

Diversion Provisions in Criminal Law: A Normative Review of Diversion in Cases of Children in Conflict with the Law

Achmad Royani¹, Syamsul Arifin², Fajar Seto Nugroho³, Dewi Indah Suryani⁴

1. Faculty of Law, University of Islam Lamongan, Jl. Veteran No.53 A Lamongan, 62211
2. Faculty of Syariah Universitas Al-Hikmah Indonesia, Jl. PP Al Hikmah Binangun Singgahan Tuban Jatim, 62361
3. Faculty of Law, University of Islam Lamongan, Jl. Veteran No.53 A Lamongan, 62211
4. Faculty of Law, University of Islam Lamongan, Jl. Veteran No.53 A Lamongan, 62211

Coresponding Author Email: royanilaw@unisla.ac.id

Abstract

Children are individuals who are in the development stage and have special vulnerabilities, especially when dealing with the law. The state has a constitutional obligation to provide legal protection for children in conflict with the law, as regulated in the 1945 Constitution and a number of national laws and regulations, and reinforced by international conventions such as the CRC. This study aims to examine the regulation of the human rights of children involved in the criminal law process and to examine the implementation of the diversion mechanism at the investigation stage as a form of restorative justice in the juvenile criminal justice system. The method used is normative juridical with a statute approach to primary legal materials such as the 1945 Constitution, the SPPA Law, and its implementing regulations. The results of the study show that although the regulations have provided a strong legal basis to guarantee the protection and recovery of children, the implementation of diversion still faces structural and cultural obstacles, such as limited understanding of the apparatus and minimal support for facilities. Therefore, it is necessary to strengthen institutional capacity, increase cooperation between institutions, and update the legal approach that is oriented towards the best interests of children.

Keywords: *Children, legal protection, diversion, crime, restorative justice*

Introduction

The period of child development is a very crucial period, so the state has a constitutional and moral responsibility to provide special protection to children,

including in situations where children have to deal with the legal system¹. Indonesia has ratified the Convention on the Rights of the Child (CRC) through Presidential Decree No. 36 of 1990 and has demonstrated its commitment to guaranteeing children's rights, especially in terms of protection from all forms of violence, discrimination, and violations of the law².

Child protection is strengthened nationally through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which aims to realize restorative justice as the primary approach in handling children in conflict with the law³. The high number of legal violations involving children often gives rise to various problems and gives rise to retributive public demands.⁴ In the context of children as perpetrators of criminal acts, an approach that focuses on guidance and recovery is considered more relevant than a punitive approach that has the potential to damage the child's psychological and social development.⁵ Criminal acts committed by children—or what is known in legal terms as juvenile delinquency—refers to all forms of legal violations committed by minors who are still under the responsibility of their parents or guardians⁶.

According to experts, including Romli Atmasasmita and Harrys Pratama Teguh, this form of delinquency can be classified into several types, ranging from criminal offenses to violations of social and educational norms⁷. One of the important steps regulated in the SPPA Law to handle children's cases in a more humane manner is the diversion mechanism, namely the transfer of the settlement of children's cases from formal justice channels to non-litigation processes involving the perpetrator, victim, family, and community⁸.

¹ Balla, Herman. *Diversi anak yang berhadapan dengan hukum*. Jurnal Litigasi Amsir Vol.10 No. 3 (2022), h. 202

² Riyadi, *Diversi Dalam Kerangka Restorative Justice Pada Penanganan Anak yang Berhadapan dengan Hukum*, Jurnal Syntax, Vol. 4 No. 9 (2023). h. 895

³ Kadir, Abd, dkk, *Penerapan diversi terhadap Anak yang Berhadapan dengan Hukum dalam Prespektif Sistem peradilan Anak*, Journal of Lex Generalis, Vol. 1 No. 6 (2020), h. 903

⁴ Ja'far Shodiq, Ulil Albab, dan Erika Husna Amalia Putri, *Abuse Of Circumstances As A Cause Of The Avoidation Of Contact In The Civil Court And Islamic Law*, Jurnal Independent 10, no. 1 (2022), h. 70

⁵ Ja'far Shodiq, Hadziqotun Nahdliyah, dan Aisyah Nur Mahdiyah, *Transformation of Child Marriage Law in Indonesia: From Private Law to Public Law*. In International Conference on Law Reform (5th Inclar 2024), Atlantis Press, 2025, h. 298.

⁶ M. Yanto dan Munif Rochmawanto. *Analisis Yuridis Normatif Perlindungan Hukum Terhadap Anak korban Tindak Pidana Pencabulan, Ditinjau dari Hukum Positif (Studi Kasus Putusan Pengadilan Negeri Lamongan, Nomor : 53/PID.SUS/2018*. Jurnal Humaniora Vol. 6 No. 2 (2022), h. 91

⁷ Harrys Pratama Teguh, *Teori dan Praktek Perlindungan Anak Dalam Hukum Pidana*, Penerbit C.V ANDI OFFSET, Yogyakarta, 2018, h.128

⁸ Kadir. *Op.cit.* h. 905

Diversion aims to protect children from the negative impacts of the conventional justice system and provide them with the opportunity to improve themselves in a supportive environment.⁹ This approach is rooted in the principles of restorative justice, which emphasize the restoration of social relationships, the responsibility of perpetrators, and the fulfillment of victims' rights. Although the diversion mechanism is clearly regulated, its implementation at the investigative level still faces various obstacles, both structural and cultural¹⁰.

Factors such as limited understanding among law enforcement officials, community resistance, and a lack of supporting facilities often hinder the successful implementation of diversion. Therefore, a comprehensive evaluation of the effectiveness of diversion implementation in the field is necessary, particularly in the initial stages of case handling, namely the investigation stage.¹¹

Research methods

This research uses a normative juridical method, namely an approach that focuses on the study of legal norms, legal principles, and expert views in order to understand and resolve the legal issues raised¹². By using a statute approach, researchers examine statutory regulations both directly and through official documents that form the legal basis for implementing diversion.

The primary legal materials used in this research are: (1) the 1945 Constitution, (2) Law Number 39 of 1999 concerning Human Rights, (3) Law Number 11 of 2012 concerning amendments to Law Number 3 of 1997 concerning the Juvenile Criminal Justice System (SPPA Law), (4) Law Number 35 of 2014 concerning child protection, (5) Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion, (6) Supreme Court Regulation Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Justice System, (7) Regulation of the Chief of the Republic of Indonesia National Police Number 6 of 2019 concerning Criminal Investigation, (8) Convention on the Rights of the Child (CRC) or Convention on the Rights of the Child (CRC) 1990

⁹ Ja'far Shodiq, Isniyatin Faizah, Moh Aqil Musthofa, dan Aisyah Nur Mahdiyah, *The Criminal Law of Forced Marriage on Children as a Preventive Measure on Sadz Dzariah's Perspectiv*, *Al-Jinayah: Jurnal Hukum Pidana Islam* 10, no. 2 (2024), h. 225

¹⁰ Erwinda Dekaria Agustiana Putri dan Pudji Astuti, *Faktor Penghambat Diversi Bagi Anak yang Berkonflik dengan Hukum di Pengadilan Negeri Blitar*, *Jurnal Hukum*, Vol. 07 No. 1 (2020), h. 185

¹¹ Wardatun Nabilah, Ja'far Shodiq, and Deri Rizal, *Basic Analysis of the Exercise of Judicial Power (Integration of Islamic Law and Positive Law)*, *Jurnal Independent* 12, no. 1 (2024), h. 8

¹² Marzuki Peter Mahmud, *Penelitian Hukum*, Kencana Prenada Media Group. Jakarta. 2005.

Research Results and Discussion

1. Human Rights Aspects for Children Involved in Legal Conflicts

Human rights are inherent rights inherent in every individual from birth and cannot be revoked by anyone. Human rights are universal, regardless of religious background, race, ethnicity, gender, or social status. Manfred Nowak states that human rights are comprehensive, indivisible, and interrelated. From a positivist perspective, human rights are considered rights guaranteed by the state through written legal instruments¹³.

Normatively, human rights protection for children in conflict with the law is regulated in various national and international legal instruments. Children, due to their physical and mental conditions, require more comprehensive treatment and protection than adults. In this context, the principles of non-discrimination and the best interests of the child are the main foundations.

These principles are reflected in the Convention on the Rights of the Child (CRC), which Indonesia has ratified through Presidential Decree Number 36 of 1990, as well as in Law Number 35 of 2014 concerning Child Protection. Articles 2 and 3 of the CRC emphasize that all children's rights must be respected without discrimination and that the child's best interests are the primary consideration in all policies. Furthermore, Articles 37 and 40 of the CRC emphasize the prohibition of cruel treatment of children, guarantees of fair legal process, and the right to rehabilitation and social reintegration. These principles are reinforced in Article 28B paragraph (2) of the 1945 Constitution, which states that every child has the right to survival, growth and development, and protection from violence and discrimination.

At the national level, various regulations such as Law Number 39 of 1999 concerning Human Rights, Law Number 35 of 2014, and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System guarantee special protection for children in conflict with the law. Article 59A of the Child Protection Law outlines the state's obligation to provide prompt treatment, rehabilitation, psychosocial assistance, and support during the judicial process for children in conflict with the law. Therefore, human rights regulations for children in conflict with the law in Indonesia not only emphasize the formal

¹³ Suparman Marzuki, *Hukum Hak Asasi Manusiast* , Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia (PUSHAM UII), Yogyakarta, 2017, h.4

aspects of justice but also ensure humane treatment that meets the child's developmental needs. This aligns with the principle of restorative justice in the Juvenile Criminal Justice System, which aims to prevent negative labeling and encourage children's proper reintegration into their social environment.¹⁴

2. Children of Criminals

Children in conflict with the law refer to minors who are suspected, accused, charged, or legally proven to have committed a crime. Internationally, several countries have adopted a restorative justice approach in their juvenile justice systems. One example is New Zealand's Family Group Conference program, which brings together perpetrators, families, victims, and the community to resolve cases through deliberation. This approach has been proven to reduce recidivism rates and increase social participation, serving as an important reference for Indonesia in developing similar policies tailored to the local context¹⁵.

Article 1 Paragraph (3) of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, states that a child is someone who is 12 years old but not yet 18 years old. The Juvenile Criminal Justice System also differentiates the status of children in the legal process, as stated in Article 1 Paragraph (2): “Children in Conflict with the Law are children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts.” Furthermore, the definition of “Child Victim” and “Child Witness” is contained in Article 1 Paragraphs (4) and (5), which underline the suffering or role of children in the legal process, both as parties who experience losses and those who provide testimony in court. Law No. 35 of 2014 in Article 59A requires the state and all authorized institutions to provide special protection to children, including those in conflict with the law. Likewise, the SPPA Law regulates a diversion mechanism as a form of resolving child criminal cases outside the formal judicial process, especially for children who are not yet 12 years old and are not married. In this process, coordination between institutions is crucial to ensure a legal approach that is humanistic and supports child protection¹⁶. The criminal system for children in the Juvenile

¹⁴ Achmad Royani, Bambang Eko Muljono, dan Renny Dea Shefirah, *Legal Protection for Child Victims of Exploitation in Criminal Acts of Theft*, Jurnal Independent 13, no. 1 (2025), h. 50

¹⁵ Yuspika Yuliana Purba, dkk, *Peran Restorative Justice dalam Penyelesaian Kasus Tindak Pidana Anak di Indonesia*, Jurnal Pendidikan, Sosial, dan Humaniora, Vol. 4, No. 2 (2025), h. 1924

¹⁶ Dewi Sartika, dkk, *Prinsip Perlindungan Terhadap Anak yang Melakukan Tindak Pidana*, Jurnal Kompilasi Hukum, Vol. 4 No. 2 (2019), h. 208

Criminal Justice System adopts an approach that emphasizes rehabilitation and guidance, not just punishment.

Legally, children who commit crimes cannot be treated the same as adults. Article 69 Paragraph (2) of the Juvenile Criminal Justice System Law states that children under fourteen years of age can only be subject to action. These actions are detailed in Article 82 of the Juvenile Criminal Justice System Law, including return to parents, surrender to certain parties, care at the LPKS, the obligation to attend education or training, revocation of driving license, and corrections due to criminal acts.

3. Children's Rights in the Legal Process and the Juvenile Criminal Justice System in Indonesia

Protection of children's rights is fundamentally linked to strengthening regulations, policies, and strategic measures to ensure the fulfillment of these rights. The juvenile criminal justice system is designed with a specific approach that emphasizes the principle of child welfare. Therefore, all actors in the justice system, from investigators and prosecutors to judges and juvenile correctional officers, are required to use this principle as a primary guideline. In the implementation of legal proceedings, special attention is paid to the rights of children as perpetrators of crimes, as stipulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System.

The rights of children in conflict with the law are guaranteed from the pre-trial stage, throughout the trial process, and after the verdict is rendered. Before trial, children have the right to be accompanied by a parent, guardian, or foster parent to provide a sense of security and maintain emotional stability. Furthermore, assistance from a legal advisor is an absolute right; if unable to afford one, the state is obliged to provide it free of charge. The presence of a Community Counselor from the Correctional Center is also crucial in the evaluation and development of children. All legal proceedings for children must be carried out as expeditiously as possible while prioritizing the principle of the child's best interests¹⁷.

During the trial, children's rights are protected through closed-door hearings to maintain confidentiality and ensure their comfort. The hearings are conducted informally, without official attire, in a family atmosphere. Children cannot be sentenced to death or life imprisonment, and the maximum sentence

¹⁷ Ibid. h. 4382

imposed is only half that of adults. The child's identity is also prohibited from being made public to prevent long-term social and psychological impacts¹⁸. After a verdict, children retain a number of rights under Article 4 of the Juvenile Criminal Justice System Law, including the right to remission, assimilation, parole, family leave, and the right to education, health care, and protection. The Indonesian Constitution explicitly recognizes children as individuals who must be protected from all forms of violence, discrimination, and exploitation.

4. Legal Basis for Child Protection in the Investigation Stage

Legal protection for children is a form of guarantee provided by the state to ensure that children's rights and obligations are fulfilled, covering legal, social and psychological aspects, and is oriented towards fulfilling human rights¹⁹. Children in conflict with the law enter the legal process from the initial stage, namely the investigation, which is a crucial stage in the juvenile criminal justice system.

This concept includes formal and material norms that serve as guidelines in handling juvenile criminal cases. The investigation stage for juveniles in conflict with the law must be based on the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. This law emphasizes the application of the principles of Restorative Justice and Diversion as the main substance²⁰. According to Article 1 number (2) of the Criminal Procedure Code, an investigation is defined as a series of legal actions carried out by investigators to collect evidence and find suspects. Meanwhile, investigators as referred to in Article 1 number (1) of the Criminal Procedure Code are police officers or state civil servants who are given special authority by law.

In the juvenile criminal justice system, investigators play a key role as the initial gateway in implementing diversion. Diversion can only begin at the investigation stage, so investigators play a primary role in assessing the suitability of a case for diversion from conventional justice channels to

¹⁸ Ibid. h. 4383

¹⁹ Muhammad Ridwan Lubis. *Pemidanaan Terhadap Anak yang Berhadapan dengan Hukum*. Jurnal USM Law. 2021. h 233. Dikutip dari. Irma Setyowati Sumitro. *Aspek Hukum Perlindungan Anak*. Penerbit Bumi Akara. Jakarta. 1990. H.22

²⁰ Jatmiko Winarno, dkk. *Crimination As a Last Effort In a Child Criminal Justice System Reflecting The Principle of Restorative Justice*. Jurnal Independent. Vol. 10 No. 1 (2022). h. 65

restorative justice-based resolution. Based on Article 7 paragraphs (1) and (2) of the Juvenile Criminal Justice System Law, investigators are required to conduct diversion if the crime committed by the juvenile is punishable by imprisonment of less than seven years and is not a repeat offense. Therefore, investigators are tasked with conducting an initial evaluation to ensure that the material and formal requirements for diversion are met.

In addition to assessing eligibility, investigators are also obligated to facilitate the diversion deliberation process as stipulated in Article 8 of the Juvenile Criminal Justice System Law. This process involves various parties, such as the child, parents, victims, community counselors, social workers, and community leaders, with an approach that emphasizes recovery, child welfare, and social reconciliation. Investigators must ensure that the principles of restorative justice are substantially applied, as emphasized in Article 6 of the Juvenile Criminal Justice System Law, namely by avoiding retaliation and emphasizing peaceful resolution between the perpetrator and victim. If the deliberation succeeds in producing an agreement, then, according to Article 10 of the Juvenile Criminal Justice System Law, the investigation process is stopped, and the case does not proceed to the prosecution stage to protect the child's psychological well-being. The agreement resulting from the diversion may include compensation, rehabilitation, the child's return to their parents, training, or community service.

The importance of a child-friendly approach during investigations is further emphasized in National Police Chief Regulation Number 6 of 2019, which regulates the principles of transparent, accountable investigations that take into account the interests of children. This provision aligns with the Juvenile Criminal Justice System Law and Supreme Court Regulation Number 4 of 2014, which provides technical guidelines for implementing diversion at every stage of the juvenile justice process. Article 29 of the Juvenile Criminal Justice System Law clarifies the investigator's obligation to complete diversion efforts within a specific timeframe: a maximum of seven days from the child's determination as a suspect and the completion of deliberations within thirty days. Within this legal framework, investigations of children are directed to be conducted in a fair, humane, and recovery-oriented manner. The primary principle that investigators must uphold is the best interests of the child, as well as efforts to prevent stigmatization and the negative impacts of overly repressive criminal justice processes.

5. Children's Rights in the Investigation Process

Protecting children's rights during the investigation phase is a fundamental aspect in ensuring a fair, humane legal process that does not harm the child's future. Therefore, the investigation of children in conflict with the law must be conducted by investigators with specialized competence in juvenile justice. Provisions regarding diversion by investigators are detailed in Law Number 11 of 2012, which replaced Law Number 3 of 1997.

In the framework of the juvenile criminal justice system, protection of children's rights must be guaranteed at every stage, including the investigation phase. Article 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System explicitly states a number of rights that must be fulfilled in the juvenile criminal justice process, namely humane treatment according to age and needs, separation from adult detainees, access to legal aid and other assistance, the right to engage in recreational activities, protection from torture, cruel treatment, or insults to the dignity of children, a prohibition on the death penalty and life imprisonment, detention only as a last resort and for the shortest possible time, an objective, impartial trial process, and closed to the public, protection of the child's identity, assistance by parents/guardians or trusted persons, access to social advocacy, protection of personal privacy, accessible facilities, especially for children with disabilities, the right to education, access to health services, and other rights as regulated in laws and regulations.

The separation of children from adult detention, for example, is intended to protect them from negative influences that could harm their mental development. Children also have the right to receive effective legal aid and other support to ensure a fair legal process. The Juvenile Criminal Justice System Law expressly prohibits the imposition of the death penalty or life imprisonment on children. This is emphasized in Article 69 paragraph (2), which states that children under the age of 14 may only be subject to legal action, not criminal penalties. The arrest, detention, and imprisonment of children may only be used as a last resort (*ultimum remedium*), as stipulated in Article 32 paragraph (2) of the Juvenile Criminal Justice System Law, and must be carried out for the shortest possible period. The legal process for children must also uphold the principles of objective justice, be free from interference, and be impartial.

Trials must be held behind closed doors to protect the child's identity and privacy. Based on Article 19 paragraph (1) of the Juvenile Criminal Justice System Law, the identity of children, child victims, and/or child witnesses must be kept confidential from publication in the mass media, both print and electronic. Paragraph (2) clarifies that identity includes the child's name, parents' names, address, face, and other information that could reveal the child's identity.

Accompaniment to children by parents, guardians, or trusted persons, as well as by Community Guidance Officers or other companions, is also mandatory at every stage of the investigation, as explained in Article 23 paragraph (1) of the Juvenile Criminal Justice System Law. This assistance aims to ensure that the legal process does not harm children and that all their rights are maximally fulfilled. Paragraph (2) adds that during every investigation, child victims or child witnesses must be accompanied by parents and/or trusted persons or social workers. Therefore, respecting and fulfilling children's rights during the investigation process is not only a legal obligation but also part of the state's moral responsibility to protect children as vulnerable and developing citizens.

Conclusion

Legal protection for children in conflict with the law has been comprehensively regulated in various national regulations, from the 1945 Constitution to Law Number 17 of 2016 and the 2012 Juvenile Criminal Justice System Law. The state, both at the central and regional levels, has an obligation to provide special protection to children, including at every stage of the legal process. The Juvenile Criminal Justice System Law stipulates that child perpetrators of crimes can be subject to criminal sanctions or rehabilitative measures, with special treatment for children under 14 years of age. One important form of protection is the diversion mechanism, namely the resolution of cases outside the formal court system that aims to achieve restorative justice. Diversion can be carried out from the investigation stage, as long as it does not involve serious crimes or repetition. Provisions for implementing diversion are strengthened through the Regulation of the Chief of Police and the Supreme Court Regulation, which emphasize the importance of a child-friendly approach. In addition, the Juvenile Criminal Justice System Law also guarantees children's rights during the legal process, such as the prohibition of detention as a primary measure, protection of identity, and the right to assistance. With this systematic legal framework, the juvenile criminal justice

system in Indonesia is directed to protect and restore, not punish, by upholding the principle of the best interests of the child.

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