. Through the Juvenile Justice System Law (SPPA), which serves as *lex specialis*, diversion must be pursued at every stage of the justice system to prevent children from deprivation of liberty and stigma, and to place criminal penalties as the *ultimum remedium*. This provision is supported by other laws and regulations that emphasize the limitation of detention, reduction of sentences, and prioritization of sanctions and development, so that the juvenile criminal justice system normatively prioritizes the best interests of children and their social reintegration. 2. Juvenile case management from a utilitarian perspective positions criminal law as a means of protection and development, not retribution. Diversion is the primary instrument to protect children from the negative impacts of criminal punishment and support social recovery. Furthermore, limiting detention and prioritizing educational and rehabilitative sanctions aims to prevent recurrence of crimes and support children's reintegration into society. Thus, juvenile criminal law policy benefits children, victims, and society, while supporting the balanced achievement of the goals of modern criminal law.

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