

DIVERSION AS A LEGAL CONCEPT THAT IS EQUITABLE FOR CHILDREN IN INDONESIA

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ABSTRACT

Indonesia is obliged to guarantee children's rights so that their lives can run normally. As a manifestation of the fulfillment of child protection, Indonesia has ratified the Convention on the Children's Rights. To fulfill this responsibility, the Indonesian Child Protection Law was regulated. This law provides several articles to fulfill children's rights without distinguishing ethnicity, religion, race, class, gender, culture and language, legal status, birth order, physical and mental condition, and be responsible for formulating and implementing policies in the field of child protection. Children are legal subjects and national assets. As part of the younger generation, children play a very strategic role as the nation's next generation. In Indonesia, children are the successors of the ideals of a nation's struggle. The urgency of protecting children's rights makes this research examine the problem-solving of children who commit crimes. Efforts to resolve children's problems in conflict with the law are part of the cluster of the Convention on the Children's Right; it is called 'special protection'. The resolution of children's problems facing the law is still interesting to study today. Based on this condition, there is a need for appropriate case resolution for children. One of them is the application of restorative justice through the diversion system. This research will examine the issue critically and normatively, that diversion is a legal concept that is fair to children in Indonesia. For this reason, this legal research uses doctrinal research methods. This legal research aims to find the rule of law, legal principles, and legal doctrines to answer the legal issues faced in this research.

Keywords: *Diversion; Children; Fair; Law*

A. INTRODUCTION

The Indonesian state is obliged to guarantee children's rights so that their lives can run normally. The constitution is expressly stated in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia; it states that every child has the right to get justice and legal protection in their growth and development, free from violence discrimination. As a manifestation of the fulfillment of child protection, Indonesia has ratified the Convention on the Children's Rights (El Rachma, 2021). This Convention is an international instrument ratified by Indonesia in 1990 through the Decree of the President of the Republic of Indonesia Number 36 of 1990 concerning Ratification of the Convention on Children's Rights. This Convention is divided into eight clusters: implementation steps; definition; principles; civil rights and freedoms; family environment and alternative care; basic health and well-being; education, leisure time, culture, and recreation; and special protection. The Convention on the

Children's Rights is an instrument that formulates universal principles and legal norms regarding the child's position. It was ratified to ensure the protection of children and enforce children's rights throughout the world. As the implementation of the ratification, the State of Indonesia has provided a legal umbrella for child protection through Indonesian Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (Child Protection Law). Article 1 of the Child Protection Law states that "Child protection is all activities to guarantee children and their rights to live, grow, develop, and participate optimally according to human dignity and protection from violence and discrimination".

The Indonesian Child Protection Law provides several articles, including obliging and giving the responsibility to the government. This obligation is intended to fulfill children's rights without distinguishing ethnicity, religion, race, class, gender, culture and language, legal status, birth order, and



physical and mental condition, and be responsible for formulating and implementing policies in the field of child protection (Aji, 2019). This law also gives responsible to the regional government to support national policies in the implementation of child protection regionally, which can be realized through regional efforts to build child-friendly districts/cities and provide support for facilities, infrastructure, and the availability of human resources in child protection (Lubis & Siregar, 2021). The Indonesian central and local governments guarantee children's protection, maintenance, and welfare by paying attention to the rights and obligations of parents, foster parents, or other people who are legally responsible for children. The government also oversees the implementation of child protection and guarantees children to exercise their rights in expressing opinions according to children's age and intelligence level. The government's most important responsibilities are to provide basic education of at least 9 (nine) years; provide the widest opportunity to obtain an education; and provide tuition fees, free assistance, or special services for poor children, neglected children, and in remote areas.

Children are legal subjects and national assets. As part of the younger generation, children play a very strategic role as the nation's next generation. In the context of Indonesia, children are the successors of the ideals of a nation's struggle. The international community has recognized this strategic role to give birth to a convention that essentially emphasizes the child's position (Utami, 2018). Children are an inseparable part of human survival and the sustainability of a nation and state. To be responsible for the sustainability of the nation and state, every child needs to get the broadest possible protection and opportunity to grow and develop optimally, physically, mentally, and socially (Garcia, Disemadi & Arief, 2020). For this reason, it is necessary to carry out protection efforts to realize the welfare of children by providing guarantees for the fulfilment of their rights without any discriminatory treatment. However, based on several previous studies, the current phenomenon shows that many children have

committed criminal acts as national assets. Such as narcotics (Ali, Zanariyah & Susanti, 2019; Firdaus, Danil, Sabri & Habibi, 2019), persecution (Nida & Nurhafifah, 2020), theft (Pardjanihadi, Ediwarman & Zulyadi, 2021; Hamzah, Siku & Hasan, 2020), beatings (Aprilia, Pratiwi & Ambarita, 2019), obscenity (Purwanti, 2019), to terrorism (Fad, 2019). Deviations in behaviour or unlawful acts are caused by various factors, including the negative impact of rapid development, globalization in communication and information, advances in science and technology, and changes in the style and way of life of some older people. All of these facts have brought about fundamental social changes in people's lives, which significantly affect the values and behaviour of children (Ratomi, 2013).

Based on the description above, this research will examine the problem-solving of children who commit crimes. Efforts to resolve children's problems in conflict with the law are part of the cluster of the Convention on the Rights of the Child, namely 'special protection.' The resolution of children's problems facing the law is still interesting to study today. Based on this, there is a need for appropriate case resolution for children. One of them is the application of restorative justice through the diversion system. This diversion topic has been studied in previous studies. Such as the publication of research results by Sulton Zaki Ananda in 2021. This research shows that in the juvenile justice system, the application of diversion to children in conflict with the law is the implementation of restorative justice that provides justice and protection for children who violate the law without neglecting the criminal responsibility of children. Diversion is an effort of a peaceful process between children who commit violations and their victims or their families and is a punishment for children who violate informally (Ananda, 2021). Zeha Dwanty El Rachma carried out another research publication in 2021. This research shows the same thing as research conducted by Sulton Zaki Ananda. Diversion is a policy carried out to avoid perpetrators from the formal criminal justice system. However, there are conditions for diversion. This study also shows that diversion has not positively influenced criminal suspects'

children entirely. It is proven by the repetition of criminal acts by the suspect (El Rachma, 2021). Based on the description above and several previous studies, this research will further examine diversion as a legal concept that is just and provides legal protection for children's human rights. The limitation of the research is that the data studied are secondary in the form of primary legal materials in the form of laws and regulations and the results of previous studies related to diversion studies.

B. RESEARCH METHOD

Research is intended to look for new findings in the form of knowledge. This knowledge can be used to answer and solve a problem. There are two types of legal research methods, namely doctrinal legal research and non-doctrinal legal research. Two of which have different properties and characteristics in their methods. The type of research used in this research is doctrinal research. This legal research aims to find the rule of law, legal principles, and legal doctrines to answer the legal issues faced. Doctrinal research is research on the law, which is conceptualized and developed based on doctrine. This research is embraced by positivists and is also known as the doctrinal method, a tradition by legal experts with functionalist-realism views. The data used is secondary data in the form of legal materials such as legislation and related research funds.

C. RESULTS AND DISCUSSION

The Concept of Justice for Children in the Juvenile Criminal Justice System in Indonesia

Handling criminal cases against children is different from handling cases against adults. It is unique because it is also regulated in separate regulations. There may still be some in the community who do not understand about the process of handling children's cases, so that sometimes it rises various assessments, even more, if there is a misjudgment that the handling of children, especially children in legal conflict, get special treatment. Some think that children cannot be punished even though it is not that far. It is just that the handling process is precisely regulated. The juvenile criminal justice system is the entire process of resolving cases

of children in conflict with the law from the investigation stage to the guidance stage after undergoing a criminal process based on protection, justice, non-discrimination, the best interests of the child, respect for the child, the survival and development of the child, proportional, deprivation of liberty and punishment as a last resort and avoidance of retaliation (Article 1 point 1 and Article 2 of Indonesian Law Number 11 of 2012 concerning the Juvenile Criminal Justice System/*SPPA* Law).

In the juvenile criminal justice system, children who conflict with the law, victims, and children who witness criminal acts are all included. Children in conflict with the law are 12 years old or more but under 18 years old and are suspected of committing a crime. Children who become victims are under 18 (eighteen years old) and have suffered physical, mental, and economic losses due to criminal acts. A child who becomes a witness is under 18 (eighteen years old) and can provide information for the benefit of the legal process starting at the level of investigation, prosecution, and trial regarding a criminal case that has been heard, seen, and or experienced. Suppose a child commits a criminal act under the age of 18, then it is submitted to a court hearing after the child exceeds the age limit of 18 years but has not yet reached the age of 21. The child is still submitted to the juvenile court. It is stated in Article 20 of the Indonesian *SPPA* Law.

Furthermore, suppose a child under 12 years of age commits or is suspected of committing a criminal act. In that case, the investigator community advisor decides to hand it over to the parent/guardian or to include him/her in educational programs, coaching at government agencies, or social welfare organizing institutions that handle the social welfare sector. (Article 21 of the Indonesian *SPPA* Law, Article 67 of Government Regulation Number 65 of 2015).

In adult cases (aged 18 years and over), each level of examination does not need to be accompanied by a parent/foster parent. However, in cases where a child conflicts with the law, it is necessary to be accompanied by a parent/foster parent. The parties involved in the juvenile criminal



justice process are Child Investigators, Child Public Prosecutors, Child Judges, Community Counselors (law enforcement functional officials who carry out community research, guidance, supervision, assistance to children inside and outside the criminal justice process). Furthermore, there is a Social Worker (someone who works in both government and private institutions that has the competence and the social work profession and concern in social work obtained through education and experience of social work practice to carry out social problems).

The investigators are determined based on the decision of the police head or other officials appointed by the head of the police. In contrast, the prosecution is carried out by public prosecutors who are determined based on the attorney general's decision or other officials appointed by the attorney general. In investigating a child's case, the investigator must ask for considerations or suggestions from the community advisor after the crime is reported. Then the Community Research Center is obliged to submit the community research results no later than three days after the investigator's request. In examining a child victim, the investigator must request a social report from a social worker or social welfare worker after the crime has been reported. Furthermore, the child who is proposed as a child in conflict with the law in the investigation, prosecution, and examination in court must seek diversion. Diversion is the transfer of the settlement of children's cases from the criminal justice process outside the criminal justice process under the conditions that it is threatened with imprisonment for under 7 (seven) years and not a repeat of the crime. In addition to these provisions, it also applies to children who are accused of committing a crime which is punishable by imprisonment of less than 7 (seven) years and also charged with a crime punishable by imprisonment (seven) years or more in the form of subsidiarity, alternative, cumulative or combination charges. (combined), It is stated in Article 7 of the Indonesian *PERMA* Law Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System.

Criminal justice (the juvenile justice system) is a form of protection provided by law to children committed a crime (Sarwadi & Bawono, 2021). The orientation of the entire juvenile criminal justice process must be aimed at the child's welfare, based on the principle of children's best interest. There are two targets for establishing the judiciary. They are 1. Advancing the welfare of children (the promotion of the wellbeing of the juvenile) means that the principle of child welfare must be seen as the main focus in the juvenile justice system. This principle can be used not to apply purely criminal sanctions or punishing sanctions; 2). Putting forward the principle of proportionality is intended to curb sanctions that mean to retaliate.

Protection of Children's Rights through Diversion

Children as part of human beings have rights and obligations. Article 6 paragraph (1) of the Convention on the Rights states that every child has inherent rights in life. Concern for children began in the 1920s after World War 1 because children and women were considered weak. So that the granting of rights to children is also a form of child protection (El Rachma, 2021). The quality of protection for children should have a degree or level that is at least the same as protection for adults because everyone has the same position before the law (equality before the law) (Hambali, 2019).

Through the Indonesian Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (*SPPA* Law), Indonesia explicitly accommodates the process of resolving child criminal cases through diversion. This law has been effective since July 31, 2014, aiming to maintain the dignity of children with a restorative justice approach. A child has the right to special protection, especially legal protection in the criminal justice system. Therefore, the Juvenile Criminal Justice System does not only emphasize the imposition of criminal sanctions for children who commit crimes but also focuses on the idea that the imposition of sanctions is intended as a means of realizing the welfare of children who are perpetrators of these crimes (Darmika, 2018). It is in line with the

objectives of implementing the Juvenile Criminal Justice System, which the international community desires (Hambali, 2019). The Juvenile Justice System is all elements of the criminal justice involved in handling juvenile delinquency cases. The police, as a formal institution, will determine whether the child will be released or further processed when juvenile delinquents first come into contact with the justice system. Prosecutors and parole agencies will also determine whether the child will be released or processed in juvenile court. Juvenile Court is when the child will be placed in choices, starting from being released to being included in a sentencing institution (Utami, 2018).

Based on this *SPPA* Law, diversion aims to achieve peace between victims and children, resolve children's cases outside the judicial process, prevent children from depriving children of independence, encourage the community to participate, and instill a sense of responsibility in children (Harefa, 2015). A diversion is a form of child protection that concerns handling children when dealing with cases (law). The provision of diversion for children can be carried out at all levels of justice, starting before a crime by taking preventive measures. The Convention on the Rights of the Child contained in Article 40 paragraph (1) provides limitations on the understanding of children in conflict with the law. In this case, suspected children are categorized in particular situations. These particular situations in UNICEF refer to Children In Especially Difficult Circumstances (CEDS). The children's needs are not fulfilled. They are vulnerable to violence, outside the family environment (within the scope of State institutions), require protection, security for themselves, and special protection. Those protections are not fulfilled, and they do not receive any care from adults (El Rachma, 2021).

The Juvenile Justice System is aimed at the welfare of children. It is emphasized in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. This rule states that the purpose of juvenile justice is "The criminal justice system for children/adolescents will prioritize their welfare and ensure that any reaction to juvenile offenders will always be

commensurate with conditions both for violators of the law and for those who violate the law." Before the Indonesian *SPPA* Law, the juvenile justice system was based on Law Number 3 of 1997 concerning Juvenile Courts (Indonesian Child Court Law). This Juvenile Court Law has not provided optimal protection for children. The law uses a formal juridical approach by emphasizing punishment (retributive). The paradigm of arresting, detaining, and imprisoning children has the potential to limit freedom and deprive children of their independence. To overcome the weakness of the Juvenile Court Law, the *SPPA* Law was enacted. The fundamental change in the law is the use of the Diversion and Restorative Justice approach and the obligation of law enforcers to seek diversion at all stages of the legal process (Utami, 2018).

Restorative justice is the settlement of criminal cases. In this case, the perpetrators are children and involve related parties to seek a settlement out of court with the principle of restoring the situation. It does not aim to avenge the perpetrator's actions with imprisonment. Restorative justice is based on the human relationship between victims and offenders. It focuses on crime's impact on all parties, victims, society, and the offenders themselves. Additionally, Restorative justice is known as the concept of punishment which intends to enforce a more just and balanced criminal system. It happens by taking into account the interests of the perpetrators and victims as a mechanism to achieve goals that are resolved by peace (Nurhaliza, Liyus & Wahyudhi, 2020).

Furthermore, one form of restorative justice is the Diversion of children in conflict with the law. Diversion is the authority of law enforcement officers who handle criminal cases to take action, whether to continue or stop the case, including taking certain actions under their policies. However, law enforcement must seek Diversion in every child criminal case that meets the requirements. Article 1 point 7 of the *SPPA* Law states that the definition of Diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice process. Diversionary handling of legal conflicts aims



to: a) achieve peace between victims and children; b) resolve child cases outside the judicial process; c) prevent children from deprivation of liberty; d) encourage the community to participate; e) instill a sense of responsibility in children. Article 8 of the Indonesian *SPPA* Law stipulates that the implementation of Diversion is carried out through deliberation involving children and their parents/foster parent, victims and their foster parents, community advisors, and professional social workers based on a restorative justice approach. This arrangement confirms the existence of a deliberation process by interested parties regarding the handling of children who commit criminal acts. Thus, the victim and their parents/foster parents must be invited to the deliberation.

The application of Diversion must be pursued at all levels of the legal process, such as investigation, prosecution, and examination of children in district courts. The conditions for Diversion are regulated in Article 7 of the *SPPA* Law. They are a) threatened with imprisonment for under seven years; b) is not a repetition of a crime. Diversion efforts are carried out by taking into account the interests of the victim, the welfare and responsibility of the child, avoiding negative stigma, avoiding retaliation, community harmony and propriety, decency, and public order. The Diversion Agreement is carried out with the consent of the victim and the victim's family and the child's willingness and his family. Several exceptions are also emphasized in Article 9 of the *SPPA* Law, namely a) criminal acts in the form of violations; b) minor crimes; c) a victimless crime; and d) the value of the victim's loss is not more than the minimum wage value of the local province. This provision regulates diversion efforts with the victim's agreement and is based on these four conditions. However, if the alleged crime by a child is committed outside of these four things, then the Diversion effort can be carried out without the consent of the victim or the parent/guardian concerned. Investigators, public prosecutors, and judges in seeking Diversion, need to pay attention to the categories of criminal acts, the child's age, the results of community research, and the support of the family and community

environment. The affirmation of article 9 implies that the social conditions of children and families should also be a reason for consideration because whether or not the Diversion effort is effective will be based on the environmental conditions owned by the child. The forms of Diversion agreements that may be formed when referring to Article 11 of the *SPPA* Law include a) reconciliation with or without compensation; b) handover to parents/guardians; c) participation in education or training in educational institutions or Social Welfare Organizations for a maximum of 3 (three) months, or d) community service.

The important role of diversion is felt when protecting children's human rights. When a child commits a crime, there must be a solution. As previously explained, settlement of cases through formal criminal justice harms children's development. Since the investigation in the police, children's rights have the potential to be violated. Continue at the prosecution stage by the public prosecutor until the trial in court. Then, at a trial in court, a child has a high chance of being sentenced to criminal sanctions or action sanctions. Even the bad effects continue when the child is in a correctional institution. School crime and stigmatization have the potential to get children. Therefore, placing children in the formal criminal justice process must be avoided because it violates children's human rights (Harefa, 2015).

Settlement of child criminal cases through diversion is carried out with full family values. Therefore, diversion will keep the child away from the bad effects that can disrupt the development and future of the child. Diversion pays more attention to children's rights. The concept of diversion is very relevant to the spirit of restorative justice. Some even explicitly state that one form of the therapeutic process is a diversion. Restorative justice intends to shift the paradigm of thinking that has developed so far in the juvenile criminal justice system. So far, punishment is considered retaliatory (retributive) and only focuses on child perpetrators. Punishment for a person is not revenge but must be a form of education to prevent him from committing crimes again (Harefa, 2015).

Legal protection for children who conflict with the law in the juvenile criminal justice process in every stage, from the investigation process to the examination process in court, has not been able to provide protection that can provide a sense of justice and tends to be neglected (Lasmadi, Kumalasari & Disemadi, 2020). A good juvenile court is not merely a criminal justice for children and does not function solely as a social institution. The concept of Restorative Justice is simple and emphasizes the size of justice. It is no longer based on retribution from the victim to the perpetrator (either physically, psychologically, or in punishment). This painful act can be cured by supporting the victim and requiring the perpetrator to be held accountable and carried out with family and community assistance. It is based on a theory of justice which considers crimes and offenses, in principle, to be offenses against individuals or society and not against the state. Restorative justice fosters dialogue between victims. Restorative justice itself means a fair settlement involving perpetrators, victims, families, and other parties involved in a crime. Then jointly seek a solution to the crime and its implications by emphasizing restoration back to its original state (Lestari & Muchlis, 2020).

The Juvenile Criminal Justice System is all elements of the criminal justice system involved in handling juvenile criminal cases. Police, Prosecutor's Office and Courts, Community Counselors, Advocates, Child Special Guidance Institutions, Temporary Child Placement Institutions, and Social Welfare Organizing Institutions determine whether the child will be released or processed in juvenile court and further given choices. These options can range from being released to being included in a sentencing institution in the corridor of restorative justice. It is in line with: (1). United Nations Declaration on The Basic Principles on the Use of Restorative Justice Programs in Criminal Matters; (2). Vienna Declaration on Crime and Justice (Vienna Declaration on Crime and Justice: "Meeting the challenges of the Twenty-First Century") points 27-28 concerning Restorative Justice; and (3). The XI UN Congress in Bangkok in 2005 on the Prevention of Crime and Criminal Justice

(Eleventh United Nations Congress on Crime Prevention and Criminal Justice) at point 32: "Strategic Alliances in the Prevention of Crime and Criminal Justice (Synergies and Responses: Strategic Alliances) in Crime Prevention and Criminal Justice)".

The low downturn in Indonesia is caused by the legalistic-positivistic mindset and attitude that has distanced the law from its social reality. The justice problem is complex and can be found in almost every society. Law has two main tasks: achieving legal certainty and achieving justice for all people (Sirait & Cahyaningtyas, 2019). Among the many thoughts and concepts of justice, one concept of justice that is quite relevant is as conceptualized by Roscoe Pound. This concept distinguishes between legal justice and social justice. Then it is said that justice is not merely a juridical issue but a highlighted social problem. In reality, children who conflict with the law, both as perpetrators and as victims, become vulnerable because they can easily become victims of injustice. This legal injustice stems from a system based on the law in action with the law in a book. The punishment itself is more oriented to the individual perpetrator or commonly referred to as individual responsibility, where the perpetrator is seen as capable of being fully responsible for the actions he has committed. In contrast, the child is an individual who has not been able to realize the actions he did. It is because children are immature individuals in their thinking. Without realizing it, punishment can have a great psychological impact on children, which affects the child's mental and the development (Lestari & Muchlis, 2020).

However, the urgency of implementing diversion as a legal concept of justice for children still has weaknesses when examined from the theory of the legal system. It was stated in a research report by Muhammad Ansori in 2019 (Ansori, 2019). These weaknesses are:

Weaknesses of Legal Structure.

These weaknesses include the weakness of law enforcement by the police, prosecutors, and judges. The weakness of existing regulations can be overcome if there is concern and sensitivity from law enforcement officers in handling children



who have problems with the law. It happens because they have the discretion to provide an alternative to prison to protect the interests of the child's future. More law enforcers have a legalistic paradigm that is only guided by written laws because they have been trained for it. However, the law also provides flexibility in handling children in conflict with the law. The insensitivity of the apparatus is seen in settlement of cases in court. Children who conflict with the law are forced to continue attending court independently without lawyers and parents and are then imprisoned mixed with adults. It is made worse by the many "naughty" law enforcement officers. Law enforcement officers still monopolize the settlement of criminal cases. The community should be involved in solving these problems to achieve a balanced situation. The settlement is carried out through deliberation and involves the families of the perpetrators, victims, and the community where the incident occurred. Law enforcement officials should facilitate the deliberation and carry out what has been agreed upon in the deliberation. The results of the deliberation showed that this case was resolved amicably. Article 93 of the Indonesian *SPPA* Law does not specify community participation as an obligation in diversion, so it is not uncommon to find many cases of children in conflict with the law that are resolved without community involvement. In other words, the word "can" in the article only fulfills the conditions. Therefore Article 93 of the *SPPA* Law must be reconstructed by taking into account justice for children and the best case settlement under the diversion philosophy itself (Ansori, 2019).

Weaknesses of Legal Substance.

In Indonesian Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, provisions related to Diversion and restorative justice have been regulated, starting from the application at the level of investigation, prosecution to court. It is stated in CHAPTER II Article 6 of Indonesian Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The obligation to implement Diversion is stated in Article 5 (3), which reads, "In the Juvenile Criminal Justice System as referred to in paragraph (2) letters

a and b, it is obligatory to strive for Diversion". Diversion development in the current juvenile justice system provides an opportunity for juvenile offenders to obtain a diversion process. However, not all child offenders can get a diversion process, and certain criteria must be met. The provisions above indicate an obligation that must be carried out at each stage of the settlement of child cases. The Indonesian Constitutional Court Verdict Number 110/PUU-X/2012 annulled Article 96, states: "Investigators, Public Prosecutors and Judges who intentionally do not carry out their obligations as referred to in Article 7 paragraph (1) shall be sentenced to a maximum imprisonment of 2 (two) years or a maximum fine of Rp. 200,000,000.00 (two hundred million rupiahs)." Then the formulation of Article 93 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System also does not provide legal certainty and a sense of restorative justice. Article 93 of the *SPPA* Law does not specify community participation as an obligation in Diversion, so it is not uncommon to find many cases of children dealing with the law that are resolved without community involvement. The norm of the word "can" in the article is only the fulfillment of the conditions. This diversion orientation is no longer aimed at finding justice and resolving cases for children under the diversion philosophy itself but is only oriented towards fulfilling conditions.

Weaknesses of Legal Culture.

These weaknesses include the plurality of components of the nation, socio-economic disparities, and levels of knowledge that often lead to inequality between the strong and the weak. The people demand the enforcement of protective laws for vulnerable groups. The built system must be able to protect all parties' interests truly, and the current judicial system does not fulfill this. The culture adopted and has become an inseparable part of applying punishment. This culture continues and seems to be the right thing to do. In every sentencing, the most prioritized policy is the punishment of an act so that it is expected to get a deterrent effect for an action taken. This punishment model makes law enforcement behavior only punishment-oriented. The concept of diversion is only

used as an option, regardless of the success of its implementation. Until now, the criminal system still treats the children involved like criminals committed by adults. Children are placed in a position as a criminal who deserves the same punishment as adults. The punishment itself is more oriented to the individual perpetrator or commonly referred to as individual accountability, where the perpetrator is seen as an individual who can take full responsibility for his actions. While children are individuals who have not realized the actions or deeds they have done fully, this is because children are individuals who have not been able to think carefully. Therefore, by treating children the same as adults, it is feared that the child will quickly imitate the treatment of those around him.

The essence of diversion based on restorative justice theory is to involve all related elements so it can reach transparency, honesty, and the responsibility of each party by way of the community participating in monitoring and controlling the progress of the settlement of cases of children dealing with children. Because at this time, the culture adopted and has become an inseparable part of applying the law is the application of punishment. This culture continues and seems to be the right thing to do. In every sentencing, the most preferred policy is the punishment of an act so that it is expected to get a deterrent effect for an action taken (Ansori, 2019).

Laws made by humans must be able to follow human will in seeking justice and legal order to establish the rule of law. The judicial process that the child must take as a form of accountability for his actions impacts the development of the child. The stages starting from the process of investigation, prosecution, courts, and juvenile correctional institutions take quite a long time, and it is not uncommon for deviations and injustices to occur from the process. The child's inherent rights must be the main thing by the judge in deciding the case. A criminal educational system must be a priority for judges in making decisions. For children in conflict with the law, it is necessary to analyze the judge's policy in every decision. Judges placing children in prison should be a last resort and the shortest possible period.

D. CONCLUSION

The urgency of implementing diversion in children's cases is a reaction to several weaknesses of the retributive justice approach. This restorative justice approach is very positive and different from retribution and rehabilitation, which is only limited to protecting victims, not perpetrators. Therefore, the implementation of diversion efforts must be supported by various facilities that support the welfare of children and focus more on the psychological impact. The implementation of diversion for each stage of case handling in Indonesia has begun to appear since the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (*SPPA Law*) and the commitment of the Prosecutor's Office in optimizing the implementation diversion efforts. The commitment of law enforcement officers (Police, Prosecutors, and Judges) in carrying out diversion efforts for children who conflict with the law at every stage of the evidentiary process is enormous. However, regulations will only become regulations if professional law enforcement officers do not support them. Therefore, the government needs to equip and prepare law enforcement officers with special abilities and expertise in dealing with children.

Restorative justice in the juvenile criminal justice system is part of the implementation of diversion. Diversion and restorative justice arrangements have been formulated in the *SPPA Law*. Ideally, restorative justice involves three stakeholders, namely, victims, perpetrators, and civil society or the community, in determining the settlement of children's cases. Through restorative justice, there are efforts to bring together victims and perpetrators to seek recovery for victims. On the other hand, child perpetrators, even though they are perpetrators, are also victims who have the right also to get reinstatement and even socialize the child perpetrators, not by retaliating. In addition, the handling of child criminal cases through restorative justice will be carried out optimally if restorative justice completeness is available properly in a judicial institution.



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