



Harmonization of Diversion Regulations In Juvenile Criminal Cases to Achieve Social Justice For Children In Conflict With The Law

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Abstract: This research aims to examine the harmonization of diversion regulations within the juvenile criminal justice system in Indonesia as an effort to achieve social justice for children in conflict with the law. Diversi is a form of case resolution outside the criminal justice system that emphasizes a restorative justice approach. Although it has been regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), the implementation of diversion still faces obstacles, particularly regarding the provision that limits diversion only to offenses with a maximum penalty of under seven years. This provision is considered not in line with the constitutional mandate and the principle of protecting children's human rights as stipulated in the 1945 Constitution and the Convention on the Rights of the Child. This research uses a normative juridical method with a descriptive-analytical approach. The research results indicate that there is a need for harmonization between the diversion provisions in the Child Protection System Law (UU SPPA) and other regulations to ensure more optimal protection of children's rights. This adjustment is important to prevent discrimination and trauma to children, as well as to realize a justice system that is oriented towards the best interests of the child.

Keywords: Diversion, Child Protection, Juvenile Justice System, Social Justice, Regulation Harmonization

Introduction

The Republic of Indonesia's 1945 Constitution, which safeguards the rights of all children, also reflects the belief that children are the country's future and that their rights must be adequately safeguarded. Considering the development of technology and the current era, there are many minors who engage in mischief and norm violations, which often constitute criminal acts. Behaviors that do not conform to norms are what ultimately lead children to commit criminal acts. Crimes committed by children are often considered juvenile delinquency, as regulated in Article 1, paragraph 2 of Law Number 3 of 1997 concerning Child Courts, which was revoked by Law Number 11 of 2012 concerning the Child Justice System. This means actions committed by children who are under 18 years old and not yet married, and whose actions violate material and formal laws. According to Anthony M. Platt, delinquency is the behavior of children that includes (Kartika & Faisal,

2024) : (1) criminal acts if committed by adults, (2) actions that violate the rules of the state or society, (3) immoral behavior that is violent, truancy, rude and indecent language, living on the streets, and associating with bad company that can have a negative influence on the child's future.

The definition of a Child in Article 1 Paragraph (1) of Law Number 23 of 2002 jo. Law Number 35 of 2014 and Law Number 17 of 2016 concerning Child Protection is someone who is not yet 18 (eighteen) years old, including a child still in the womb. Considering that children are the future of the nation, children who commit crimes must also have their rights protected so that they continue to receive a decent life and education. A proper education is expected not to disturb the child's psychological condition and also not to interfere with the teaching and learning activities of minors. Considering that a child who commits a criminal act may be subject to criminal sanctions, if this occurs, it will significantly affect the development of the child who committed the criminal act. Therefore, in the juvenile justice system, a child who commits a crime will not automatically be tried and given a criminal sanction. The current juvenile justice system law has provided a policy related to diversion efforts with a restorative justice approach in the juvenile justice system. This is a form of implementing *ultimum remedium* in the enforcement of law against actions that violate criminal law provisions. The existence of diversion in Indonesia's juvenile justice system is expected to protect the interests of children's human rights, especially for children who commit criminal acts.

Diversion can be carried out with certain requirements, so not all juvenile criminal cases can be resolved through diversion. This is certainly not in line with the human rights of children, considering their very young age and unstable emotions, which require proper education and guidance. Therefore, to achieve social justice for children that protects the human rights of every child, especially to ensure a decent life, considering that children who come into conflict with the law, particularly those who commit a crime, also need a decent life, it is essential to prevent anything that could hinder the child's growth and development. Thus, the resolution of juvenile criminal cases through diversion should be optimized with the harmonization of legal regulations. This is done to provide protection for children who commit a crime so that their cases can be resolved through diversion first, considering that children are the future and hope of the nation, and also the principle of *ultimum remedium* in criminal law enforcement, so that when a crime is committed by a child, it is not prosecuted through the trial process and is expected to be resolved through the diversion process.

Diversion is a transfer of a child's case from the judicial process to outside the criminal judicial process. (Jalilah, N. L : 2023) Diversion is intended to prevent the child from experiencing trauma from the criminal judicial process. The criminal judicial process will only be carried out if the diversion process fails, but in reality, diversion has not been able to completely resolve the issue so that the criminal act committed by the child can be settled through non-penal channels. (Juliansyah, E. R : 2022)

Law Number 11 of 2012 on the Juvenile Criminal Justice System, which took effect in 2014, limits the use of diversion to cases where the criminal penalty is less than seven years.

This restriction hinders the broader goal of diversion under the law, which is to uphold children's rights to life, growth, development, and protection from violence and discrimination. These rights are guaranteed by the 1945 Constitution of the Republic of Indonesia and further reinforced by laws such as Law Number 23 of 2002, amended by Law Number 35 of 2014, and Law Number 17 of 2016 on Child Protection. These regulations emphasize that child protection efforts must uphold human dignity and ensure freedom from abuse and discrimination, with responsibilities shared by parents, families, communities, and the state.

Indonesia's commitment to child rights is also reflected in international and national legal instruments, including the ratification of the Convention on the Rights of the Child through Presidential Decree No. 36 of 1990, and laws like Law No. 4 of 1979 on Child Welfare, Law No. 39 of 1999 on Human Rights, and the updated Child Protection Laws. These frameworks affirm children's rights to life, identity, education, health care, religious practice, freedom of thought, play, creativity, rest, social interaction, and access to social security.

The regulations regarding diversion in Law Number 11 of 2012 on the Juvenile Criminal Justice System, in reality, have not fulfilled the rights that children can obtain; instead, these regulations contradict the mandate of the constitution and other laws governing children's rights because they constitute discrimination. (Agdani, S. E : 2020) The unfulfilled objectives of this diversion can be observed from the number of juvenile offenders from year to year, which can be seen before and after the enactment of the SPPA. Data from the Ministry of Law and Human Rights' Directorate General of Corrections indicates that the number of juvenile delinquency cases (ABH) increased between 2020 and 2023. Nearly 2,000 youngsters are in legal trouble as of August 26, 2023. Of these, 1,467 are in custody and undergoing judicial processes, while 526 children are serving sentences as prisoners. (Sidiq, P. D. F. A., & Saputra, T : 2024) According to the report "Implementation of the Juvenile Justice System" in 2020, the Indonesian Child Protection Commission stated that the number of children facing the law handled by the police according to case resolution during the period 2017-2020 was 29,228 children. (NINGSIH, N : 2024) From that number, 4,126 children had their investigations terminated through diversion. So, in proportion, in 4 (four) years, only 14.1% of cases were closed through diversion. This is very detrimental when children spend their time undergoing the investigation process to court hearings, which take a long time. Children in this phase have lost time that should have been used for learning.

So far, the diversion process for child offenders is still minimal. It is unknown what the cause is, whether it is the threat of a criminal sentence for children in conflict with the law being more than 7 years or something else. Data from the Directorate General of Corrections, Ministry of Law and Human Rights, indicates that in 2023, the majority of children in conflict with the law (ABH) were sentenced to more than 1 year in prison. (SARAGIH, F. W : 2023) As of August 25, 2023, there were 1,089 children, or 72.3% of the total juvenile inmates. This means there are indications of a lack of seriousness in the implementation of diversion for children in conflict with the law (ABH). Indonesian Child

Protection Commission (KPAI) Commissioner, Dian Sasmita, stated that the Child Protection System Law (UU SPPA), the Child Protection Law, and the Human Rights Law mandate humane treatment for everyone, including ABH. Law enforcement officers must apply all these legal instruments. Children can be supported to change their perspectives and behavior when treated humanely and their dignity and worth are respected, such as not being yelled at and not being punished inappropriately for their mistakes. Based on this, there is a need to re-evaluate the harmonization of diversion regulations in juvenile delinquency cases to achieve social justice for children in conflict with the law.

Methodology

The research conducted by the author is descriptive-analytical in nature, which describes the issue of harmonizing diversion regulations in juvenile delinquency to achieve social justice for children in conflict with the law. The type of research is normative juridical, where the main data collection technique uses secondary data or library data, including primary legal materials, secondary legal materials, and tertiary legal materials. (Rosidi, A et al : 2024) Primary, secondary, and tertiary legal documents are among the secondary data that can be found through the steps of the research process, which is library research. Law Number 23 of 2002 jo. Law Number 35 of 2014; Law Number 17 of 2016 on Child Protection; and Law Number 11 of 2012 on the Juvenile Criminal Justice System are only a few of the pertinent material that is now being gathered for the research stages.

Literature Review

A. Diversion

Diversion in criminal justice refers to formal strategies aimed at redirecting individuals particularly juveniles away from the traditional justice system and into alternative, rehabilitative processes. Rather than pursuing prosecution, diversion programs offer services such as counseling, restorative practices, or community-based interventions. The primary goal is to reduce the harms of incarceration and labeling, particularly for first-time or low-risk offenders. In juvenile systems, diversion is widely regarded as a preventive approach that promotes reintegration and reduces recidivism.

The concept of diversion is grounded in several criminological theories. Labeling theory suggests that formal legal processing can reinforce criminal identity, particularly in young offenders. Restorative justice theory underpins many diversion programs by focusing on repairing harm and involving victims and communities in the justice process. Furthermore, procedural justice emphasizes the importance of fairness and dignity in legal interactions, which diversion strategies seek to uphold by avoiding punitive proceedings in favor of collaborative resolutions.

Diversion is most extensively applied in juvenile justice systems worldwide. For instance, Indonesia's Law No. 11 of 2012 mandates diversion for juvenile offenders under specific conditions. Research by Akbar et al. (2025) reveals that while legal frameworks exist, implementation often varies significantly due to local legal actor interpretation. Studies show that when properly executed, diversion can prevent reoffending, promote social

rehabilitation, and minimize the long-term consequences of legal intervention on youth development.

Restorative justice principles are increasingly integrated into diversion schemes. Programs that involve victim-offender mediation, community circles, and restitution agreements allow offenders to take accountability while fostering healing. Wibawa and Suwondo (2025) demonstrate how police-led diversion rooted in restorative practices significantly improves satisfaction for both victims and young offenders. These approaches humanize justice and reflect a paradigm shift from punishment to reconciliation and community empowerment.

Key issues include unequal access, lack of trained personnel, resistance from conservative legal actors, and the absence of monitoring systems. Behrmann (2025) warns that informal diversion processes may perpetuate bias or offer less protection for marginalized groups. Moreover, in contexts without strong legal mandates, diversion risks being inconsistently applied, potentially undermining its rehabilitative goals and legitimacy.

Recent literature points to promising innovations in diversion, particularly in linking it to public health and mental health responses. Programs like the U.S.-based COSSUP target substance abuse and mental health crises through diversionary referrals instead of incarceration (Lee et al., 2025). Such interdisciplinary approaches enhance the scope and effectiveness of diversion beyond traditional crime categories. For policymakers, the priority should be expanding diversion eligibility, ensuring legal consistency, and investing in restorative infrastructure to support long-term reform.

B. Child Protection and the Juvenile Justice System

The intersection of child protection and the juvenile justice system is a critical area of focus for legal reform, especially as nations seek to balance the goals of accountability and the developmental needs of children. Children in conflict with the law are often among the most vulnerable, facing systemic barriers including poverty, abuse, and lack of access to education. The juvenile justice system, when improperly designed, can exacerbate harm instead of fostering rehabilitation. As a result, contemporary legal discourse emphasizes child-centered approaches that align with human rights instruments such as the UN Convention on the Rights of the Child (CRC)

The CRC (Articles 37 and 40) requires that detention be used only as a last resort, and that every child must be treated with dignity and respect. National systems—such as Indonesia's *Law No. 11 of 2012 on the Juvenile Criminal Justice System*—mirror this emphasis by promoting diversion, restorative justice, and the prohibition of arbitrary detention. However, implementation remains inconsistent. According to Akbar et al. (2025), the legal framework alone is insufficient without strong interagency coordination and judicial training in child-sensitive practices.

These approaches prioritize rehabilitation and social reintegration over punitive responses. Wibawa and Suwondo (2025) highlight how police-led diversion can prevent the stigmatization and trauma associated with formal prosecution. In cases of minor offenses, community-based restorative practices—such as mediation and victim-offender

reconciliation—allow children to accept responsibility while preserving their dignity and future prospects. These mechanisms help uphold the child’s right to development and protection from harmful institutional environments.

Studies show that children in the system often experience poor legal representation, prolonged detention, and inadequate access to social services. Behrmann (2025) observes that marginalized groups—such as children from minority or impoverished backgrounds—are disproportionately exposed to harsh legal responses. Similarly, Fallah and Al-Shreifeen (2025) argue that the justice system often lacks the capacity to differentiate between child offenders and victims, which can lead to re-victimization or neglect. This highlights the urgent need for capacity-building among law enforcement, judiciary, and child welfare institutions.

Social workers play a vital role in identifying vulnerable children, developing case plans, and facilitating community-based solutions. In many countries, child protection agencies act as gatekeepers, helping to prevent children from entering the justice system unnecessarily. Moonti et al. (2025) stress the need for these agencies to be fully resourced and legally empowered to intervene early. A multidisciplinary approach not only supports better legal outcomes but also ensures that children’s rights and developmental needs are holistically addressed.

Recommendations and Future Directions The literature collectively advocates for a shift from punitive juvenile justice to child protection-oriented frameworks. Effective models emphasize early intervention, diversion, specialized courts, and trauma-informed care. Governments must ensure that legal mandates are supported by resources, training, and accountability mechanisms. International collaboration and monitoring—such as through UNICEF and UNODC—can help enforce standards and share best practices. Ultimately, protecting children in conflict with the law is not only a legal responsibility but a moral imperative to uphold their dignity, rights, and future potential.

Result and Discussion

Harmonization of Diversion Regulations in Juvenile Delinquency to Achieve Justice for Children in Conflict with the Law

Legislation regarding Diversion is regulated in Article 7 Paragraph (2) of the Child Justice System Law (hereinafter referred to as the SPPA Law). The SPPA Law in Indonesia regulates the protection and rights of children in conflict with the law. In general, this article emphasizes the importance of humane treatment and prioritizing the best interests of the child. Some important treatments applied to children in conflict with the law are found in Article 7, Paragraph (2), namely (Munggardijaya et al, 2025):

- 1) **Human Treatment:** Children who come into contact with the law must be treated humanely, without discrimination.
- 2) **The Best Interest of the Child:** Every decision made must consider the best interest of the child.

3) Access to Justice: Children have the right to access justice, including legal assistance. Article 7 Paragraph 2 of Law Number 11 of 2012 on the Juvenile Criminal Justice System regulates the implementation of diversion in the juvenile court process.

This article emphasizes the importance of diversion as an effort to resolve juvenile cases outside the criminal justice process. Diversion aims to protect children from legal processes that could harm their psychological and social development.

The criteria for diversion can be applied to children suspected of committing a crime with a prison sentence of less than 7 years and who are not repeat offenders. (Prayoga, 2025) This aims to give children the opportunity to improve themselves without going through the formal judicial process. The diversion process involves various parties, including the child offender, parents or guardians, the victim, and community supervisors. This process aims to achieve a fair and restorative agreement.

Field implementation in the research conducted at Polresta Pontianak Kota shows that the police are striving to implement this article by involving all relevant parties. However, there are several challenges in its implementation, such as:

- 1) The victim's unwillingness to reconcile.
- 2) Limited time for community counselors to conduct research.
- 3) The lack of parental supervision for children in conflict with the law.
- 4) Difficulty in finding the family or parents of the child in question.

Diversion aims to achieve peace between the victim and the perpetrator, resolve cases outside of court, and prevent children from being deprived of their freedom. It also encourages community participation and instills a sense of responsibility in children.

Article 7 Paragraph 2 of the Child Justice System Law emphasizes the importance of diversion as an alternative resolution for cases involving children in conflict with the law. Although efforts have been made by law enforcement officials to implement this article, there are various challenges that must be overcome in order to achieve the optimal goals of diversion. The diversion process for troubled children can be implemented through several steps that involve a restorative justice approach and collaboration between various parties. The implementation of diversion involves transferring the resolution of juvenile cases from the criminal justice process to an out-of-court process. In this context, it means seeking solutions that are more educational and rehabilitative rather than punitive. The main goal of diversion is to protect children from negative stigma and provide them with an opportunity to improve their behavior.

Identifying problematic behaviors exhibited by children, such as disciplinary violations or actions that harm peers or others who are not peers, needs to be carried out. It is necessary to involve several parties in resolving cases of child delinquency, including parents, counselors, and other relevant parties, to obtain a comprehensive understanding of the child's situation. The main process of diversion is to hold a meeting involving the child, parents, teachers, and other parties such as counselors or social workers. In this meeting, all parties can express their views and seek a joint solution. (Nurusshobah, S. F : 2022)

The restorative justice approach is also emphasized more in resolving juvenile delinquency cases. Focus on restoring the relationship between the child and the affected

parties, as well as finding ways to rectify the mistakes that have been made. This can include an apology, compensation, or other positive actions. The next step in diversion is to conduct mediation or negotiation until an agreement is reached. After the deliberation, all parties must reach a mutually agreed-upon settlement. This agreement can take the form of additional training or education programs, community service activities, and psychological support or counseling.

Monitoring and evaluation after an agreement is reached are important to carry out as a goal for monitoring the child's development. The family and relatives' environment must provide the necessary support to ensure the child can fulfill the agreement that has been made. The mental recovery of both the perpetrator's and the victim's child must receive support from the community as well as through collaboration with social institutions, possibly through the child's school working together with the institution.

Conclusion

The harmonization of diversion policies with applicable laws must be understood comprehensively, that considerations in handling children in conflict with the law should not only focus on criminal threats but also include an analysis of the background, causes, and impacts of the actions taken by the child. These factors are important to serve as the basis for providing mitigating considerations or even justifying diversion actions. The main objective of the diversion process is to create a mechanism for resolving cases that is educational, supportive, and rehabilitative. The involvement of various parties to provide a harmonious understanding, including family, school, law enforcement, and the community, is essential, where it is hoped that the child can improve their behavior without having to undergo formal judicial processes that could potentially ruin their future.

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