



Enhancing Restorative Justice in Indonesia: Exploring Diversion Implementation for Effective Juvenile Delinquency Settlement

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Article	Abstract
<p>Keywords: Diversion; Juvenile Delinquency; Restorative Justice.</p> <p>Article History Received: Nov 18, 2022; Reviewed: Jun 13, 2023; Accepted: Jul 29, 2023; Published: Jul 31, 2023.</p> <p>DOI: 10.28946/slrev.Vol7.Iss2.2427.pp318-334</p>	<p>Indonesia's juvenile delinquency is rapidly increasing in a high number every year. At the same time, restorative justice's implementation through the diversion mechanism is ineffective. This circumstance indicates that efforts to enhance juvenile delinquency settlement are essential. Hence, this research elaborates on diversion challenges in settling cases involving juveniles in Indonesia. Moreover, it will analyse efforts to optimise diversion implementation in strengthening restorative justice in settling juvenile cases in Indonesia. This is normative research that uses a statutory approach and is described qualitatively. The research illustrates numerous obstacles in applying diversion during juvenile delinquency resolution in Indonesia. Amongst the difficulties are legal factors; law enforcer factors; factors of means or supporting facilities; societal factors, and cultural factors. These challenges incline the necessity to improve diversion applications in Indonesia's juvenile delinquency. The effectiveness of diversion will contribute positively to the restorative justice system in Indonesia. Furthermore, optimising diversion is possible through reformulating regulation and prioritising prevention efforts to prevent juvenile delinquency from reaching litigation settlement.</p>

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INTRODUCTION

Juveniles¹ are legal subjects and national assets. As in children, national assets have a strategic role in the next generation.² However, nowadays, juveniles are exposed to deviant behaviour and even violence, either directly or indirectly. Juveniles can directly see violence in their homes, schools, and communities. Indirectly, children can easily access via television or mobile phones that uncover unfiltered contents. This can cause long-term mental and emotional

¹ The criminal code of Indonesia states that a juvenile falls into the category of someone 12-17 years old. Due to consistent reasoning, authors use "juvenile" instead of "children".

² Candra Hayatul Iman, "Kebijakan Hukum Pidana Perlindungan Anak Dalam Pembaruan Sistem Peradilan Pidana Anak Di Indonesia," *Jurnal Hukum Dan Peradilan* 2, no. 3 (2013): 357-78, 358.

damage that lasts into adulthood.³ The crime rate and variants of violence involving juveniles as victims and perpetrators in Indonesia are grim. This violence is not only executed in groups but also individually. Juvenile crimes are not unique to city areas since they are common in the suburbs. Juvenile delinquency portrays generally and ones that are against the law. The severity of juvenile actions is no longer “mischievous”; it has developed as crimes. Thus, juvenile delinquency as a status offence means any deviant acts committed by young people under 18. If adults commit these offences, these actions are not considered crimes, for example, smoking, skipping school, running away from home, or arguing with parents. Meanwhile, juvenile delinquency as a violation of the law means that actions are considered “deviant” if committed by a juvenile and considered a “crime” if committed by adults.⁴ Based on Indonesia’s criminal law, the terminology juvenile delinquent is “juvenile in conflict with the law”. Article 1 Number 3 of the criminal code states that juveniles who are 12 (twelve) years old and/or under 18 (eighteen) years old are suspects that commit a crime.

However, handling juvenile delinquents that prioritise the best interests of juveniles is still far from expected. The government has issued special regulations that regulate the protection of the juvenile rights in juvenile delinquents, such as Law No. 3 of 1997 concerning Juvenile Court, which was later changed to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (JCJS Law) and Law no. 23 of 2002 concerning Child Protection. The government even ratified the Convention on the Rights of the Child by issuing Presidential Decree Number 36 of 25 August 1990. Nonetheless, it turns out that the provisions in these regulations are not the best solution for resolving juvenile delinquents.⁵ This is seen through every year, with more than 50 juveniles involved in juvenile delinquent as physical and psychological violence perpetrators, as illustrated in Figure 1 below:

Figure 1. Numbers of Juveniles Involved in Juvenile Delinquent as Physical and Psychological Violence Perpetrators in Indonesia (2016-2020)



Sources: The Indonesian Child Protection Commission

Figure 1 above shows the Indonesian Child Protection Commission’s record on juveniles as violent perpetrators in 2016-2020. In total, of these years, 655 juveniles have committed vio-

³ David Finkelhor et al., “Children’s Exposure to Violence, Crime, and Abuse: An Update,” *U.S. Department of Justice*, September 2015, <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/248547.pdf>.

⁴ Iva Kasuma, Ian Aji Hermawan, and Melly Setyawati, “Problematika Pelaksanaan Diversi Bagi Anak Berhadapan Dengan Hukum Di Kota Layak Anak (Studi Pada Aparat Hukum, Pemerintah Kota Dan Masyarakat Di Depok Dan Surakarta),” *Jurnal IUS Kajian Hukum Dan Keadilan* 8, no. 2 (2020): 350-371,351.

⁵ Azwad Rachmat Hambali, “Penerapan Diversi Terhadap Anak Yang Berhadapan Dengan Hukum Dalam Sistem Peradilan Pidana” 13, no. 1 (2019): 15–30, 20, <http://dx.doi.org/10.30641/kebijakan.2019.V13.15-30>.

lence. In detail, 506 juveniles committed physical violence, and 149 committed psychological violence. The number of juveniles involved in delinquency was consistently above 100 people every year between 2016-2019.⁶ The high number of juvenile delinquents causes an increase in juvenile detentions and arrests by law enforcement. In other words, the settlement of juvenile delinquents tends to go through formal rather than non-formal justice processes.⁷ When a child is suspected of committing a crime, the formal justice system that places the child in prison status can have major consequences in the child's life. The formal justice process that sends juveniles to prison is unsuccessful and does not make the child a deterrent and become a better person. Prison makes juveniles more professional in committing crimes.⁸

Juveniles as crime perpetrators require special attention and protection to ensure their development is according to age.⁹ The state has accommodated child protection through the juvenile justice system's renewal, which is fulfilling juveniles' rights both during the judicial process and after serving a crime. With the passing of the JCJS Law, the juvenile justice system's renewal aims to accommodate child protection through diversion with a restorative justice approach.¹⁰

The phenomenon shows that the agreed diversion is considered poor because it is different from coercive criminal sanctions. For example, based on data in 2022, there are four cases of legally violating juveniles at South Sumatra Regional Police. From these four cases, only one was successful in diversion. The significant ineffectiveness implies that diversion protection to juveniles is weak. Therefore, improvement in various sectors is vital.¹¹ There are obstacles in applying diversion, consisting of legal substance and technical struggles. These struggles include (1) a lack of government regulations' socialisation regarding the new diversion implementation guidelines, (2) a lack of parties' awareness regarding diversion's implementation (legal culture), (3) and lack of juvenile policies experts' (legal structure) to analyse diversion concept's implementation.¹² that orients towards a restorative justice¹³ approach.¹⁴

⁶ Reza Pahlevi, "Ini Jumlah Anak-Anak Yang Jadi Pelaku Kekerasan Di Indonesia," accessed November 14, 2022, <https://databoks.katadata.co.id/datapublish/2022/07/29/ini-jumlah-anak-anak-yang-jadi-pelaku-kekerasan-di-indonesia>.

⁷ Rodliyah and Joko Jumadi, "Implementasi Diversi Terhadap Anak Yang Berhadapan Dengan Hukum (Studi Kasus Di Pulau Lombok)," *Masalah* 42, no. 2 (2013): 275–81, 277, <https://ejournal.undip.ac.id/index.php/mmh/article/view/5817>.

⁸ Irwan, "Problematika Penerapan Diversi Terhadap Anak Pelaku Tindak Pidana Narkotika," *LEX Renaissance* 5, no. 3 (2020): 525–38, 526.

⁹ Irma Cahyaningtyas Elia Tri Utari, "Legal Protection of Children as Perpetrators of Theft in the Investigation Process in Kerinci Police Resort," *International Journal of Multicultural and Multireligious Understanding (IJMMU)* 9, no. 2 (2022): 753–62, 753.

¹⁰ Doddy Kridasaksana Ani Triwati, "Pijakan Perlunya Diversi Bagi Anak Dalam Pengulangan Tindak Pidana," *Jurnal USM Law Review* 4, no. 2 (2021): 828–43, 830.

¹¹ Fahmi Noor Adly, "Diversi Sebagai Bentuk Penyelesaian Perkara Pidana Anak Di Tingkat Penyidikan Dalam Kasus Kejahatan Kesusilaan Di Wilayah Hukum Polda Jatim," *Jurnal Sosiologi Dialektika* 15, no. 1 (2020): 26–32.

¹² Basically, diversion is a program of diverting individuals from criminal sanctions for crimes committed. Article 1 point 6 of the JCJS Law defines diversion as the transfer of settlement of child cases from the criminal justice process to processes outside the criminal justice. Robin Lindquist-Grantz et al., "Diversion Programs for Individuals Who Use Substances: A Review of the Literature," *Journal of Drug Issues* 51, no. 1 (2021): 1–12, <https://doi.org/10.1177/00220426211000330>.

¹³ Restorative justice is a process in which all parties with an interest in certain violations meet together to resolve how to resolve the consequences of these violations for the benefit of the future. United Nations Office

The implementation of diversion is different from the goals of diversion as contained in Article 6 of the JCJS Law. This Article explains that diversion aims to (1) achieve peace between victims and juveniles, (2) resolve juvenile cases outside the judicial process, (3) prevent juveniles from being deprived of independence, (3) encourage the community to participate, (4) and instil a sense of responsibility towards juveniles. On the contrary, implementing diversion in Article 7 paragraph (2) letter “a” of the JCJS Law stated a time limit to implement diversion where a juvenile can only receive diversion if the imprisonment is under seven years. Thus, if a juvenile commits a crime that affects over seven years of imprisonment, they will lose their right of diversion and potentially be sent to jail.¹⁵

The consistent increase in juvenile delinquency each year without sufficient law enforcement indicates that efforts to optimise juvenile delinquency resolution are crucial. Based on this background, the research identifies two issues formulated as follow: (1) How is the implementation of diversion in resolving cases of legally violating juvenile in Indonesia? and (2) how are the optimal diversion implementation efforts in resolving cases of legally violating juveniles as a form of strengthening Indonesia’s restorative justice system?

This research has its own novelty that is influenced by previous research conducted by Wikan Sinatrio Aji entitled “The Implementation of Diversion and Restorative Justice in the Juvenile Criminal Justice System in Indonesia”.¹⁶ The research by Wikan reviews the weaknesses of the JCJS Law’s articles and examines restorative justice’s obstacles in juvenile delinquent cases at Pati District. Meanwhile, in this research, the analysed obstacles are limited to the JCJS Law and wider aspects. Furthermore, this research will discuss ideas for solving these obstacles, particularly recommendations on optimising restorative justice’s implementation in juvenile delinquency cases. These ideas did not exist in Wikan’s research. Additionally, the nature of the “optimisation” is applicable as a recommendation to various regions in Indonesia.

RESEARCH METHODS

This is normative research that examines a norm or provision that applies, as disclosed by Irwansyah. Legal research with a normative doctrinal approach is an activity that will examine aspects (to resolve problems that exist within) of the internal of positive law.¹⁷ A research approach is a statutory approach, with data sources in the form of primary legal materials and secondary legal materials, which are described in a qualitative descriptive.¹⁸

on Drugs and Crime (UNODC), *Handbook on Restorative Justice Programmes Criminal Justice Handbook Series* (New York: United Nations, 2016).

¹⁴ Raden Azhari Setiadi, “Implementasi Diversi Terhadap Tindak Pidana Penganiayaan Anak Pada Sistem Peradilan Pidana (Studi Di Wilayah Hukum Pengadilan Negeri Semarang),” *Jurnal Idea Hukum* 7, no. 1 (2021): 1–23, 20.

¹⁵ Lin Yan Che and Ade Adhari, “Reformulasi Kebijakan Diversi Terhadap Seluruh Tindak Pidana Yang Dilakukan Oleh Anak,” *Jurnal Hukum Adigama* 4, no. 2 (2021): 3403–23, 3411.

¹⁶ Wikan Sinatrio Aji, “The Implementation of Diversion and Restorative Justice in the Juvenile Criminal Justice System in Indonesia,” *Journal of Indonesian Legal Studies* 4, no. 1 (2019): 73–88, 73, <https://doi.org/10.15294/jils.v4i01.23339>.

¹⁷ Kornelius Benuf and Muhamad Azhar, “Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer,” *Jurnal Gema Keadilan* 7, no. 1 (2020): 20–33, 23.

¹⁸ Irwansyah, *Penelitian Hukum* (Yogyakarta: Mirra Buana Media, 2021).

ANALYSIS AND DISCUSSION

Diversion Constraints in Indonesia’s Juvenile Delinquency Resolution

Fundamental changes of Law No. 11 of 2012 concerning the Juvenile Justice System as a substitute for Law Number 3 of 1997 concerning Juvenile Courts are using restorative justice and diversion models in resolving juvenile cases. This essential change must be implemented in cases involving children as offenders, emphasising the significance of upholding the principle of restorative justice through diversion. It rests on philosophical, sociological, juridical, and political foundations, all working together to discourage children from resolving cases through formal mechanisms. According to Law No. 11 of 2012 concerning the Juvenile Justice System, the diversion process must be performed at every level of the judicial process, starting from the first stage at the police institution, followed by the following stages¹⁹ illustrated in the following diagram:

Diagram 1: Diversion/Restorative Justice Diagram in Juvenile Courts in Indonesia

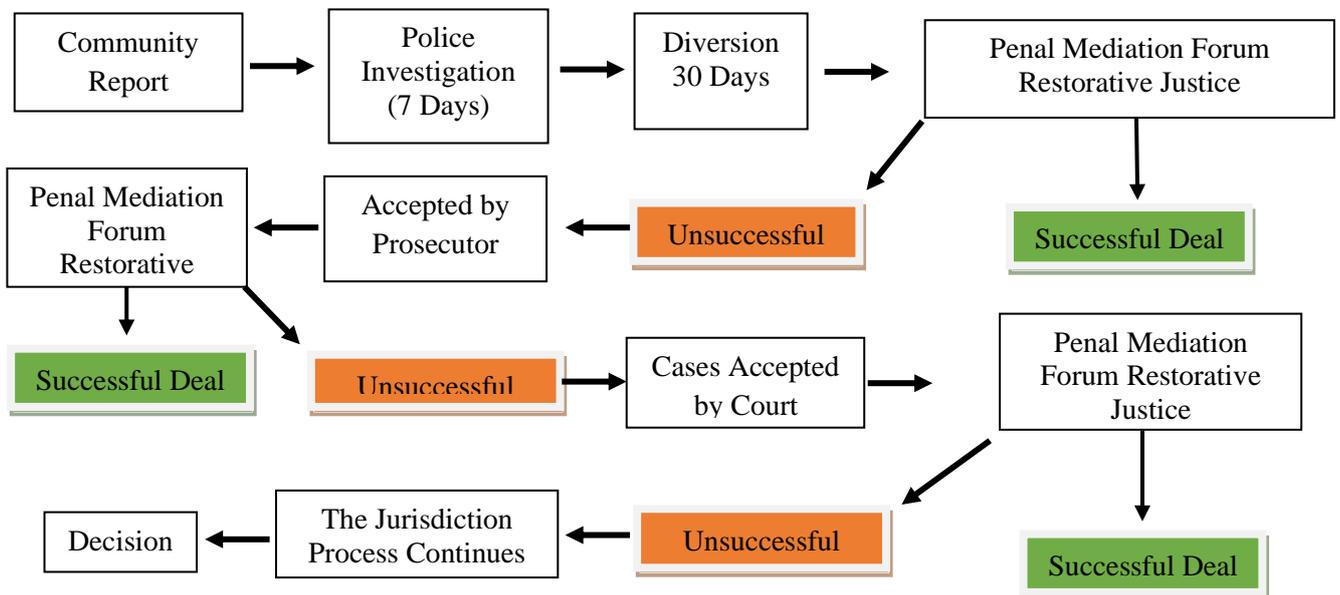


Diagram 1 describes that in handling juvenile delinquents, each criminal justice stage is obliged to pursue penal mediation, or diversion, in legal terms. The obligation to execute diversion begins at the investigation stage by the police.²⁰ If no agreement is reached, then the mechanism proceeds to the prosecution stage. Next, diversion is performed at the prosecution stage.²¹ If no agreement is still reached, then the mechanism proceeds to the court. Diversion is also mandatory in the court stage.²² If there is still no agreement, then the case is examined through evidence and finalised by a decision.

The current approach of the juvenile justice system, which leans heavily towards retribution and restitution, is now being gradually supplemented and promoted with a restorative model approach, as initiated by Law No. 11 of 2012. Beforehand, the matter had

¹⁹ Yulia Kurniaty, Johny Krisnan, and Heni Hendrawati, *Hambatan Pelaksanaan Diversi Dalam Penyelesaian Tindak Pidana Anak Di Tingkat Pengadilan* (The 4th University Research Coloquium, 2016).

²⁰ As formulated in Article 29 of the JCJS Law.

²¹ As formulated in Article 42 of the JCJS Law

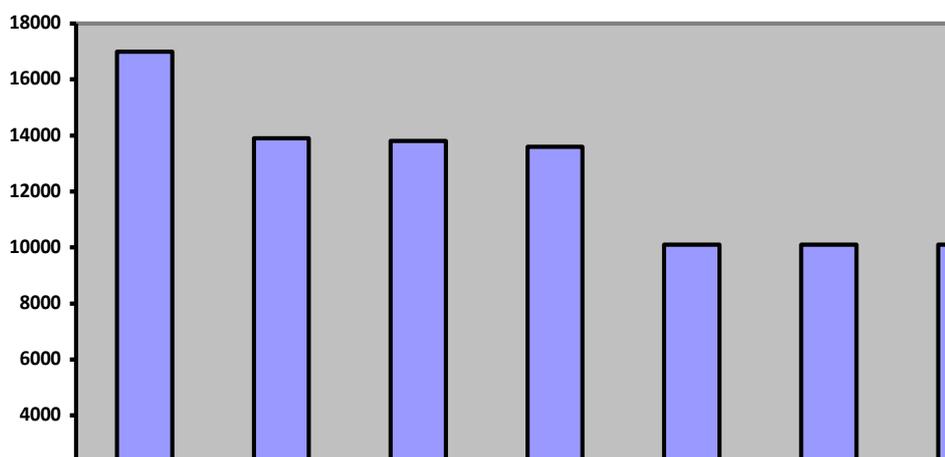
²² As formulated in Article 52 of the JCJS Law

been addressed in the Convention on the Rights of the Child, which was ratified by Presidential Decree No. 36 of 1990 on Ratification of the Convention on the Rights of the Child and reaffirmed later by Law No. 23 of 2002 on Child Protection. These two regulations distinctly demonstrate the endeavours to safeguard juveniles, particularly emphasising the principle of prioritising the best interest of the child, wherein the imposition of punishment on juveniles should be considered the final recourse.

From the perspective of juvenile justice in Indonesia, the sub-system in the juvenile justice system²³ is unique. As a specific legal study, the juvenile justice system requires officials who are particularly authorised to implement criminal justice system that involves juvenile delinquency.²⁴ Generally, the criminal justice apparatus for juveniles who commit crimes is the same as the system that applies to adults (police, public prosecutors, judges, and correctional institutions). However, a special institution called Correctional Officer is essential in the juvenile justice process. The authors highlight that the specific need of experts in the juvenile crime system is a focal point in protecting juveniles who commit crimes.²⁵

As a focal point, correctional officers are obliged to publish Community Research at every stage of the judicial process. This research contains personal data on the child, a chronology of events, and suggestions from correctional officers on the juvenile justice structure. Rationally, the obligation to apply diversion as restorative justice in juvenile justice should have suppressed child offenders' occupancy into correctional assistance in the Special Child Development Institution. Nonetheless, empirically obtained data shows that the number of juveniles as correctional inmates is still quite high. In July 2022, the overall occupancy of assisted residents (adults and juveniles) in South Sumatra was the highest of the 33 regional offices, as illustrated in the diagram below:²⁶

Diagram 2. Number of Correctional Institutions by Region



²³ With the issuance of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, the definition of the juvenile justice system has been formulated, namely: the entire process of resolving cases of children in conflict with the law, from the investigation stage to the mentoring stage after serving a sentence. See Article 1 Number 1 Law No. 11 of 2012 concerning the Juvenile Criminal Justice System.

²⁴ The specificity of children is based on the premise that children have "special characteristics", as formulated in the Preamble of Law No. 3 of 1997 concerning Juvenile Courts.

²⁵ Nashriana, "Judge's Considerations in Imposing Prison Sentences for Children Who Do Narcotics Abuse," *Simbur Cahaya* 20, no. 5 (2013).

²⁶ "No Title," n.d., <http://sdppublik.ditjenpas.go.id/analisis/public/grl/bulanan>.

Diagram 2 shows that the South Sumatra Regional Office is in the top 10 areas with the highest occupancy rates for adult correctional institutions and special development institutions for juveniles. The first order is held by DKI Jakarta Regional Office, followed by the North Sumatra Regional Office, then the West Java Regional Office, the East Kalimantan Regional Office, the South Kalimantan Regional Office, the Riau Regional Office, the Banten Regional Office, the Lampung Regional Office, and the South Sumatra Regional Office at number 9. Regarding data on juveniles with correctional status, the South Sumatra Regional Office also has the highest number of all existing Regional Offices (33 Regional Offices), not much different from the North Sumatra Regional Office, West Java Regional Office, Central Java Regional Office, and Lampung Regional Office. The details are illustrated below:²⁷

Table 2: Data of the Highest Corrective Children in 2022 at 33 Kanwil in Indonesia

Regional Office	January	February	March	April	May	June	July
South Sumatera	M: 106 F : 2	M: 91 F : 3	M: 91 F : 3	M: 79 F: 3	M: 74 F: 3	M: 80 F: 3	M: 75 F: 3
North Sumatera	M : 85 F : 1	M: 95 F: 1	M: 95 F: 1	M: 92 F: 0	M: 20 F: 0	M: 26 F: 0	M: 14 F: 1
West Java	M: 74 F : 1	M: 81 F: 1	M: 81 F: 1	M: 89 F: 1	M: 1591 F: 1	M: 98 F: 1	M: 80 F: 1
Central Java	M: 62 F : 2	M: 66 F : 1	M: 66 F: 1	M: 78 F: 1	M: 72 F: 1	M: 66 F: 2	M: 56 F: 1
Lampung	M: 75 F: 1	M: 68 F: 2	M: 68 F: 2	M: 91 F: 1	M: 72 F: 1	M: 78 F: 1	M: 81 F: 1

Note: M is for Male and F is for Female

The table 2 indicates that children in correctional facilities in South Sumatra were the highest in January 2022. However, the highest number shifted to the North Sumatra Regional Office in February. South Sumatra became the second-highest in March, following the North Sumatra Regional Office. In April, the South Sumatra Regional Office occupied the lowest position. Moving to May and June, the South Sumatra Regional Office ranked second after the West Java Regional Office. Finally, in July, the South Sumatra Regional Office dropped to the third position, with the highest number now recorded in the Lampung Regional Office, followed by the West Java Regional Office.

The high data on juveniles with the status of correctional assisted juveniles is a question that needs to be answered. So far, the research is evolving into a more complex discussion; is the criminal justice structure's incapability in implementing diversion at every level with juvenile offenders a challenge? Is it true that a juvenile who commits the crime of seven years and above imprisonment is not allowed diversion? These questions will be thoroughly answered based on an empirical approach. Regarding obstacles in implementing diversion for juveniles offenders, a theory by Soerjono Soekanto describes that law enforcement is influenced by numerous factors, namely, (1) legal factors, which in this case is limited by law, (2) law enforcement factors, which is the structure of juvenile justice consisting of investigators, public prosecutors, judges, and community counsellors, (3) facility factor or supporting

²⁷ *Ibid.*

facilities, (4) community factors, (5) and Cultural factors.²⁸ These factors are further explained below:

Legal Factor

The JCJS Law does not specify if crimes by juveniles are directly threatened with half of the sentence regulated by the criminal code. For example, if a juvenile commits theft by weighting (Article 363 of the Criminal Code), does it include possible resolution through diversion? This ambiguity causes interpretation differences among law enforcers. It is also learned that a restorative justice case must continue from the investigators' perspective even though there is a letter from the District Court.²⁹ The reason is that these cases could continue by the victim's will. Also, the JCJS Law does not provide a provision for officials to completely and legally stop the case they are handling.

Law Enforcer Factors

There are differences of understanding among fellow judges in dealing with cases of juvenile delinquents. Some judges follow Supreme Court Rules No. 4 of 2014 concerning Guidelines for the Diversion Implementation in the Criminal Justice System and follow the JCJS Law. This Supreme Court guideline regulates the juvenile's age that is applicable for diversion, which is 12 to under 18 years, including juveniles who are/were married between these ages. Another law enforcement factor is the number of social advisors, which is inversely proportional to the number of juvenile delinquents. The large number of juvenile delinquents is unmatched by the number of Community Advisors, resulting in less optimal assistance.

For instance, the South Sumatra Regional Police needs more juvenile investigators because juvenile cases are expedited and provided by law for a very short time, ten days at the police investigation stage. It is as disclosed by Santy Wijaya as Panit Unit 3 SUBDIT IV PPA, Dit-reskrim Regional Police of South Sumatra.³⁰

Victims Factors/ Family Victims

In resolving juvenile cases, the victim and their family often experience that the compensation proposed by the perpetrator is inequivalent to their losses. This causes the problem to drag on and usually ends with no agreement.

Perpetrator/Family Perpetrator Factors

The perpetrator and their family are also obstacles to restorative justice implementation. The perpetrator and their family often fail to fulfil the demands of the victim and their family because they are economically disabled.

Society Factor

First, there is still a paradigm of punishment for every crime, even if the perpetrators are juveniles. Such a paradigm shows that the orientation of revenge is still strong in society. The high number of unsuccessful diversions is found to be motivated by the community that prefers the judicial process. *Second*, another perspective is society's distrust towards police or authori-

²⁸ Soerjono Soekanto, *Perihal Kaedah Hukum* (Bandung: Alumni, 1978)., Patricia Birnie and Alan Boyle, "Loc.Cit.," 2002.

²⁹ As described by SH. MH. Panit Unit 3 SUBDIT IV PPA IPDA Dr. Santy Wijaya, (South Sumatra, n.d.).

³⁰ *Ibid.*

ties. When authorities pursue diversion in settling juvenile delinquency, the community suspects them of being subjective. If this happens, an agreement between the perpetrator and the victim will likely fail. *Third*, agreement or consensus between the perpetrator and the victim mediated by the authorities went unsuccessful because the perpetrators could not fulfil the victim's request.

Optimising the Diversion Implementation in Resolving Juvenile Delinquent Cases in Indonesia as Strengthening Restorative Justice in Indonesia

According to Commentary Rule 11 of UN Resolution 40/33, which outlines the UN Standard Minimum Rules for Administration of Juvenile Justice, diversion is considered a deviation from the traditional judicial approach when dealing with children who commit crimes. This restorative justice measure aims to divert these young offenders away from the conventional legal system. The primary targets for deviation are: ³¹ 1) The authorities actively strive to avoid detention, aiming to resolve children's issues while safeguarding their best interests, 2) Active diversion prevents the application of stamps or labels, thus actively protecting the child's psychological development, 3) The diversion process actively involves perpetrators, providing them with an opportunity to enhance their life skills, 4) Through diversion, the authorities actively ensure that the perpetrator is held accountable for their actions, 5) Diversion actively functions as a preventive measure, actively reducing the likelihood of the perpetrator repeating their offenses, 6) Diversion actively facilitates necessary interventions for both victims and perpetrators without resorting to formal legal procedures, 7) The active implementation of a diversion program effectively keeps children out of the justice system's processes, 8) By opting for diversion, the authorities actively keep children away from the negative influences and consequences of the judicial system.

Based on JSJC Law, the necessity to optimise the restorative justice principle as special protection towards juvenile offenders is grounded on the following pillars: 1) Philosophical Foundation; the philosophical reasons for the need for restorative justice regulation in juvenile justice are, of course, inseparable from what is formulated in the Preamble to the JCJS Law, that: a) Children are blessings, possessing inherent dignity and value as complete human beings. From the moment of birth, they are entitled to fundamental human rights. Despite their imperfections, children greatly need assistance from adults in their surroundings. They are entrusted to be guided, sheltered, and provided with all the rights inherent to their existence because they are unable to protect themselves. This responsibility falls upon adults, including parents and society, acknowledging their role in nurturing and safeguarding children; b) Children's dignity and worth demand special protection, particularly within the justice system. Despite some actions mirroring adults' actions in criminal law, the treatment of children must remain distinct. This distinction finds its voice in international documents like the Beijing and Tokyo Rules, which are universally applicable in the international community. Consequently, as a nation, among others, Indonesia must adopt these universally accepted principles into its national criminal law regulations; c) Being a state party to the Convention on the Rights of the Child, Indonesia bears the responsibility of ensuring special protection for juveniles/children

³¹ Paulus Hadisuprpto, "Peradilan Restoratif: Model Peradilan Anak Indonesia Masa Datang," *Professor Inauguration of the Faculty of Law*, 2016, 19..

entangled in legal issues. Prior to the enactment of the JCJS Law, the formulation of legal protection for children has yet to be adequately addressed. Although the Law on Juvenile Courts aligns with the Convention on the Rights of the Child, it fails to encompass the crucial principle of restorative justice, which is essential in safeguarding children in conflict with the law. This principle is vital as it helps prevent stigmatisation and victimisation that could hinder these children's normal growth and development, who involuntarily find themselves in legal trouble.

The crux of understanding the importance of restorative justice regulation in resolving child cases lies in its philosophical foundation—dedicating all efforts to protect children solely for their best interests. To ensure effective child protection, it becomes imperative to prioritise the principles that place the child's best interests at the forefront of every decision concerning them. Neglecting this crucial principle would create numerous stumbling blocks in our mission to safeguard children effectively. The principle of the child's best interest is particularly vital because, in many cases, children become "victims" due to their innocent lack of understanding. Ignoring this principle would inadvertently pave the way for the emergence of more serious societal challenges in the future.³² Juridically, the principle of the child's best interests is contained in Article 3 of the Convention on the Rights of the Child (CRC) and Article 2 of Law No. 23 of 2002 concerning Child Protection. 2) Sociological Foundation, To understand the urgency of regulating the principle of restorative justice for providing special protection to children who commit criminal acts, it is essential to examine the historical perspective of the Indonesian people, consisting of numerous ethnic groups. Throughout history, indigenous peoples have resolved criminal acts through deliberation and consensus, showing a consensus approach. These settlements reflect the ancestors' legacy in Indonesian indigenous communities, which should be preserved. This customary approach embodies the true essence of Indonesia, suggesting that the term "restorative justice," which originated in Western countries, aligns with a concept deeply ingrained in Indonesian society for a long time.

In Indonesia, recognition of the existence of customary law in society is contained in paragraph 2 of Article 18B of the 1945 Constitution, which states that: "The state recognises and respects customary law community units and their traditional rights as long as they are still alive and following the development of society and the principles of the Unitary State of the Republic of Indonesia which are regulated in law". The Customary Law System for Criminal Case Settlement Efforts involves recognising and respecting community units governed by customary law and their traditional rights. Philosophically, this approach emphasises acknowledging and respecting all structures and institutions, including the judiciary, that pertain to indigenous and tribal peoples.³³

Settling criminal cases through a restorative approach views conflicts or damages arising from a crime as issues in community relationships that require joint resolution and restoration

³² One form of ignoring this principle through the formulation of laws is as formulated in Article 1. Number 2 letter b refers to the understanding of children who commit acts declared prohibited for children, both according to statutory regulations and other legal regulations that live and apply in the community concerned (cursive by the author). This understanding shows that Law No. 3 of 1997 has contradicted the principle of legality. Nashriana, "Membangun Sistem Sanksi Bagi Anak Berbasis Asas the Best Interest of the Child," *Simbur Cahaya* 20, no. 50 (2013): 11.

³³ Mohammad Jamin, *Peradilan Adat, Pergeseran Politik Hukum, Perspektif Undang-Undang Otonomi Khusus Papua* (Yogyakarta: Graha Ilmu, 2014).

by all involved parties. The process revolves around empowering the victim to actively participate in resolving the criminal act.³⁴ Toni Marshal reveals five principles of restorative justice through research entitled “Restorative Justice an Overview”, developed by Susan Sharpe in her book, “Restorative Justice a Vision for Hearing and Change”:³⁵a) Restorative Justice includes full participation and consensus, b) Restorative Justice seeks to heal the damage or loss resulting from the occurrence of a crime, c) Restorative Justice provides direct responsibility from the perpetrators in full, d) Restorative Justice seeks the reunification of members of a society that is divided or separated due to criminal acts, e) Restorative Justice provides resilience to the community so that it can prevent further criminal acts from occurring.

Restorative justice, primarily a system of resolving disputes or criminal cases outside the formal justice system, is formulated in the Criminal Procedure Code through mediation or deliberation to achieve justice. The objective is for the parties involved in criminal law, including the perpetrators and victims (along with their families), to reach a mutually agreed upon and approved solution. Restorative justice is regarded as a guiding philosophy to achieve justice outside the judiciary, facilitating a peaceful process between the perpetrators and victims (and their families) affected by the crimes. In cases where a child is a perpetrator, achieving peace becomes crucial to ensuring their future self-development is not hindered. Through restoration and consensus, children can grow and develop normally, similar to those who have not committed delinquency or crimes. 1) Juridical Foundation, The JCJS Law's formation, which follows the philosophy of restorative justice punishment, incorporates a diversion mechanism at each level of criminal justice examination stages. Juridically, this is based on the relevant rules outlined in the Preamble, specifically: a) The Convention on the Rights of the Child which regulates the principle of legal protection for children has an obligation to provide special protection for children in conflict with the law, which was ratified through Presidential Decree Number 36 of 1990, b) Law Number 39 of 1999 concerning Human Rights (State Gazette of the Republic of Indonesia of 1999 Number 165, Supplement to the State Gazette of the Republic of Indonesia Number 3886), c) Law Number 23 of 2002 concerning Child Protection (State Gazette of the Republic of Indonesia of 2002 Number 109, Supplement to the State Gazette of the Republic of Indonesia Number 4235); as amended by Law Number 35 of 2014, and the second amendment through Law Number 17 of 2016 dated 9 November, 2016, concerning the Stipulation of Government Regulation in lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to Become a Law, d) Law Number 13 of 2006 concerning Protection of Witnesses and Victims (State Gazette of the Republic of Indonesia of 2006 Number 64, Supplement to the State Gazette of the Republic of Indonesia Number 4635), e) Law Number 16 of 2011 concerning Legal Aid (State Gazette of the Republic of Indonesia of 2011 Number 104, Supplement to the State Gazette of the Republic of Indonesia Number 5248). 2) Political Foundation, A well-crafted criminal law policy

³⁴ Rufinus Hotmaulana Hutauruk, *Penanggulangan Kejahatan Korporasi Melalui Pendekatan Restoratif, Sebuah Terobosan Hukum*, Jakarta: Sinar Grafika, 2014, p. 106.

³⁵ Tony Marshal dalam La Syarifudin, “Sistem Hukum Adat Terhadap Upaya Penyelesaian Perkara Pidana,” *Jurnal Risalah Hukum* 15, no. 2 (2019): 6.

must embody positive values.³⁶ In theory, the goals of juvenile criminal law policy are intertwined with the broader objectives of criminal law policy, which ultimately aims to achieve social welfare. When dealing with youth crime and child delinquency, the focus extends beyond general social welfare and defence policies. Instead, it centres on child welfare politics and protecting children's rights, especially those who have become delinquents.

Based on the previous sub-chapters, obstacles to diversion's implementation in Indonesia are evident. Therefore, optimising the diversion implementation in resolving juvenile delinquent cases is necessary to strengthen restorative justice in Indonesia. The optimisation is possible by reformulating the regulation and prioritising prevention efforts. Hence, juvenile delinquency does not reach court, and this will portray diversion effectiveness based on restorative justice.³⁷ The optimisation efforts are described as follows:

Reformulation of Legal Provisions

Delinquent juveniles can be intentionally addressed through a diversion process that engages the child, parents/guardians, victims, community counsellors, and professional social workers, all guided by a restorative justice approach. The outcome of this diversion agreement may lead to a resolution with restitution, as specified in the JCJS Law. Restitution for a child who falls victim to a crime may involve compensation for property loss, the distress caused by the crime, and/or reimbursement for medical and psychological expenses. Based on the provisions of the JCJS Law, restitution is in the form of money, but the JCJS Law does not regulate other forms of restitution. This condition causes juveniles who come from poor families less opportunity to settle their cases outside the court. The circumstances are different in the Philippines and Thailand; these countries have expanded the meaning of restitution by providing other options, such as services by the perpetrator and/or their family to the victim and their family, as well as repairing the damage caused by the perpetrator. This form of restitution is an alternative reformulation in the *ius constituent* dimension. However, law enforcement must determine and supervise the form of restitution services to avoid slavery.³⁸

The criminal law policy theory is potentially used to reformulate Article 7 paragraph (2) letter (a) of the law on the Juvenile Criminal Justice System. As mentioned, this Article is inconsistent with the principle of child protection without discrimination. This reformulation

³⁶ According to Wisnubroto, Penal Policy is an action related to: 1) What are the government's efforts to tackle crime with criminal law; 2) How to formulate criminal law to suit the conditions of society; 3) How is the government's policy to regulate society with criminal law; 4) How to use criminal law to regulate society in order to achieve greater goals. This opinion adopts from the opinion of Marc Ancel states that "Penal Policy" is a science as well as an art which ultimately has a practical goal to enable positive law regulations to be better formulated and to provide guidelines not only to legislators but also to courts—those who apply the law, as well as the organisers or executors of court decisions. Barda Nawawi Arief, "Bunga Rampai Kebijakan Hukum Pidana. Perkembangan Penyusunan Konsep KUHP Baru," in *Edisi 1 Cet. 2* (Jakarta: Kencana, 2010), 27.

³⁷ Gde Made Swardhana Diah Ratna Sari Hariyanto, "Optimalisasi Pelaksanaan Diversi Dalam Sistem Peradilan Pidana Anak Yang Berorientasi Pada Restorative Justice Di Kota Denpasar," *Jurnal LEGISLASI INDONESIA* 18, no. 3 (2021): 394–404, 394.

³⁸ I Wayan Putu Sucana Aryana, "The Reformulation of Restitution Concept in Juvenile Cases (A Comparative Study with Philippines and Thailand)," *PADJADJARAN Journal of Law* 7, no. 3 (2020): 400–420, 417.

stage aims to realise juveniles' rights in the diversion process. This reformulation is essential, considering the Article limits diversion to criminal penalties under 7 (seven) years.³⁹

The reformulation of diversion requirements against Article 7, paragraph 2 does not need to include a limitation under seven years of punishment. If this clause is maintained, it will distort the basic idea of the juvenile justice system. The authors opined that if there is a necessary prerequisite for diversion, it is far better to add the explanation in Article 9 paragraph (1) letter "a" in the body of Article 7 paragraph 2. Article 9 paragraph (1) letter "a" regulates the qualifications of serious criminal acts, such as murder, drug trafficking, terrorism and rape. As a separate note, the four serious crimes in question must be detailed, for example, by emphasising "premeditated murder" as a serious crime.⁴⁰

The strategy of reforming criminal law within the Indonesian juvenile justice system to align with restorative justice principles should focus on the clauses within the Criminal Code Bill. These provisions fundamentally emphasise the importance of the child's future interests by advocating restorative justice as child-related cases' primary settlement. This gesture is hopefully effective in preventing juvenile punishment. Ideally, the idea of Restorative Justice through the diversion process is applied comprehensively. Thus, juveniles will be spared from the traumatising effects of the formal justice process and the negative stigma that may arise in society.⁴¹

Prevention

The restorative justice formulation policy in the JCJS Law is a preventive policy, namely a policy given by law to law enforcement to prevent bringing suspects to court unnecessarily. The philosophical foundation contained in this law is to provide legal protection for juveniles as juvenile delinquents to realise restorative justice (recovery) through diversion, starting from receiving reports by the police to the court stage. This is done to prevent the possibility that the defendant will be imprisoned, considering the imperative system of formulating prison sentences. This policy can be pursued by giving authority to law enforcement officials to select suspects who will be brought to court even though the person has committed a crime.⁴²

It is crucial to reinforce coordination, training, and outreach to law enforcement to enhance prevention endeavours. Law enforcement aims to promote social order and legal assurance by establishing clear regulations for the functions, responsibilities, and authorities of law enforcement institutions tailored to their specific domains. A robust cooperation system should be in place to support the intended goals effectively.⁴³ In addition, the morale of law enforcement officials as the main key in law enforcement must be addressed and improved through training. Legal reform also requires improving the quality of science. Increasing the

³⁹ Rahma difa Sherfany, "Reformulasi Diversi Dalam Undang-Undang Sistem Peradilan Pidana Anak Yang Mencerminkan Prinsip Perlindungan Anak," *Kumpulan Jurnal Mahasiswa Fakultas Hukum Universitas Udayana* 1, no. 22 (2016): 17.

⁴⁰ Derita Prapti Rahayu Faisal, "Reformulasi Syarat Diversi: Kajian Ide Dasar Sistem Peradilan Pidana Anak," *Masalah-Masalah Hukum* 50, no. 3 (2021): 331–38, 337.

⁴¹ Muhamad Mahrus Setia Wijaksana, "Kebijakan Pembaharuan Hukum Pidana Terhadap Konsep Restorative Justice Dalam Sistem Peradilan Pidana Anak Di Indonesia," *Jurnal Rechtsvinding Media Pembinaan Hukum Nasional* 1, no. 5 (2020): 5.

⁴² I Made Wahyu Chandra Satriana, "Kebijakan Formulasi Keadilan Restoratif Dalam Sistem Peradilan Pidana Anak," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 3, no. 2013 (2AD): 1–18, 15.

⁴³ Sanyoto, "Penegakan Hukum Di Indonesia," *Jurnal Dinamika Hukum* 8, no. 3 (2008): 199–204, 199.

quality of science is expected to improve the quality of legislative and law enforcement products. There is no meaning in forming/renewing laws and law enforcement agencies if the knowledge (law) of legislators and law enforcement officials is not updated and improved.⁴⁴

Approaching the community and increasing awareness of resolving cases through diversion is important. Legal counselling is essential to spread knowledge and comprehension of legal norms and relevant regulations. Its objective is to foster and enhance public legal awareness, thereby cultivating a legal culture that adheres to established legal norms. This pursuit ultimately upholds the principles of the rule of law, ensuring orderliness and compliance within society. Legal counselling is regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number: M-01.PR.08.10 of 2007 concerning Amendments to the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number: M01.PR.08.10 of 2006 concerning Patterns of Legal Counseling.⁴⁵ The immediate requirement is to establish a strong presence of legal counsellors to optimise legal counselling and community outreach. By doing so, the extension of legal services can significantly aid in effectively disseminating legal knowledge to the public. Integrating diverse methods and innovative approaches will further enhance the process of providing engaging counselling and socialisation activities.⁴⁶

CONCLUSION

Specific stages within the criminal justice process necessitate the implementation of diversion when dealing with juvenile offenders. Nevertheless, several hindering factors in executing diversion for resolving juvenile delinquency in Indonesia can be identified, including legal, law enforcement, facilities, societal, and cultural factors. These obstacles underscore the importance of enhancing juvenile delinquency diversion implementation in Indonesia to reinforce restorative justice practices. The need for efforts to optimise the principle of restorative justice as a basis for special protection for children who commit delinquency, as set forth in the JSJC Law, is based on the philosophical, sociological, juridical, and political foundations. To achieve this, optimisation is achievable through regulatory reformulation and a focus on preventive measures. These measures aim to prevent juvenile delinquency cases from reaching the court system and thus strengthen diversion based on restorative justice principles.

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⁴⁴ Ismansyah, "Permasalahan Hukum Dalam Pengembangan Ilmu Hukum Di Indonesia (Pentingnya Reformasi Hukum Terkait Dengan Permasalahan Hukum)," *Jurnal Demokrasi* 9, no. 1 (2010): 1–28, 19.

⁴⁵ Sudjana, "Penyuluhan Hukum Dalam Upaya Peningkatan Kesadaran Hukum Berlalu lintas Melalui Pemahaman Terhadap Isi Undang-Undang Nomor 22 Tahun 2009 Tentang Lalu Lintas Dan Angkutan Jalan," *JPIS, Jurnal Pendidikan Ilmu Sosial* 25, no. 2 (2016): 1–14, 3.

⁴⁶ Yul Ernis, "Implikasi Penyuluhan Hukum Langsung Terhadap Peningkatan Kesadaran Hukum Masyarakat," *Jurnal Penelitian Hukum De Jure* 18, no. 4 (2018): 477–96, 486, <https://doi.org/http://dx.doi.org/10.30641/dejure.2018.V18.477-496>.

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