



Implementation of Diversion in the Juvenile Criminal Justice System in Indonesia: Analysis of Obstacles and Juvenile Punishment Based on Law Number 11 of 2012

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Abstract. This study aims to examine the concept of punishment for children as perpetrators of crimes in Indonesia. This study uses normative legal research with a statutory and conceptual approach. The legal materials are sourced from primary and secondary legal materials. The legal material collection technique is through literature studies and interviews. The legal materials are analyzed using qualitative methods. The results of this study indicate that The juvenile criminal justice system or Diversion has been implemented in various countries with different characteristics. International Law has recognized that children must be treated differently from adults. In Indonesia, the juvenile criminal justice system applies, which refers to Law Number 11 of 2012. However, the large number of cases of children sentenced to prison shows that Diversion has not been implemented optimally in Indonesia. The causes range from the inadequate capabilities of law enforcement officers, victims and/or victims' families who refuse to make peace, and diversion requirements that limit diversion efforts. Therefore, improvements are needed in the implementation of Diversion to ensure better protection for children as perpetrators of criminal acts in Indonesia.

Keywords: Criminalization, Criminal Justice System, Diversion.

1. INTRODUCTION

The state is responsible for protecting every child born from the womb of the Indonesian nation and state from all actions that can take away and eliminate their rights as children, even if the child commits a crime (a child in conflict with the Law). As the next generation, children should receive treatment appropriate to their age (Mulyana et al., 2023). Child protection is a form of effort to create conditions or circumstances to protect children so they can exercise their rights and obligations. In this case, what is meant by children's rights is that the child's wishes are protected based on the power of the legal system given to children (Wadong, 2000).

Protection of children is regulated in Article 28B of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which states that *"every child has the right to survive, grow and develop and has the right to protection from violence and discrimination"*. Legal protection of children here is interpreted as an effort to protect children's freedom and human rights related to their welfare (Nasruddin et al., 2021). Regarding child protection, Indonesia has also ratified the UN Convention on the Rights of the Child through Presidential Decree Number 36 of 1990 concerning the Ratification of *the Convention on the Rights of the Child*, which, in principle, regulates special protection for children in conflict with the Law. Currently, criminal law is used as a means to achieve complete human beings, so the application of criminal law must be humanistic, especially regarding children who are the relay for the progress of a country. The punishment of children involved in the Law must be fully integrated into the juvenile criminal justice system.

As for special protection for children in conflict with the Law is then regulated in Law Number 3 of 1997 concerning Juvenile Courts. The implementation of the Law raises various problems, including the use of a formal legal approach by emphasizing punishment (retributive), which has the paradigm of arrest, detention, and imprisonment of children. The criminal system in the Law is considered not to be in favour of child protection, thus giving rise to stigmatization, problems of continuing education, child welfare, interaction with other lawbreakers, and issues of readaptation and reintegration in society.

Regarding the problems of Law Number 3 of 1990, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (Law No. 11/2012) was born. Fundamental changes include juvenile justice, which was initially *retributive justice* to *restorative justice*, expansion of the scope of children, the age of criminal responsibility of children, elimination of the categories of juvenile criminals, state children and civil children, changes in nomenclature, the obligation of the diversion process at every level, affirmation of children's rights in the judicial process, and efforts to limit deprivation of liberty as *a measure of the last resort*. Indonesian criminal Law not only focuses on perpetrators of criminal acts but also on witnesses and victims involved in criminal cases (Saodana et al., 2023). The purpose of implementing a juvenile criminal justice system is not merely to impose criminal sanctions on juvenile perpetrators of crimes but also as a means of realizing child welfare by paying attention to the principle of proportionality, which is expressly regulated in United Nations regulations in *the United Standard Minimum Rules for the Administration of Juvenile Justice* (SMRJJ) or *Beijing Rules* and the Convention on the Rights of the Child (CRC).

Based on Law No. 11/2012, Diversion has been regulated, which functions so that children in conflict with the Law are not stigmatized due to the judicial process they undergo. As in Article 1 number 2 of Law No. 11/2012, it is stated that children in conflict with the Law are children in conflict with the Law, children who are victims of criminal acts, and children who are witnesses to criminal acts. Regarding children in conflict with the

Law, not all can be diverted. Diversion can only be carried out for criminal acts as stipulated in Article 7 paragraph (2) of Law No. 11/2012, namely criminal acts subject to imprisonment of less than 7 (seven) years and are not a repeat of the crime. The same thing is also regulated in Law Number 1 of 2023 concerning the Criminal Code (Law No. 1/2023), which emphasizes that children imprisoned for less than 7 (seven) years and not repeating the crime must be diverted.

Diversion in the Law only applies to criminal acts subject to imprisonment of less than 7 years. Therefore, Diversion cannot be used for criminal acts over 7 years, which is an obstacle to achieving *restorative justice* in cases of children. In addition, regarding the repetition of criminal acts as referred to in the provisions, where the Explanation of Article 7 paragraph (2) letter b of Law No. 11/2012 states that the repetition of criminal acts in this provision is a criminal act committed by a child, both similar and dissimilar crimes, including crimes that are resolved through Diversion. Referring to the new Criminal Code in Article 58 letter c of Law No. 1/2023 that the repetition of criminal acts is a factor that aggravates the crime, and Article 59 of Law No. 1/2023 emphasizes that the aggravation can be increased by a maximum of 1/3 (one third) of the maximum criminal threat. This emphasizes that the essence of protection for children in conflict with the Law is not by where the substance of the existing article directs the imposition of an aggravating sentence on the child himself.

Criminal responsibility itself is regulated in Article 1 number 3 of Law No. 11/2012, which stipulates that children in conflict with the Law are children who are 12 (twelve) years old but not yet 18 (eighteen) years old and who are suspected of committing a crime. Criminal responsibility itself is regulated in Article 1 number 3 of Law No. 11/2012, which stipulates that children in conflict with the Law are children who are 12 (twelve) years old but not yet 18 (eighteen) years old and who are suspected of committing a crime. Exceptions to this provision apply to children who commit crimes under 12 (twelve) years. Based on this provision, criminal responsibility is only attached to children 12 (twelve) years old but not yet 18 (eighteen) years old. In comparison, children who are not yet 12 (twelve) years old are considered unable to be held responsible for the crime they have committed.

In addition, based on Article 32 paragraph (2) of Law No. 11/2012, it is stipulated that detention of children can only be carried out 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. Another provision based on Article 69 paragraph (2) stipulates that children not yet 14 (fourteen) years old can only be subject to action. The same thing is also regulated in the new Criminal Code Article 113 paragraph (3) of Law No. 1/2023, which emphasizes that children under 14 (fourteen) years old cannot be sentenced and can only be subject to action. Changes to the Criminal Code are marked by the issuance of Law Number 1 of 2023 concerning the Criminal Code (KUHPidana). This latest Criminal Code reconstructs the norms governing child criminal law. At least, the spirit of the latest Criminal Code can be seen in Article 51 letter b, which emphasizes efforts to socialize convicts through coaching and guidance to become good and valuable people. This means that imprisonment can be used as a last alternative. Then, Article 52 emphasizes that criminal punishment is not to degrade human dignity. Likewise, Ar, title 53, paragraph 2 states that if there is a conflict between legal certainty and justice, the judge must prioritize justice. This means that written Law can be ignored. Then Article 54 letter h states that criminal punishment must consider the impact on the future of the perpetrator of the crime.

When associated with the juvenile criminal justice system, the reconstruction of the articles above will undoubtedly affect the regulation of child punishment, even though the child is a perpetrator of a crime with a threat of severe punishment. This can be seen in Articles 114-116 of the latest Criminal Code, which places imprisonment as the last option. The main punishment for children is prioritized as a warning, a conditional sentence (outside the institution, community service, or supervision), and job training. For example, it can be seen in diversion efforts for children. Although Article 112 of the latest Criminal Code states that the obligation to Diversion is attempted for criminal threats under 7 years and not a repetition of the crime, the reconstruction of this article does not emphasize or prohibit diversion efforts if the threat of punishment is above 7 years. This article instead requires diversion efforts for the threat of imprisonment under 7 years.

Reconstruction of articles on child criminal acts in the latest Criminal Code will undoubtedly affect the punishment of children. The laws and regulations governing the juvenile criminal justice system will refer to the latest Criminal Code. Based on this background, the author examines and conducts research on the concept of the punishment of children as criminal acts in Indonesia.

2. METHODOLOGY

The type of research used in this study is normative legal research, namely examining various laws and regulations related to the legal issues raised and other legal literature. Normative legal research is understood as research to test a norm or applicable provision. It can also be research conducted by examining library materials or secondary data. Because this research focuses on library materials, normative research is often called doctrinal or library research.

The research approach used is the statute approach, *whose* primary reference is in the form of legal materials, namely statutory regulations used as basic materials when conducting research; this approach is carried out to study or examine all laws and regulations related to the legal issues being faced (Irwansyah, 2020). Furthermore, the conceptual approach provides an analytical perspective on solving problems in legal research, as seen from the legal concepts that underlie it or from the values contained in the norming of regulation about the concept used. This approach is used to assess whether the norms in statutory regulations are by the underlying spirit. The type of data used in this study is Primary Legal Materials, which consist of laws and regulations,

jurisprudence or court decisions (especially for research in the form of case studies) and international agreements (treaties), in addition to those that can provide explanations in the form of draft legislation, research results, textbooks, journals, newspapers, *pamphlets*, *leftlent*, brochures, and internet news. Tertiary Legal Materials are legal materials that can explain both primary and secondary legal materials in the form of dictionaries, encyclopedias, lexicons, and others.

This research was conducted by collecting data such as documentation or literature studies, namely a series of efforts to obtain data by reading, reviewing, classifying, identifying and understanding legal materials in the form of laws and regulations and literature books related to the problems discussed in this study. Researchers also conducted interviews; the use of this technique is very effective, in-depth, and *flexible* in obtaining the data and information needed by researchers. Interviews were conducted with stakeholders directly and openly to discuss the problems raised by researchers.

All collected data is then processed and analyzed using qualitative methods. Qualitative methods analyze qualitative data consisting of a series of words. The collected data is then systematically described and connected between one data point and another and finally arranged or presented in legal writing. As a result, qualitative data analysis is specific, especially in summarizing data and uniting it into an analysis flow that is easy for others to understand.

3. RESULT AND DISCUSSION

3.1. The Concept of Child Criminalization in Various Countries

Crime is a classic problem of humanity in its social environment (Sofyan et al., 2021), the actions of a child when committing a crime have different motivations and characteristics than adults, so applying the same concept of punishment to both is an act of discrimination and does not consider the best interests of the child. In the end, the development of criminal Law found and applied the concept of punishment for children through penal mediation known as "diversion". The word diversion comes from the English word " *diversion* " which means avoidance or Diversion (Dewi, 2011) . The idea of Diversion was initiated and standardized internationally through *the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (SMRJJ) or The Beijing Rules* (UN Assembly Resolution 40/33 dated November 29, 1985), where Diversion is listed in Rule 11.1 11.2 and Rule 17.4. Based on the regulation, Diversion is the granting of authority to law enforcement officers to take policy actions in handling or resolving child abuse issues without taking formal routes, including stopping or not continuing the criminal justice process or returning to the community. Diversion can be applied at all levels of examination, intended to reduce the negative impact of children's involvement in the judicial process (Rahayu, 2015). In addition to *the Beijing Rules*, there is also the Convention on the Rights of the Child (CRC), so countries worldwide refer to these two international rules.

Several countries have implemented Diversion before the two international rules above emerged. In Australia, for example, in 1970, the two primary forms of Diversion were focused not on making Diversion an alternative program but rather a Diversion to get out of the justice system (Marlina, 2010). The Diversion Process in Indonesia, when associated with countries that have already implemented the diversion method, is still far behind; there is still disharmony between the Law and its Implementation, Law No. 11 of 2012, which wants to provide restorative justice to children in conflict with the Law is a process outside the courts, but the parties that are seen are parties in the judicial process, such as the police, prosecutors and judges, and the apparatus in the judicial process does not have a policy or discretion for children in conflict with the Law, in contrast to states in Australia, etc., which can provide policies in the form of Iisan warnings, written warnings, diversion efforts and the last resort is to hand over the problem to the juvenile court, while in Law No. 11 of 2012, law enforcement officers are required to carry out Diversion if it is suspected that a crime has been committed by a child (Sahetapy & Suhartati, 2018).

The following are some of the criminalization processes for children that are implemented in several countries:

3.1.1. Child Criminalization in Australia

Only two countries as a whole diversion is applied, namely Tasmania and New York, whose states are suitable for application in Indonesia, or at least those close to the character of child punishment in Indonesia. In essence, the objectives of Diversion carried out in Australia are: (Morris, 2004)

- a) *Adverse effects of labeling, which exposure to the juvenile justice system can cause;*
- b) *There is doubt about the efficacy of measures available for young offenders.*

First, the state of Tasmania's handling of children in conflict with the Law set up in *the Youth Justice Act 1997*, Which allow police to Discretion directly to perpetrator children by giving informal warnings (advice), formal (written) warnings through meetings, meeting with members of the community *conferencing* through process diversion or forwarded to court (Morris, 2004) . Simply put, Diversion in Tasmania can be presented in the table below:

Table 1: Implementation of Diversion in the State of Tasmania.

Regulation	Diversion Provisions	Type Violation	Objective Diversion	The institution that Handle
Youth Justice Act 1997, Section 8, And 10	Section 8: Givewarning to the child who violates. No process children carry on....	Section 8: violation light	Avoid labelling effect- negative system justice	Which due to by effects on the child

Source: Youth Justice Act 1997.

Second, the state of New South Wales, Birth *Young Offenders Act 1997* (NSW), through process legislation Parliament on June 1997 and became effective on April 6, 1998, became a fix for the system handling of child offenders in New South Wales. *Young The Offender Act 1997* (NSW) changed the way the police work so that they do not directly address child abuse in the system of juvenile justice. But actively trying to handle children who commit violations with alternative forms of settlement violation children. Put, Diversion in New South Wales can be presented in the table below:

Table 2: Implementation of diversion in the state of New South Wales.

Regulation	Diversion provisions	Types of violations	Diversion goals	Institutions that handle
<i>Young Offenders Act 1997, Section 3, 13, 14.</i>	Section 3: ...alternative for processing child out of process court...	Section 13: ...violation light... violation others that determined by lawpart This;	Section 3: ...repair and reception not quite enough Answered by perpetrator... meet the needs of victims and the violators...	Section 14: Police

3.1.2. Child Criminalization in Japan

Article 1 of the Juvenile Law explains that the purpose of Law in Japan is *to voice the development of teenagers /children*. The intention is to carry out rehabilitation for naughty children/teenagers. In Japan, the juvenile justice system provides hearing court families to protect children. Family courts are used at all stages of Japan's juvenile criminal justice system. The stages are:

First is the judicial process at the investigation level. The judicial process begins with a police investigation into a child abuse case based on the Criminal Procedure Code. Although there are provisions for special treatment for children, such as restrictions on arrests and interviews, there are still doubts about the effectiveness of child protection in practice (Purwati, 2020). *Second, the judicial process at the Prosecutor's office level.* The public Prosecutor refers all cases to Family court after completing the Investigation. With this, all instances will finally be resolved by the Family Court. However, the Prosecutor generalizes their wisdom. In the No to Judge case—in certain cases, the child voluntarily admits their guilt (Purwati, 2020). *Third, the judicial process at the court level.* Referring to Article 9 of the Juvenile Law, a pre-trial investigation is carried out after the Family Court receives the case. Office Testthe Family Court investigates the child, the child's behaviour, the child's background, the child's parents and the person, is related to the child (his/her social environment) involving medical, psychological, pedagogical, sociological and skill other as needed for the Investigation. Process time detention is generally insufficient from 4 weeks and should not exceed 8 weeks—*fourth, social work in family court procedures.* Action educative informal for support the child to cope with problems, they were taken over by Family Court trial by implementing community service (working for the community). During the trial period, various educational actions were taken. In a number of cases, giving guidance is allocated as a volunteer in public. While this is happening, the child could be accommodated in a civilian home—or facility personal or state-provided facilities. For the time, it is determined by the Family Court. It is returned to the child's family if it is finished. The above judicial method in Japan, which uses the Family Court, is one way to divert the criminal trial of children who apply prison sentences.

3.1.3. Child Criminalization in New Zealand

The concept of Diversion was First time implemented by the Government of New Zealand New. S since Diversion is implemented in New Zealand New, it made New Zealand New a reference center for study about Diversion And *Restorative Justice* (Morris, 2004) . Before Diversion was implemented in New Zealand, children were not a priority and were not even considered business committees. Finally, I experienced a paradigm shift after reflecting on the ethnic group New Zealand New, an ethnic group Maori Which considers children very important; even when a child is too young to do something crime, the person has to bear sanctions (Laila, 2022). For this reason, a law was passed that regulates Diversion, namely the *Children, Young Persons and Their Families Act* in 1989. The following are several stages of the juvenile criminal justice system implemented in New Zealand, namely: first, the police state; second, *the Family Group Conference* (FGC); third, *the youth court*.

3.1.4. Child Criminalization in the Netherlands

The characteristics of juvenile criminal Law are contained in the basic idea that Sanctions for children must contain pedagogical elements. This pedagogical approach is the primary mission of Criminal Law. Child in Dutch. As set up in regulation legislation, Invitation specials about child Which there is in Chapter VIII A, "Special

Provisions for Children" Book I *Wetboek van Strafrecht* (WVS) consisting of Articles 77a to 77gg Sr (*Straight*). Element pedagogy comes true in the form of Handling child delinquents, Which is called Diversion, Good done by police (level of Investigation and inquiry), as well as that carried out by the prosecutor general (prosecution level) (Hadisuprpto, 2000). The following is the application of Diversion in the juvenile criminal justice system in the Netherlands: *First, Diversion by the Police* Announcement written from the official investigator to public Prosecutor that a child who has committed a crime is considered in a way indeed for follow as well as in the Halt project, the child's right to criminal prosecution is also fall. *Second, Diversion by the Public Prosecutor* Based on Article 77f paragraph (2) jo 77m paragraph (1) *The Traffic Regulations*, the requirements regarding alternative cooperation arrangements, only Prosecutor It's common Which can drop after He spread out the offer That in a way transparent to child defendant. The nature of the alternative cooperation relationship must also be mentioned in the offer. Based on Article 77f paragraph (2) Joe. 77n verse (1) *Wetboek van Strafrecht*, implementation condition That only is implemented after advice from the Child Protection Foundation to the Prosecutor General related with characteristic, substance, as well as the possibility of its implementation.

3.2. Implementation of the Juvenile Justice System in Indonesia

Children are an important part of human survival; the state needs to guarantee the rights of every child to survival, growth and development and protection from violence and discrimination. Article 28B paragraph (2) of the 1945 Constitution. Therefore, children's best interests should be prioritized for the sake of human survival, including humans in Indonesia. From this article, the Indonesian government needs to issue policies that aim to protect children and their rights. The author assesses that children's will differs from adults' will. Thus, the intention to do evil is different in quality from the intention of adults. The biggest factor in children doing evil/violating is influenced/caused by external factors, be it parents, siblings, friends, and the social environment, including government policies related to children. Because the motivation and characteristics of children are different from those of adults, the 1945 Constitution also mandates the formulation of separate policies pertaining to children, thus Law Number 3 of 1997 concerning Child Protection was established, which was then refined by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (while also revoking the previous Law).

The integrated criminal justice system contains systemic applications from its supporting subsystems, namely the police, prosecutors, KPK, advocates, and correctional institutions, forming a single unit (Jupri et al., 2022). Article 1, paragraph (10) of the SPPA Law states that the juvenile justice system is the entire process of resolving juvenile cases, from the investigation to the guidance stage after serving a sentence. This SPPA Law is a strict regulation regarding restorative justice and Diversion, which is intended to avoid and distance children from the judicial process so that they can avoid stigmatization of children who are in conflict with the Law, and it is hoped that children can return to the social environment naturally. The process must aim to create restorative justice for children and victims. Restorative justice is a diversion process, namely all parties involved in a particular crime together solve problems and create an obligation to make things better by involving victims, children, and the community in finding solutions to improve, reconcile, and calm the heart that is not based on revenge.

According to Abintoro Prakoso, the goals to be achieved through resolving criminal cases using a restorative justice approach (including Diversion) are: (Prakoso, 2013).

- a) Reparation or compensation for losses suffered by the victim, the perpetrator's recognition of the injuries suffered by the community as a result of his actions, conciliation and reconciliation of the perpetrator, victim and community.
- b) Empowering victims, perpetrators, families and communities to improve their unlawful actions by using awareness and realization as a foundation for improving community life.
- c) Restoring the welfare of society, improving humans as members of society by confronting children as perpetrators in the form of accountability to victims for their actions. Victims who are usually neglected in the judicial process participate in the judicial process.

The following is the implementation of Diversion at each stage of resolving child criminal cases based on the SPPA Law:

3.2.1. Diversion by Police

Article 26, paragraph (3) of the SPPA Law states that the requirements for being appointed as a child investigator are:

- a) Has experience as an investigator;
- b) Have interest, attention, dedication, and understand children's problems; And
- c) Has attended technical training on juvenile justice.

If the District/City Police do not yet have investigators with the 3 (three) requirements above, then the Investigation of children is carried out by investigators who handle adult crimes (Salam, 2022). The requirements above are related to the investigator's knowledge of Diversion and the ability to deal with and protect children. This is important because children must be treated differently from adults. The psychological and physical conditions of children are different from adults, the maturity of their thinking and motivation to behave are also different from adults. Child investigators must understand this. In addition, child investigators must understand the ins and outs of the SPPA Law. For example, at the Pekanbaru Police. Teguh Nofrian's research results stated that the Pekanbaru Police's diversion efforts experienced more failures than successes. The

obstacles experienced were due to the lack of Polri personnel who were trained in handling child cases. The Pekanbaru Police PPA Unit which handled Diversion only involved one investigator. Meanwhile, other PPA investigators did not yet understand the implementation of Diversion. In fact, ideally, Diversion should be carried out by 2 PPA investigators (Salam, 2022).

To standardize the implementation of Diversion in the Police institutions throughout Indonesia, the Police issued Circular Letter Number: SE/8/VII/2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases. The mechanism is as follows: (Ramadhan, 2021)

- a) After receiving a peace request from both parties (the complainant and the accused) signed on a stamp, conduct an administrative investigation into the formal requirements for resolving the case through restorative justice;
- b) a peace request after the formal requirements have been met is submitted to the investigator's superior to obtain approval;
- c) After the application has been approved by the investigator's superior (Head of Criminal Investigation/Chief of Regional Police/Chief of Resort Police), the time for signing the peace statement is then determined;
- d) implementation of a conference that results in an agreement signed by all parties involved;
- e) make an official note to the investigator supervisor or Head of Work Unit regarding a request to carry out a special case title for the purpose of termination;
- f) carry out a special case title with the reporting participants, and/or the reporting family, the reported party and/or the reported party's family and representatives of community leaders appointed by the investigator, the investigator handling the case and representatives of the internal supervisory function and legal function and government elements if necessary;
- g) prepare administrative completeness and special case title documents as well as case report results;
- h) issue a Letter of Order to Terminate Investigation/Prosecution and a Letter of Decision to Terminate Investigation/Prosecution on the grounds of Restorative Justice;
- i) For cases at the investigation stage, investigators issue a Letter of Order to Terminate Investigation and a Letter of Decision to Terminate Investigation signed by:
 - 1) Director of Criminal Investigation at the National Police Headquarters Level
 - 2) Director of Criminal Investigation at the Regional Police Level
 - 3) Police Chief at the Police Resort and Police Sector levels
- j) For cases at the investigation stage, investigators issue a Letter of Order to Terminate Investigation and a Letter of Decision to Terminate Investigation signed by:
 - 1) Director of Criminal Investigation at the National Police Headquarters Level
 - 2) Director of Criminal Investigation at the Regional Police Level
 - 3) Police Chief at the Police Resort and Police Sector levels
- k) Recording in the new register book B-19 as a restorative justice case is counted as settling the case

As is known, the main pillar of Diversion is the consent of the victim and/or the victim's family. However, based on Article 9 paragraph (2) of the SPPA Law, investigators can carry out Diversion without the victim's consent, namely in the case of:

- a) Criminal acts in the form of violations;
- b) Minor crime;
- c) Victimless crime; or
- d) The value of the victim's loss is not more than the local provincial minimum wage.

The above article must be a serious concern for the police, because if one of the reasons above is met, then it is mandatory for the police to try Diversion. Failure of investigators to understand this article or the element of deliberate investigators ignoring the article causes Diversion to fail to be implemented. According to data from the 2020 Report "Implementation of the Juvenile Justice System" of the Indonesian Child Protection Commission, only 14.1% of the 29,228 children in conflict with the Law were successfully closed through Diversion (Sibuea, 2023). This takes a long time, so that children lose time that should be used to learn. A concrete example of the failure of Diversion by the police is Case Number 31 / Pid.Sus / 2018 / PN Lbo, in the case of sexual intercourse with a child. That after the report was made, there was a discussion between the family and the defendant, so that a peace letter was made from the defendant in front of witnesses and the Village Government, and the relationship between the defendant, victim and victim's family improved (Mahmud et al., 2019).

The author believes that the Police should have taken an active role in resolving the case in a restorative manner so that the case did not have to go to court. Because from the beginning, the case had been reconciled before the local Village Government. The perpetrator was also ready to marry the victim. The perpetrator and victim had reconciled. It's just that the author believes the Police were rather passive, not only that, the Police instead continued the process to the Prosecutor's office (prosecution) so that the process went to court.

Table 3: Number of Diversion handling at Pekanbaru Police.

Year	Theft Case	Successful Diversion	Diversion Failure	Achievement (%)
2018	3	1	2	33.33%
2019	2	0	2	0
2020	3	0	3	0

The table above shows the failure of Diversion carried out by the Pekanbaru Police. However, if successful, the diversion agreement will be determined. For example, what happened at the Pekanbaru Police.

Table 4:

Child Identity	Age	Diversion Agreement	Court Order
Moh. Fernanda als Petnem bin Fendi Eka Putra	17 years	BA Diversion Agreement No. A173/KD/I/2018/Reskrim dated January 29, 2018: a. The reported party apologized to the victim b. The reported party is able to compensate the victim for the loss of Rp. 2 million for the loss of the victim's cellphone. c. The reported party will not repeat the act	Determination of Diversion from Pekanbaru District Court No. 02/Pid.Sus-Anak/Div./2018/PN.Pbr: states the diversion agreement as stated in the BA Diversion Agreement No. A173/KD/I/2018/Reskrim dated January 29, 2018 signed by the reported party, the reporting party, the investigator, and the Correctional Center and to implement the decision.

From the two tables above, it can be seen that the diversion efforts of the Pekanbaru Police have experienced more failures than successes. The obstacles experienced were due to the lack of Polri personnel who were trained in handling child cases. The PPA Unit of the Pekanbaru Police which handled the Diversion only involved one investigator. Meanwhile, the other PPA investigators did not yet understand the implementation of Diversion. In fact, ideally, Diversion should be carried out by 2 PPA investigators. (Mahmud et al., 2019).

According to the author, Diversion carried out by the Police plays a very important role, because the police are the initial gateway to determining whether or not a crime has occurred, and are also the initial gateway to assess whether or not a crime is serious, and are also the initial gateway to assess whether the child's case can be resolved through Diversion or not. So that it is not necessary to continue to the prosecution stage by the Prosecutor's Office. For this reason, the police must have human resources who are competent in understanding the ins and outs of children, child psychology, in addition to the applicable positive Law.

3.2.2. Diversion by the Prosecutor's Office

In the juvenile criminal justice system in Indonesia, the police, prosecutors, courts and correctional institutions are carried out in an integral manner, meaning that each institution that carries out a process that has been determined by Law will influence the process carried out by other institutions (Atmasasmita, 1996).

The Prosecutor's Office is a legal structure that is a single unit (subsystem) that implements the juvenile criminal justice system based on the SPPA Law, the stages of implementation of which are carried out after the police have carried out their duties. The Child Public Prosecutor as part of the Prosecutor's office is one of the series of implementers of the juvenile criminal justice system (Posumah, 2023).

According to the Attorney General's Regulation Number: PER-006/A/JA/04/2015 concerning Guidelines for the Implementation of Diversion at the Prosecution Level, the implementation of Diversion by the Prosecutor's office is carried out in 9 (nine) stages, namely:

- 1) Appointment of Public Prosecutor
- 2) Coordination
- 3) Diversification Efforts
- 4) Diversion Deliberation
- 5) Diversion Agreement
- 6) Implementation of the Diversion Agreement
- 7) Monitoring and Reporting of Diversion Agreements
- 8) Issuance of Letter of Decision to Terminate Prosecution
- 9) Diversion Registration

The 9 (nine) stages above will run effectively depending on the quality of the human resources of the general Prosecutor. Similar to investigators (police), the author always emphasizes that the appointment of investigators and public prosecutors must be those who understand Diversion. For example, in Case No. 26/Kds/Euh.2/08/2015 with the defendant Arya Muda bin Darmanto. The defendant is 13 years old. The defendant was charged cumulatively, namely Article 310 paragraph (3) of Law No. 22 of 2009 and Article 310 paragraph (4) of Law No. 22 of 2009. In this case, the public Prosecutor failed to carry out Diversion. The victim's family has forgiven him, but they still want to continue the legal process. According to the author, if the public Prosecutor has the ability, skills and understanding of the benefits of Diversion for the victim, he can be a bridge for the victim and the perpetrator. The losses experienced by the victim can be recovered. Moreover, the perpetrator is still a child, namely 13 years old.

The same thing also happened in case No. Reg: 3/Kds/Epp.2/02/2015 an. Defendant Novel Aditya bin Watono. The defendant is 17 years old. He was charged with Article 353 paragraph (1) of the Criminal Code,

Article 353 paragraph (2), and Article 351 paragraph (1). One of the failures was because the public Prosecutor did not have sufficient ability when acting as a diversion facilitator. So the Diversion was carried out as it was, and only to follow the SPPA Law.

In the two cases above, the public Prosecutor should be able to bridge the victim and the perpetrator to explain the benefits of Diversion. Punishing or imprisoning the perpetrator will not have any impact on the victim. The losses experienced by the victim will not be able to be recovered. In fact, with Diversion, the victim's losses can be recovered. The author believes that the Prosecutor's office must now be more active in seeking Diversion, especially after the issuance of the Constitutional Court Decision Number: 110/PUU-X/2012 which has revoked Articles 96, 100 and 101 of the SPPA Law, which became the argument for the public Prosecutor's half-heartedness in carrying out Diversion. Because the three articles seem to criminalize law enforcers including public prosecutors when they do not carry out Diversion, while the diversion effort must see the victim's consent. This means that the public Prosecutor can be more free to carry out diversion efforts.

3.2.3. Diversion by Judge in Court

In the application of Diversion by judges, the court chairman needs to be selective in choosing judges for children's trials. Article 43, paragraph (2) of the SPPA Law states that judges appointed as facilitators in children's Diversion must be:

- a) has experience as a judge in a general court environment;
- b) have interest, attention, dedication, and understand children's problems; And
- c) has attended technical training on juvenile justice.

The three conditions above are substantially the same as the articles applied to investigators and public prosecutors. Based on Perma No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in SPPA, the implementation of Diversion by judges in court is carried out in several stages, namely:

- a) Diversion Preparation
- b) Diversion Deliberation Stages
- c) Diversion Agreement

If the diversion agreement is not fully implemented by the parties based on the report from the Community Guidance of the Correctional Center, the judge will continue the examination of the case in accordance with the juvenile criminal justice procedure. However, the judge must consider it as an agreement that has been fulfilled, if any. The theft case was sentenced to prison by the judge, namely in case No. 02/Pid.Sus.Anak/2015/PN.Mkd. Two 17-year-old male child perpetrators stole a motorbike so that they were sentenced to 3 months in prison on charges of Article 363 paragraph (1) to 3,4,5 of the Criminal Code. Another example that should be able to be attempted Diversion is the Gunungsitokli District Court Decision Number: 1/Pid.Sus-Anak/2015/PN.Gst. These cases should be able to provide an illustration for the judge in deciding the child's case. Diversion efforts should be the main thing in resolving child cases. Article 8 paragraph (3) letter a of the SPPA Law states that diversion must pay attention to the interests of the victim. Then, 8 paragraph (3) letter d of the SPPA Law states that Diversion must pay attention to avoiding retaliation for the perpetrator. This means that there is a connection between the two norms that avoiding retaliation for the perpetrator is aimed at the interests of the victim. Repaying the perpetrator with imprisonment will actually harm the victim because the perpetrator's obligation to restore the victim's and/or his/her family's losses is null and void.

3.2.4. Diversion by Correctional Institutions (LAPAS)

The last subsystem that is obliged to carry out Diversion in the juvenile criminal justice system is the Correctional Institution (Lapas), in this case, namely the community counselor. According to Article 1 paragraph (13) of the SPPA Law, the community counselor is a functional law enforcement official who carries out community research, guidance, supervision, and assistance to children inside and outside the criminal justice process.

The authority of the community counselor to carry out Diversion is in accordance with the mandate of Article 5 paragraph (2) letter c of the SPPA Law which states that the juvenile criminal justice system must prioritize a restorative justice approach, one of which includes coaching, guidance, supervision and/or assistance during the process of implementing the criminal act or action and after serving the criminal act or action. The following are the stages of Diversion by the community counselor, namely:

- a) Pre-adjudication stage
- b) Adjudication Stage
- c) Post Adjudication Stage

For example, Diversion carried out by Community Guidance Officers is in the case of a mob attack that occurred in Tarakan. There were two children who attacked one child. The alleged article imposed is Article 170 paragraph (2) of the Criminal Code with a sentence of 7 years (1st) and 9-12 years (2nd). If associated with Article 7 paragraph (2) letter a of the SPPA Law, it should not meet the requirements for Diversion, but the Community Guidance Officer of the Tarakan Class II Correctional Center (PK Bapas) succeeded in carrying out Diversion. The PK Bapas who was on duty in the Diversion hearing this time was Elvianto. The hearing was attended by the Head of Criminal Investigation Unit, PK Bapas, the Social Service, ABH Clients and ABH parents, as well as the Victim and the victim's guardian. The activity began with an opening from the Police and continued with the provision of suggestions and opinions from PK Bapas Tarakan and the Social Service. Elvianto, a Youth

Community Counselor, gave advice and opinions in the diversion hearing that if the perpetrator repeats the crime, he will no longer be given the opportunity to carry out Diversion, but must follow the court procedure. Therefore, it is hoped that parents or guardians of ABH will pay more attention to their children. After the Bapas PK gave advice, the social service represented by Kuswandi Jakaria also gave advice that after the results of this diversion activity were determined by the judge, we as social workers will monitor the development of the child client for one month to ensure changes in the child client's behavior so that they do not deviate again.

According to the author, the effectiveness of this Diversion is higher when carried out by Bapas, because they are the ones who supervise and provide direct guidance to children who are categorized as naughty or have committed crimes. In addition, providing guidance to citizens who commit violations or crimes is indeed their main job. It is understandable that from the many cases of criminal acts committed by children, it is necessary to carry out fair Diversion where protection is given to children who commit crimes without ignoring the future of the child victims, as explained above that children are the next generation of the nation, children are the future of the nation. Therefore, guarantees are needed in the process of child development by means of protection for children. Thus, this child crime diversion case is directed at resolving the non-litigation justice system (outside the courts) to achieve restorative justice for perpetrators of crimes and must also prioritize Justice for Child Victims of Crime.

4. CONCLUSION

The juvenile criminal justice system or Diversion has been implemented in various countries with different characteristics. However, international Law has recognized that children must be treated differently from adults. *The Beijing Rules* are one of the international laws that recognize the special status of children. This status is inherent in children even if the child is the perpetrator of a crime. However, for ABH, it still follows the juvenile criminal justice system that applies in each country. In Indonesia itself, the SPPA applies which refers to Law Number 11 of 2012. However, the implementation of Diversion has not been carried out so massively by APH, the many cases of children who have been sentenced to prison show that Diversion has not been implemented optimally in Indonesia. The causes range from inadequate APH human resources, victims and/or victim families who refuse to make peace, diversion requirements that limit diversion efforts,

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