

## DIVERSION IN THE JUVENILE JUSTICE SYSTEM: A REVIEW OF IMPLEMENTATION AND CHALLENGES

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### Abstract

This research aims to find out the implementation and challenges of diversion. In this study, an empirical method is used. The primary and secondary data obtained are analyzed using a qualitative method, namely analyzing data related to the problem being researched, then selecting based on logical thinking. The results of this study show that: The implementation of diversion in the juvenile criminal justice system in Indonesia has a very important role in protecting children from the adverse effects of the judicial process. Despite the many challenges faced in its implementation, with improvements in terms of training law enforcement officials, and rehabilitation facilities, and increasing public awareness, diversion can be a more effective and profitable solution for children facing the law. Efforts to improve and pay greater attention to children's rights in the criminal justice system are expected to realize a fairer, more humane justice system and support child rehabilitation.

**Keywords:** Diversion, Implementation, Challenges, Juvenile justice

### Abstrak

Penelitian ini bertujuan untuk mengetahui implementasi dan tantangan dari diversi. Pada penelitian ini menggunakan metode empiris. Data primer maupun data sekunder yang diperoleh dianalisis dengan menggunakan metode kualitatif, yaitu menganalisis data yang berhubungan dengan masalah yang diteliti, kemudian dipilih berdasarkan pemikiran yang logis. Hasil penelitian ini menunjukkan bahwa : Pelaksanaan diversi dalam sistem peradilan pidana anak di Indonesia memiliki peran yang sangat penting dalam melindungi anak dari dampak buruk proses peradilan. Meskipun banyak tantangan yang dihadapi dalam implementasinya, dengan perbaikan dalam hal pelatihan aparat penegak hukum, fasilitas rehabilitasi, dan peningkatan kesadaran masyarakat, diversi dapat menjadi solusi yang lebih efektif dan menguntungkan bagi anak yang berhadapan dengan hukum. Upaya perbaikan dan perhatian yang lebih besar terhadap hak-hak anak dalam sistem peradilan pidana diharapkan dapat mewujudkan sistem peradilan yang lebih adil, manusiawi, dan mendukung rehabilitasi anak.

**Kata kunci:** Diversi, Implementasi, Tantangan, Peradilan Anak

### INTRODUCTION

Children are part of the young generation who play a strategic role in the future, besides that it has special features that ensure the sustainability of the country and the country in

the future. Every child will take on roles and responsibilities, therefore, children must have the widest possible opportunity to grow and develop objectively, both physically, mentally, socially, and morally. Children who are born should receive the widest possible protection from the country where they live based on Law Number 35 of 2014 and Law Number 39 of 1999 concerning Human Rights (HAM) which stipulates that every child has the right to receive protection from parents, family, society and the state. In this regard, children who are confronted by the law are obliged to get protection. One of the ways that has been formed by the state to protect and prevent children from facing the law is through the implementation of the juvenile justice system (SPPA) which states the general principles of child protection, namely non-discrimination in the best interests of children, survival that respects and grows and develops children. The juvenile criminal justice system is not only to impose sanctions but also focuses on challenging the answers of perpetrators of child crimes, which is commonly called restorative justice. Restorative justice aims to ensure the welfare of the child concerned, without compromising the interests of the victims and the community (Ghoni & Pujiyono, 2020).

Law Number 11 of 2012 concerning the Juvenile Justice System (SPPA) came into effect in July 2014 and has permanent legal force. In the law, in articles 6 to 15, there is a provision for diversion which is a violation in the juvenile criminal justice system. The diversion is referred to as diversion. Diversion is an act or treatment that moves a case from a formal process to an informal process or removes a child offender from a formal court. This means that not all children's problems that are contrary to the law must be resolved through the formal justice system and provide alternative solutions by using a restorative justice approach in the best interests of the child and considering justice for the victims and the community. The protection of children, especially in Indonesia, is accommodated in Article 28 B paragraph (2) of the 1945 Constitution which contains: "loyal children have the right to sustainability, growth and development and the right to protection from violence and discrimination." More importantly, the legal protection of children's rights can be found in various laws and regulations such as in the resident decree No. 36 of 1990 on August 25, 1990, which was the ratification of the United Nations Convention on the Rights of the Child. (Convention on the Rights of the Child), Law No. 4 of 1979 concerning Child Welfare, and Law No. 23 of 2002 concerning Child Protection (Lengkong dkk., 2024).

The presence of the Law formulates the protection of children's rights (UDHR), with one of the formulations being that every human being is born independent and equal in dignity and rights. Thus, children are guaranteed their rights to live and develop according to their abilities and must be protected. Legal protection for children can be carried out as an effort to protect the law against various freedoms and human rights of children. This protection of children also includes interests related to the welfare of children. The protection of children in conflict with the law (ABH) is a joint responsibility of law enforcement officials. Not only children as perpetrators, but also children who are victims and witnesses. Law enforcement officials involved in handling ABH should not only refer to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System or other laws and regulations related to the handling of ABH but prioritize peace over the formal legal

process that began to be enforced 2 years after the SPPA Law was promulgated on August 1, 2014 (Article 108 of Law No. 11 of 2012) (Ghoni & Pujiyono, 2020).

The Supreme Court responded to the Juvenile Criminal Justice System Law very progressively. Chief Justice of the Supreme Court of the Republic of Indonesia Muhammad Hatta Ali signed Supreme Court Regulation (PERMA) Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System even before the Government Regulation which is a derivative of the SPPA Law was issued. The important point of PERMA is that Judges are obliged to resolve the ABH issue with the Diversion event which is a legal procedure that is still very new in the criminal law system and reform in Indonesia. In addition, this PERMA contains procedures for the implementation of diversion which is the handle of the Judge in the settlement of juvenile crimes considering that no regulation contains a special procedural law for the diversion of the Juvenile Criminal Justice System (Restoratif dkk., 2014). In the context of the implementation of diversion, data from the Ministry of Law and Human Rights and the Ministry of Women's Empowerment and Child Protection (KPPPA) shows an increase in the number of children processed through diversion.

According to the KPPPA report, in 2021, around 60% to 70% of juvenile criminal cases were resolved through diversion. In some areas, such as in DKI Jakarta and Surabaya, the diversion rate is even higher, with success reaching 80% of the total child cases. Based on this, a comprehensive diversion system has not been achieved on the official website of KPAI regarding increasing the reach of diversion in Indonesia; from the police to all stages of the judicial process on January 25, 2014, shows that the diversion process is still being pursued. From this data, the author intends to create an article entitled Diversion in the Juvenile Justice System: A Review of Implementation and Challenges with the aim that this article provides an overview of the implementation and challenges in diversion in Indonesia. The other research related to this article is diversion in the juvenile criminal justice system in Indonesia (Sari, 2012a), The Application of Diversion in the Juvenile Criminal Justice System: A Case Study at the Tangerang District Court (Lengkong dkk., 2024) and Legal Protection for Children Facing the Law Through the Implementation of Diversion in Indonesia (Ghoni & Pujiyono, 2020). The difference between all these articles lies in the obstacles of diversion in Indonesia.

## **METHOD**

This study uses a normative legal research method, namely reviewing and studying the legal norms in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and other legal regulations related to the application of diversion as an effort to protect children who are in conflict with the law. The object of the research is how to apply diversion through Undang-Law Number 11 of 2012 concerning the Juvenile Criminal Justice System as a form of legal protection for children who are facing the law. The data sources of this research consist of primary legal materials, secondary legal materials to be continued by analyzing the whole, laws and regulations, literature, data, and several related documents, as well as tertiary legal materials to explain and assist in analyzing primary and secondary legal materials.

## RESULT AND DISCUSSION

Children are social creatures that live and grow in three environments, namely the environment of parents and family, schools and society and the nation. In this environment, there is a growth of the child's soul and body, so special attention is needed to these two aspects. In addition to the fulfillment of nutritious food, it is also important to fulfill the soul of children with noble values that come from religion, the soul of a child requires very important attention from parents and close family so as to provide a sense of security and comfort for children. (Rodliyah, 2019)

### Diversion and the Basis of Punishment

Diversion comes from the English word Diversion, becoming the term diversion (Hukum dkk., t.t.) The term diversion was used in the formulation of the results of the national seminar on juvenile justice organized by the Faculty of Law, Padjadjaran University, Bandung on October 5, 1996 (Ghoni & Pujiyono, 2020). Diversion is promulgated in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (SMRJJ) or The Beijing Rules (UN General Assembly Resolution 40/33 dated November 29, 1985), where diversion is listed in Rules 11.1, 11.2 and 17.4. This diversion or diversion is to avoid the negative effects of conventional examinations of juvenile criminal justice on children, both the negative effects of the judicial process and the negative effects of stigma (bad marks) of the judicial process, so the conventional examination is transferred, and the child is subject to diversion programs (Lengkong dkk., 2024).

Law No. 3 of 1997 concerning Children's Court has the following scope: a. All inspection activities b. Termination of the case c. Matters related to the interests of children. b. Child Crimes. Thus, etymologically, Juvenile delinquency is a child crime, whose perpetrator is a child. The application of Restorative Justice will cause a shift in the direction of punishment and the purpose of punishment that is punitive and/or revenge by accounting for every act committed to an act that emphasizes more on efforts to heal and is an act of welfare between the perpetrator, the victim, and the community. Diversion according to Jack. E. Bynum is: "Diversion is an attempt to divert, or channel out, youthful offenders from the juvenile justice system." (Hukum dkk., t.t.)

The conditions for Diversion in child cases are:

1. Child offenders who are committing a criminal act for the first time;
2. The age of the child is relatively young;
3. The implementation of diversion programs imposed on children with the approval of parents/guardians, as well as the children concerned;
4. The crime committed can be minor or serious (in certain cases);
5. The child has pleaded guilty to committing a crime;
6. The community supports and does not object, to the transfer of this inspection;
7. If the implementation of the diversion program fails, then the child offender is returned for formal examination (Sari, 2012b).

Diversion is a concept in the criminal justice system that aims to shift the legal process from the courts to alternative dispute resolution processes, such as mediation, especially for children who are faced with the law. In Indonesia, the concept of diversion is regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), which aims to provide protection for children's rights, prevent negative stigma, and provide opportunities for children to improve their behavior without going through a formal legal process. Diversion aims to shift the settlement of children's cases from the criminal justice process to out-of-court through the mediation process, restorative justice, or out-of-court settlement involving parents, victims, and other related parties. This diversion only applies to children under 18 years old and is carried out with the main purpose of the child's welfare.

Based on Article 6 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, the objectives of diversion are:

1. Achieving peace between victims and children
2. Resolving children's cases outside the judicial process
3. Preventing children from the process of depriving them of independence.
4. Encourage children to participate
5. Instilling a sense of responsibility in children (Lengkong dkk., 2024).

According to Apong Herlina, how the benefits of implementing diversion for child offenders can be stated as follows.

1. Helps juveniles learn from their mistakes through early intervention
2. Repairs the harm caused to families, victims, and the community
3. Incorporates parents, guardians, and lessons from everyday life
4. Equips and encourages juveniles to make responsible decisions
5. Creates a mechanism to collect restitution for victims
6. Holds Yovith accountable for their actions & provides learning opportunities regarding cause and effect
7. Allows eligible offenders the opportunity to keep their records clean
8. Reduces burden on the court system and jails
9. Curbs juvenile crime (control of juvenile crime) (Sari, 2012a)

In addition to the legal basis of diversion in Indonesia, 5 (five) types of laws and regulations regulate the criminal legal policy of diversion, including the following:

1. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System
2. Government Regulation No. 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under the Age of 12 (Twelve) Years.
3. Regulation of the Attorney General of the Republic of Indonesia Number Per-006/A/J. A/04/2015 concerning Guidelines for the Implementation of Diversion at the Prosecution Level

4. Regulation of the Supreme Court of the Republic of Indonesia No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System.
5. Law Number 1 of 2023 concerning the Criminal Code (new Criminal Code) (Lengkong dkk., 2024).

Based on the above regulations, all of which are related to diversion, there is a difference found, where there is a difference in the conditions for diversion against children in the Law on the Children's Criminal Justice System and the Supreme Court Regulation regarding the conditions for the application of diversion to children. In accordance with the SPPA Law, the condition for the application of diversion against children is that criminal acts committed by children are threatened with a prison sentence of under 7 (seven) years and are not a repetition of criminal acts, while according to PERMA, the condition for the application of diversion against children is that criminal acts committed by children are threatened with imprisonment under 7 (seven) years and are also charged with criminal acts that are threatened with a prison sentence of 7 (seven) years or more in the form of subsidiary, alternative, cumulative or combined (combined) indictments (Lengkong dkk., 2024).

The provisions of Article 7 Paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System state that "Diversion, as referred to in paragraph (1), is carried out in the event of a criminal act committed: a. Threatened with imprisonment under 7 (seven) years; and b. it is not a repetition of the criminal act". Meanwhile, per the provisions of Article 3 of the Regulation of the Supreme Court of the Republic of Indonesia No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System, it is stated that "The juvenile judge is obliged to seek diversion if a child is charged with a criminal act threatened with a prison sentence of less than 7 (seven) years and is also charged with a criminal act threatened with a prison sentence of 7 (seven) years or more in the form of a subsidiary indictment, alternative, cumulative or combination (combined)".

So that the combination (combined)" gives rise to a sentence that is multi-interpreted, where the sound of the article can be diversions to all children who are facing the law. So according to the author of Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System, it is contrary to the principle of *lex superior, derogat legi inferiori*, or in other words, a law or regulation that has a lower degree in the hierarchy of laws and regulations must not contradict a higher one.

### **Diversion Implementation**

In the context of legal protection for children who are in conflict with the law according to Law Number 11 of 2012 concerning the provisions of diversion in the SPPA Law, it is specifically regulated in Articles 6 to 16. In Article 6, it is stated that the purpose of diversion is:

1. Achieving peace between victims and children;



2. Resolving children's cases outside the judicial process;
3. Preventing children from being deprived of independence;
4. Encouraging the community to participate; and
5. Instilling a sense of responsibility in children (Young, 2012).

The five objectives of the SPPA Law in Article 6 prioritize a welfare approach for children and the best interests of children. Article 7 explains that at the level of investigation, prosecution, and examination of children's cases in the district court, Diversion must be sought. (2) Diversion as intended in paragraph (1) is carried out in the event of a criminal act committed: a. threatened with imprisonment for less than 7 (seven) years; and b. it is not a repetition of the criminal act. In article 8, it is explained that the Diversion Process is carried out through deliberation by involving the Child and their parents/guardians, victims and/or parents/guardians, community advisors, and professional social workers based on the Restorative Justice approach. (2) In case of necessity, deliberation as intended in paragraph (1) may involve Social Welfare Workers, and/or the community. (3) The Diversion process must pay attention to: a. the interests of the victim; b. children's welfare and responsibilities c. avoidance of negative stigma; d. avoidance of retaliation; e. community harmony; and f. propriety, decency, and public order. (www.hukumonline.com, 2012)

### **Stages in Divergence**

#### **a. Investigation and Determination of Whether Diversion is Applicable.**

Investigators (usually the police) conduct investigations on children suspected of committing criminal acts. After the investigation is completed, the investigator assesses whether the actions taken by the child are eligible for diversion, based on the nature of the crime, the age of the child, and the child's condition. As for the nature of the crime, the age of the child and the condition of the child are stated in Article 2 of Perma no. 4 of 2014, namely: Article 2: Diversion is applied to children who are 12 years old but not yet 18 (eighteen) years old, or have been 12 (twelve) years old even though they have been married but are not yet 18 (eighteen) years old, who are suspected of committing a criminal act.

If the crime committed by the child is included in the misdemeanor category and meets other conditions (for example, there is no objection from the victim), the investigator can apply for diversion. Based on article 3 of Perma no. 4 of 2014, namely: Article 3: The Child Judge is obliged to seek Diversi in the event that the child is charged with committing a criminal act that is threatened with a prison sentence of less than 7 (seven) years and is also charged with a criminal act that is threatened with a prison sentence of 7 (seven) years or more in the form of a subsidiary, alternative, cumulative or combination (combined) indictment. (Restoratif dkk., 2014)

#### **b. Deliberations to Reach an Agreement**

After the decision to diversion is taken, the next stage is deliberation between the parties involved, namely the child, the child's parents or guardians, the victim, the investigator,

the prosecutor, and other competent parties (e.g. social institutions). The legal basis is listed in Perma No. 4 of 2014, namely in article 5:

The Diversion Deliberation was opened by the Diversion Facilitator with the introduction of the parties present, conveying the purpose and purpose of the diversion deliberation, as well as the rules of deliberation to be agreed upon by the parties present.

The Diversion Facilitator describes the duties of the Diversion Facilitator.

The Diversion facilitator explained the summary of the indictment and the Community Allowance provided information about the child's behavior and social situation and provided suggestions for obtaining a settlement.

Diversion Facilitators are required to provide opportunities to: a. Children to be heard about the indictment. b. Parents/Guardians to convey matters related to the Child's actions and the expected form of settlement, c. Victims/Victims' Children/Parents/Guardians to give responses and expected forms of settlement.

Professional social workers provide information about the social situation of the Child Victim and provide advice on how to obtain a solution.

If deemed necessary, the Diversion Facilitator may call community representatives or other parties to provide information to support the settlement.

If deemed necessary, the Diversion Facilitator may hold a separate meeting (Caucus) with the parties.

The Diversion Facilitator poured the results of the deliberations into the Diversion Agreement.

In drafting the diversion agreement, the Diversion Facilitator pays attention to and directs that the agreement does not conflict with the law, religion, propriety of the local community, and morality; or contain things that the Child cannot do; or contain bad faith.

The purpose of this deliberation is to reach an agreement regarding the settlement of the case, such as rehabilitation, counseling, compensation (restitution), or other forms of settlement that are agreed upon by all parties.

This deliberation is led by a facilitator who is trained based on Article 1 paragraph 2 of Perma No. 4 of 2014, namely the Diversion Facilitator is a Judge appointed by the Chief Justice to handle the case of the child concerned (Restoratif dkk., 2014).

#### c. Settlement through Diversion

If an agreement is reached in deliberation, then the settlement of the case is carried out based on the results of the agreement. These settlements can be in the form of social rehabilitation, compensation for losses, apologies, or other settlements that are considered appropriate in the best interests of the child. The diversion agreement is recorded in the minutes and signed by the diversion facilitator and the clerk/substitute clerk and reported to the chief judge then the judge determines the termination of the case examination. This is based on article of Perma no. 4 of 2014, namely:



Diversion Deliberation is recorded in the News. The Diversion event is signed by the Diversion Facilitator and the Substitute Registrar Committee

the diversion agreement is signed by the parties and reported to the Chief Court by the Diversion Facilitator.

The Chief Justice of the Court issued a determination of the agreement based on the Diversi agreement as referred to in paragraph 2

The Chief Justice may return the diversion agreement to be corrected by the Diversion Facilitator if it does not meet the conditions as referred to in Article 5 paragraph (9), selamba. t~larribatrl Yes within three days.

After receiving the determination from the chairman of the court as referred to in paragraph (3), the Judge issues a determination to terminate the examination of the case (Restoratif dkk., 2014).

#### d. Endorsement by the Prosecutor or Court

If the diversion is successfully agreed upon and implemented, then the prosecutor or judge will certify the settlement. If there are no objections from the parties involved, then the legal process is considered complete without the need to be brought to court. However, if the victim or the victim's family feels dissatisfied or there is a failure in the implementation of the diversion, the case can be brought to court for further processing. This is based on PERMA No. 4 of 2014, namely: If the Diversion Agreement is not fully implemented by the parties based on the results of the report from the Community Supervisor of the Correctional Center, the Judge continued. examination of the case following the Criminal Procedure Law of Children (Restoratif dkk., 2014).

#### e. Evaluation and Monitoring

After the diversion is carried out, monitoring and evaluation of the implementation of the decisions reached in the deliberations are carried out to ensure that the child involved in the case has undergone a rehabilitation process or other settlement following the agreement. The evaluation is carried out by an institution appointed by the court or prosecutor, which is tasked with ensuring compliance with the diversion decision (Restoratif dkk., 2014).

### **Obstacles in the implementation of Diversion in Indonesia.**

Although diversion has good goals, its implementation in Indonesia cannot be separated from some challenges. Some of the challenges that are often encountered are:

Lack of Understanding Law enforcement officials such as police, prosecutors, and judges, sometimes lack a deep understanding of diversion procedures. This can lead to improper application and potentially violate children's rights.

Diversion deliberation requires the involvement of many parties and can experience difficulties in reaching an agreement, especially if there is a difference of interest between the victim and the child who committed the crime.

Inadequate Facilities and Infrastructure such as the limitations of institutions or competent parties in carrying out diversion programs, such as child counseling and rehabilitation institutions, hinder the effectiveness of diversion implementation.

Although diversion is sought to protect children from greater social impacts, children involved in criminal acts are often still socially stigmatized, which can worsen the rehabilitation process.

### **Improvement Efforts in the Implementation of Diversion**

To overcome these challenges, several improvement steps can be taken, including:

**Increased Training for Law Enforcement Officials** More intensive training for law enforcement officials on the procedures and objectives of diversion is essential to ensure proper implementation.

**Improving Child Rehabilitation Facilities**, such as Increasing the number and quality of institutions that can provide rehabilitation, counseling, and educational programs for children involved in criminal acts will greatly help the diversion process.

**Socialization to the community** by educating the public about the importance of diversion as a more rehabilitative mechanism for children, so that there is no longer a negative stigma against children who commit criminal acts.

**Collaboration between State Institutions and Non-Governmental Organizations** in strengthening cooperation with non-governmental organizations that have concerns about child protection to provide wider support in diversion programs (Rifqi, 2020).

The application of Diversion to children has enormous benefits, especially in the context of the juvenile criminal justice system. Diversion refers to efforts to divert or resolve cases of children in conflict with the law (ABH) outside the formal judicial route, intending to prevent children from the negative impact that may arise from a difficult judicial process and can interfere with their development. Diversion aims to provide more rehabilitative, educational, and non-punitive solutions, as well as maintain children's rights to receive treatment appropriate to their age and psychological development.

The benefits of diversion for children include:

Avoiding social stigma in children, especially in the formal judicial process, can often create a stigma that can harm children in the future. Diversion can reduce the potential for negative social impacts.

Providing opportunities for rehabilitation by giving children space to learn from their mistakes without having to go through punishments that may make their situation worse.

Faster and more effective settlement leads to better settlements, both for children, families, and the community.

Protecting the rights of children Diversion by prioritizing the best interests of the child, by prioritizing a restorative approach, not punitive (Junaidi, 2021).

With diversion, children who are faced with the law can get more humane and constructive treatment, per the principle of protecting children's rights. The implementation of diversion in the juvenile criminal justice system in Indonesia has a very important role in protecting children from the adverse effects of the judicial process. Despite the many challenges faced in its implementation, with improvements in terms of training law enforcement officials, and rehabilitation facilities, and increasing public awareness, diversion can be a more effective and profitable solution for children facing the law. Efforts to improve and pay greater attention to children's rights in the criminal justice system are expected to realize a fairer, more humane justice system and support child rehabilitation.

## CONCLUSIONS

The implementation of diversion in the juvenile criminal justice system in Indonesia has a very important role in protecting children from the adverse effects of the judicial process. Despite the many challenges faced in its implementation, with improvements in terms of training law enforcement officials, and rehabilitation facilities, and increasing public awareness, diversion can be a more effective and profitable solution for children facing the law. Efforts to improve and pay greater attention to children's rights in the criminal justice system are expected to realize a fairer, more humane justice system and support child rehabilitation.

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