

The Implementation of Restorative Justice for Juvenile Crimes Oriented Toward the Best Interests of the Child

**Wikan Sinatrio Aji¹, Setya Wahyudi², Dwi Hapsari Retnaningrum,³
Muhammad Imam Akbar⁴**

¹Student of Doctoral Program, Jenderal Soedirman University, Indonesia, Email: wikan.aji@mhs.unsoed.ac.id

²Jenderal Soedirman University, Indonesia, Email: setya.wahyudi@unsoed.ac.id

³Jenderal Soedirman University, Indonesia, Email: dwihapsari.retnaningrum@unsoed.ac.id

⁴The University of Queensland, Australia, Email: muhammadimam.akbar@student.uq.edu.au

Abstract

Law enforcement treats children in conflict with the law as “small adults” who commit criminal acts. The handling of children as perpetrators of crimes punishable by imprisonment of 7 years or more frequently neglects the best interests of the child. This study examines whether the concept of Restorative Justice can complement the resolution of cases involving children in conflict with the law, particularly those facing a sentence of 7 years or more. This study uses a normative juridical research method. The research findings suggest that Restorative Justice can complement the resolution of cases involving children in conflict with the law, particularly those facing sentences of 7 years or more, as it fundamentally upholds children’s rights. Moreover, Restorative Justice can be applied to such cases through existing diversion mechanism, which shifts the legal process from criminal proceedings to non-criminal alternatives. This approach involves mediation and negotiation between the perpetrator, the victim, their families, the community, and law enforcement to identify the best solution for addressing the issues faced by children as criminal offenders.

Keywords: *Children; Crime; Restorative Justice.*

1. INTRODUCTION

In cases involving children in conflict with the law, their young age often results in a prolonged and exhausting legal process, starting with police investigations, prosecution by the public prosecutor, court trials by the judge, and the implementation of court decisions.¹ From the investigation stage, law enforcement officials are authorized by law to detain children. Detention conditions can place significant mental and psychological strain on children, especially when they face trial as defendants. Punishment through the formal criminal justice system, including detention, has proven ineffective in deterring juvenile offenders or fostering their development into responsible individuals. On the contrary, detention facilities often expose children to negative influences, as they mingle with other children in conflict with the law or even adult inmates, potentially leading to an increased likelihood of criminal behavior.²

¹ Pujiyono Adi Hardiyanto Wicaksono, “Diversion Implementation Policy as Protection for Children in Conflict with the Law at the Prosecution Level at the Kudus District Attorney’s Office”, *Law Reform*, 11.no.1 (2015): 12–42, doi:<https://doi.org/10.14710/lr.v11i1.15752>.

² Pangestika Rizki Utami, ‘Konsep Diversi Dan Restorative Justice Sebagai Pergeseran Tanggung Jawab Pidana Pada Sistem Peradilan Pidana Anak’, *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 1.1 (2018), pp.

Children in conflict with the law are handled through the Juvenile Criminal Justice System (SPPA) under Law Number 11 of 2012. This law introduced the concept of diversion in Articles 6–15 as a form of juvenile justice reform. Diversion is an effort to shift case resolution from the formal justice process to informal mechanisms using a restorative justice approach.³ Through diversion, not all juvenile cases must be resolved in court. This approach prioritizes the best interests of the child while also considering justice for the victim and the community. The goal is to protect children from the negative impacts of the formal criminal justice system and provide protection and rehabilitation to prevent them from becoming criminals in the future.⁴ Diversion also emphasizes a persuasive approach and provides opportunities for children to change. According to Setya Wahyudi, diversion is a shift in the handling of juvenile delinquency from conventional judicial processes to a community-based approach to protect children from the negative impacts of formal justice.⁵ Diversion is a policy aimed at keeping offenders out of the formal criminal justice system. It is also implemented to provide protection and rehabilitation for offenders as an effort to prevent children from becoming adult criminals.⁶ The concept of diversion involves using persuasive approaches and providing offenders with an opportunity to reform. According to Setya Wahyudi, diversion is a form of redirection or sidelining of juvenile delinquency cases from conventional juvenile court processes toward a more community-service-oriented approach. It is implemented to shield juvenile offenders from the negative impacts of conventional juvenile justice practices.⁷

In the implementation of diversion, a restorative justice approach is employed, which Lilik Mulyadi describes as deliberation-based adjudication.⁸ In the diversion process using a restorative justice approach, efforts are made to involve all community elements related to the child's case.⁹ This includes representatives of the victim (if there is a victim), representatives of the offender, village officials or relevant agencies, and law enforcement officers serving as diversion mediators.

In practice, many law enforcement officers in Indonesia have not fully embraced the philosophy of child protection or the implementation of diversion. For instance, in some cases involving children without victims, alternative resolutions through diversion using a restorative justice approach are highly feasible. This is because, in

95–106, doi:<https://doi.org/10.24090/volksgeist.v1i1.1691>.

³ Emiliya Febriyani Tantimin, Ampuan Situmeang, 'Duress Prevention in Juvenile Criminal Proceedings: Comparative Analysis of The United Kingdom and Indonesia', *Jurnal Litigasi*, 26.1 (2025), pp. 1–25, doi:<https://doi.org/10.23969/litigasi.v26i1.19168>.

⁴ Ahmad Jamaludin Jambunanda Endad Musaddad, Muhammad Ishom, Mohd Norhusairi Mat Hussin, 'Guaranteeing the Rights of Children and Women Post-Divorce: A Comparative Study Between Indonesia and Malaysia', *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 8.1 (2025), pp. 1–14, doi:<https://doi.org/10.24090/volksgeist.v8i1.12214>.

⁵ Irma Cahyaningtyas Ellyana Masrurotin, 'The Urgency of the Implementation of the Children Hearing System Towards Children of Criminal Acts in the Diversion Process', *International Journal of Multicultural and Multireligious Understanding*, 9. no 4 (2002): 434–45, doi:<http://dx.doi.org/10.18415/ijmmu.v9i4.3627>.

⁶ Zahrah Salsabillah Ashari Erfaniah Zuhriah, Suud Fuadi, Imam Sukadi, 'Dimensions of The Islamic Law and Human Rights in The Protection of Children from Convicted Parents', *De Jure: Jurnal Hukum Dan Syari'ah*, 16.no.2 (2024), pp. 432–55, doi:<https://doi.org/10.18860/j-fsh.v16i2.25150>.

⁷ Setya Wahyudi, *Implementasi Ide Diversi Dalam Pembaharuan Sistem Peradilan Pidana Anak Di Indonesia* (Genta Publishing, 2011). 59

⁸ Lilik Mulyadi, *The Face of the Indonesian Juvenile Criminal Justice System* (Alumni, 2014). 14

⁹ Zainuddin Zainuddin, Hasbuddin Khalid, and Rizki Ramadani, 'Compulsory Testament: Efforts to Protect and Fulfil the Welfare Rights of Adopted Children in Indonesia's Islamic Inheritance System', *Manchester Journal of Transnational Islamic Law & Practice*, 19.no 2 (2023): 162–75, doi:https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4521123.

such cases, victim consent is no longer required for the success of the diversion process. Law enforcement officers, as mediators, should ideally focus on actions and efforts to guide the child offender so that, after experiencing this legal process, the child can learn valuable lessons and grow into a better individual in the future. In practice, cases involving children are often processed directly without prior review or in-depth analysis of the specific considerations required for handling cases involving child offenders. Most law enforcement officers rely primarily on a regulatory perspective, specifically Article 7 of Law No. 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA). When interpreted from a positivist standpoint, this article imposes highly restrictive criteria for children in conflict with the law to be eligible for diversion. Such practices, according to the author, are inconsistent with the spirit of the Juvenile Criminal Justice System Law (UU SPPA), which upholds the principles of the best interests of the child and restorative justice.

Based on the issues outlined above, this study will analyze how to construct the policy formulation for diversion using a restorative justice approach, as outlined in Law Number 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA) with a focus on the best interests of the child?

Legal research employs several approaches, including normative and empirical legal research.¹⁰ Research based on secondary data, often from library sources, is known as normative legal research. This type of research is essential because law comprises the entirety of principles and norms governing human relationships. Normative legal research includes studies on legal principles, the systematic structure of law, the levels of vertical and horizontal synchronization, legal comparisons, and legal history. In writing this article, the researcher will use a normative legal research method by conducting a study of legal principles, legal systematics, and comparative law. This research is library-based (Literature Research) requiring extensive document analysis.

2. ANALYSIS AND DISCUSSION

2.1. Diversi dan Restorative Justice

Philosophically, diversion is outlined in the United Nations *Standard Minimum Rules for the Administration of Juvenile Justice* (SMRJJ), also known as *The Beijing Rules*, adopted by General Assembly Resolution 40/33 of November 1985. The principles of diversion are specifically stipulated in Rules 11 and 17.4.

Furthermore, the Commentary on Rule 11 regarding diversion explains that, in essence, diversion is specifically aimed at offenses of a non-serious nature. However, it is also stated that diversion need not be limited to minor cases; making it an important tool in addressing a broader range of offenses (*it need not necessarily be limited to petty cases, thus rendering diversion an important instrument*).¹¹

¹⁰ Depri Liber Sonata, 'Metode Penelitian Hukum Normatif Dan Empiris Karakteristik Khas Dari Metode Meneliti Hukum', *Fiat Justitia Jurnal Ilmu Hukum*, 8. no 1 (2014): 15–35, doi:<https://doi.org/10.51749/jphi.v2i1.14>.

¹¹ Ediwarman Renhard Harve, Syafruddin Kalo, Alvi Syahrin, 'Synchronization of Laws and Application of Diversion in Children Criminal Laws in Conflict', *International Journal of Criminal Justice Science*, 16.2 (2021), pp. 358–368.

Additionally, diversion is also regulated in Rule 17.4, which states, “*The competent authority shall have the power to discontinue the proceeding at any time.*” This provision grants authorized officials the power to terminate proceedings at any time (*have the power to discontinue the proceeding at any time*).¹² This authority is based on a characteristic inherent in the handling of juvenile offenders (*a characteristic inherent in the handling of juvenile offenders*), which differs from the approach to adult offenders. At any point, certain circumstances may become legally apparent to the competent authority, leading to the complete cessation of intervention as the best resolution for the case.¹³

According to the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*, diversion grants law enforcement officials the discretion to resolve cases involving juvenile offenders without resorting to formal proceedings. This includes actions such as halting criminal proceeding and either returning the child to the community or placing them in social service activities.¹⁴ Diversion can be applied at any stages of legal proceedings and aims to minimize the negative impacts of a child’s involvement in the judicial process.¹⁵ The specific objectives of diversion are oriented toward fostering reconciliation between the victim and the child, preventing the deprivation of the child’s liberty, and encouraging community participation in instilling a sense of responsibility in the child.

Definition and Scope of Restorative Justice

“*Restorative Justice*”, often translated as *keadilan restoratif*, is a model of approach that emerged in the 1960s as a method for resolving criminal cases.¹⁶ Unlike the conventional criminal justice system, this approach emphasizes the direct participation of offenders, victims, and the community in the resolution process.¹⁷ Restorative justice is a paradigm that focuses on repairing harm caused by criminal behavior through participatory processes involving the offender, victim, and community. Unlike retributive justice, which emphasizes proportional punishment, restorative justice focuses on accountability, dialogue, reconciliation, and restoration of social balance.¹⁸ The modern theoretical foundation of restorative justice is strongly influenced by scholars like Howard Zehr, who conceptualizes crime not merely as a violation of law, but as a violation of people and relationships. In this perspective, justice is achieved

¹² Mohamad Taufiq Zulfikar Sarson Fence M Wantu, ‘Legal Protection of Women as Victim of Domestic Violence (Case Study of Women and Children Service Units, Criminal Unit of Gorontalo City Police)’, *Indonesian Journal of Advocacy and Legal Services*, 1.2 (2020), pp. 243–58.

¹³ Mohammad Hamidi Masykur Hazar Kusmayanti, Dede Kania, Ramalinggam Rajamanickam, ‘The Justice for Illegitimate Children of Indonesian Women Workers Through Constitutional Court Decision No. 46/PUU-VIII/2010’, *Jurnal IUS: Kajian Hukum Dan Keadilan*, 11.2 (2023), pp. 253–264, doi:<https://doi.org/10.29303/ius.v11i2.1228>.

¹⁴ Oleksandr Sukhomlyn Volodymyr Pavlov, Tetiana Slutska, Alina Harkusha, Oleksandr Kozlenko, ‘Administrative, Legal and Criminal Aspects of Liability for Illegal Expulsion of Children’, *Jurnal IUS: Kajian Hukum Dan Keadilan*, 12.no 2 (2024): 447–458, doi:<https://doi.org/10.29303/ius.v12i2.1386>.

¹⁵ Ratnawati Ratnawati Abdul Rahman, Zainal Amin Ayub, ‘Legal Framework for Protecting Children from Commercial Sexual Exploitation’, *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 8. no 1 (2025): 87–110, doi:<https://doi.org/10.24090/volksgeist.v8i1.13156>.

¹⁶ Elly Sudarti Sahuri Lasmadi, ‘Restorative Justice as an Alternative for The Settlement of Corruption Crimes That Adverse State Finances in The Perspective of The Purpose of Conviction’, *Jurnal IUS: Kajian Hukum Dan Keadilan*, 9.no 2 (2021): 287–298, doi:<https://doi.org/10.29303/ius.v9i2.904>.

¹⁷ Beby Suryani Fithri, ‘Asas Ultimum Remedium Terhadap Anak Yang Berkonflik Dengan Hukum Dalam Rangka Perlindungan Anak’, *Jurnal Mercatoria*, 2. no 1 (2017): 13–28, doi:[10.31289/mercatoria.v10i1.733](https://doi.org/10.31289/mercatoria.v10i1.733).

¹⁸ Henny Saida Flora, ‘Keadilan Restoratif Sebagai Alternatif Dalam Penyelesaian Tindak Pidana Dan Pengaruhnya Dalam Sistem Peradilan Pidana Di Indonesia’, *University Of Bengkulu Law Journal*, 3.2 (2018), pp. 142–58, doi:<https://doi.org/10.33369/ubelaj.3.2.142-158>.

when the harm is acknowledged, responsibility is accepted, and steps are taken to repair the damage to victims and communities.¹⁹

Normatively, restorative justice has been recognized at the international level through instruments such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters. These instruments encourage member states to develop alternative mechanisms that emphasize reintegration and victim participation rather than punitive sanctions.

In juvenile justice systems, restorative justice often serves as the primary response mechanism due to its alignment with the principle of the best interests of the child. However, its application may extend beyond juvenile cases to adult criminal matters, depending on statutory regulation and judicial discretion.²⁰ In the Indonesian juvenile justice framework, diversion must be pursued at the investigation, prosecution, and trial stages for offenses punishable by imprisonment under seven years, excluding repeat offenses.²¹ This demonstrates that restorative justice is not merely optional, but structurally integrated into procedural law.

Despite its broad applicability, restorative justice has normative and practical limitations. Restorative justice is generally inappropriate in case where: the offender denies responsibility, a significant power imbalance exists that cannot be mitigated, the offense involves severe violence or serious human rights violations, or victim participation cannot be secured voluntarily. Moreover, restorative justice should not undermine due process guarantees or lead to secondary victimization. It must function within a rights-based framework to ensure its legitimacy.²²

Restorative justice should be understood not merely as a procedural mechanism but as a normative framework that challenges and redefines the philosophical foundation of criminal law. It challenges the classical retributive paradigm by shifting the central question from “What punishment does the offender deserve?” to “What harm has been caused, and how can it be repaired?”. This conceptual shift transforms the role of the state from a monopolistic punisher into a facilitator of dialogue, accountability, and reconciliation.²³

From a theoretical perspective, restorative justice integrates elements of corrective justice, communitarian theory, and human rights-based approaches,²⁴ emphasizing the need for accountability, community involvement, and respect for individual dignity. It recognizes that crime produces multidimensional harm legal, moral, psychological, and social, and that sustainable justice requires multidimensional responses. Therefore,

¹⁹ Margie Gladies Sopacua, ‘Implementasi Keadilan Restoratif Sebagai Landasan Dalam Penyelesaian Masalah Kekerasan Dalam Rumah Tangga Di Indonesia’, *Jurnal Pembangunan Hukum Indonesia*, 6.1 (2024), pp. 96–111, doi:<https://doi.org/10.14710/jphi.v6i1.%p>.

²⁰ Arifai Arifai, ‘Menalar Keadilan Restoratif Dalam Perkara Tindak Pidana Narkotika Dengan Terdakwa Anak’, *Jurnal Yudisial*, 13.3 (2021), pp. 373–390, doi:<https://doi.org/10.29123/jy.v13i3.356>.

²¹ Mark Umbreit, *Restorative Juvenile Justice: Repairing the Harm of Youth Crime* (Criminal Justice Press, 1999).

²² Yul Ernis, ‘Diversi Dan Keadilan Restoratif Dalam Penyelesaian Perkara Tindak Pidana Anak Di Indonesia’, *Jurnal Ilmiah Kebijakan Hukum*, 10.2 (2017), pp. 170–203, doi:<http://dx.doi.org/10.30641/kebijakan.2016.V10.163-174>.

²³ Mudzakir, *Analisis Restorative Justice: Sejarah, Ruang Lingkup, Dan Penerapannya* (Macana Jaya Cemerlang, 2013).

²⁴ Hariman Satria, ‘Restorative Justice: Paradigma Baru Peradilan Pidana’, *Jurnal Media Hukum*, 3.2 (2018), pp. 34–45, doi:[10.18196/jmh.2018.0107.111-123](https://doi.org/10.18196/jmh.2018.0107.111-123).

restoration is not limited to material compensation but includes emotional healing, acknowledgment of wrongdoing, and reintegration of the offender into society.

However, the transformative potential of restorative justice depends on its authenticity. If reduced to an administrative or efficiency-driven mechanism, it risks losing its restorative essence.²⁵ Genuine restorative justice requires trained facilitators, informed consent, balanced power relations, and institutional safeguards to prevent coercion or superficial agreements. Ultimately, the scope of restorative justice should be interpreted dynamically, adapting to social realities while remaining anchored in human dignity and fairness. Its legitimacy lies not in leniency, but in its capacity to produce substantive justice, justice that heals victims, holds offenders meaningfully accountable, and strengthens the moral fabric of the community.²⁶

In the Indonesian context, restorative justice is institutionalized in Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak, particularly through diversion, which prioritizes settlement outside formal court proceedings for appropriate cases involving children. Despite ongoing theoretical debates surrounding it, this approach has developed significantly and has influenced legal policies and practices in many countries.²⁷

The handling of criminal cases through a restorative justice approach offers a different perspective and methodology for understanding and addressing criminal acts. In restorative justice, a criminal act is viewed as an offense against individuals, society, and communal relationships, aligning with general criminal law. In restorative justice approach, the primary victim of a crime is not the state, as is often emphasized in traditional judicial systems. Instead, crime creates an obligation to repair the harm caused to relationships by the criminal act. Restorative justice is understood as a process of resolving problems arising from a criminal case, where the involvement of victims, the community, and offenders is essential in efforts to restore, reconcile, and ensure the sustainability of those restorative efforts.²⁸

The restorative justice approach represents a contemporary shift in criminal justice, offering an alternative to traditional models and for addressing criminal cases today. The United Nations, through its Basic Principles, regards restorative justice as a rational approach within the criminal justice system. This aligns with G.P. Hoefnagels' perspective, which asserts that criminal policy must be rational (*a rational total of the responses to crime*).²⁹ The restorative justice approach serves as a paradigm that can be utilized as a framework for strategies in handling criminal cases, aiming to address dissatisfaction with the functioning of the current criminal justice system.³⁰

Restorative justice is a framework that addresses the evolution of the criminal justice system by emphasizing the involvement of the community and victims, who are often

²⁵ Soesilo Galih Bagas and Septi Indrawati, 'Criminal Policy Dan Restorative Justice Sebagai Upaya Penanggulangan Terjadinya Kekerasan Dalam Rumah Tangga', *Amnesti: Jurnal Hukum*, 3.2 (2021), pp. 87–96, doi:<https://doi.org/10.37729/amnesti.v3i2.1390>.

²⁶ Satria, 'Restorative Justice: Paradigma Baru Peradilan Pidana'.

²⁷ Eva Achjani Zulfa, *Keadilan Restoratif* (Badan Penerbit FH UI, 2009). 1

²⁸ Saroja Dhanapal Mahfud Jufria, Norbani Binti Mohamed Nazerib, 'Restoratif Justice : An Alternative Process for Solving Juvenile Crimes in Indonesia', *Brawija Law Journal*, 6. no 3 (2019): 157–69, doi:DOI: <http://dx.doi.org/10.21776/ub.blj.2019.006.02.03>.

²⁹ Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan Dan Pengembangan Hukum Pidana* (PT.Citra Aditya Bakti, 2001). 169.

³⁰ Hardianto Djanggih, 'Konsepsi Perlindungan Hukum Bagi Anak Sebagai Korban Kejahatan Siber Melalui Pendekatan Penal Dan Non Penal', *Mimbar Hukum*, 30.2 (2018), pp. 316–30, doi:<https://doi.org/10.22146/jmh.32017>.

marginalized under the existing mechanisms. On the other hand, restorative justice also represents a new paradigm that law enforcement can use to address criminal acts.³¹

Theory of Legal Interpretation

As Paul Scholten stated, “*Het recht is er, doch het moet worden gevonden*,” meaning the law exists but must still be discovered. It is an illusion to think that legislation has addressed everything comprehensively. Therefore, legal discovery differs from the mere application, as it involves uncovering new elements through interpretation, analogy, or refinement of the law.³² Law enforcement is not solely carried out through the logic of legal application relying on reasoning; it also involves assessment and delves into the realm of ascribing meaning.³³ Law cannot operate without interpretation; as law requires further meaning to become more just and grounded, implementing statutes ultimately becomes a process of *rechtvinding*.

There are four commonly used methods of legal interpretation. *The first* is grammatical interpretation, which involves interpreting a legal provision in everyday language. *Second*, systematic or logical interpretation connects legal provisions to other legal regulations, statutes, or the broader legal system.

Third, historical interpretation involves understanding the meaning of a law by examining its origin and the history of its enactment, including legal system itself. Fourth, teleological interpretation focuses on the law-makers purpose and intent when drafting the law, rather than adhering strictly to the statute’s literal wording. Additionally, teleological interpretation must consider the context of current societal realities.

Fourth, the main methods of interpretation (grammatical, systematic, historical, and teleological), commonly recognized in legal studies, are also applied *mutatis mutandis* in the field of criminal law. While no strict prioritization exists among these methods, in criminal law, grammatical interpretation holds greater significance compared to its role in civil law. Nonetheless, in criminal law, historical interpretation *historia legis* also plays an important role, making *travaux préparatoires* essential in legal discovery. However, the most significant form of interpretation in criminal law is teleological interpretation. Thus, in order of priority within criminal law, teleological interpretation ranks first, followed by historical interpretation, then grammatical interpretation, and finally systematic interpretation.³⁴

2.2. Analysis of the Application of Restorative Justice to Juvenile Offenses Oriented Toward the Best Interests of the Child

Indonesia’s juvenile criminal justice system has entered a new phase of development.³⁵ A key reform in Indonesia’s Juvenile criminal law is the modern regulation emphasizing justice aimed at improving and restoring conditions following criminal events, known

³¹ Dani Krisnawati, ‘Law Enforcement Preparedness For The Implementation Of Indonesia’S Law On Juvenile Justice System’, *Mimbar Hukum*, 25.3 (2013), pp. 476–88, doi:https://doi.org/10.22146/jmh.16081.

³² Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana* (Cahaya Atma Pustaka, 2014). 37.

³³ Satjipto Rahardjo, *Penegakan Hukum, Tinjauan Sosiologis* (Genta Publishing, 2009). 9-11

³⁴ Mustawa Mustawa Rafika Nur, Handar Subhandi Bakhtiar, Nurul Miqat, Darmawati Darmawati, ‘Model Of Punishment: Juvenile Justice Systems’, *Jambura Law Review*, 3.Special Issue (2021): 35–56, doi:https://doi.org/10.33756/jlr.v3i0.8313.

³⁵ Rayno Dwi Adityo Krismiarsy Krismiarsy, ‘The Urgency of Community Service Imposed as Punishment on Juvenile Delinquents: A Study of Al- Shatibi’s Maqhasid Al-Syariah Concept’, *De Jure: Jurnal Hukum Dan Syari’ah*, 17. no.1 (2025), pp. 132–48, doi:https://doi.org/10.18860/j-fsh.v17i1.31246.

as restorative justice.³⁶ The restorative justice approach represents a new paradigm in responding to criminal acts. From the perspective of restorative justice, a criminal act is understood as a dispute or conflict that has damaged relationships between individuals and the community, rather than merely a violation of law directly opposing the state.³⁷

The application of restorative justice in juvenile criminal cases marks a shift from retributive punishment to a child-centered justice model. In the Indonesian context, this transformation is rooted in Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak (SPPA), which mandates diversion and restorative approaches at every stage of the criminal justice process. This legislative framework reflects Indonesia's commitment to the principles embodied in the Convention on the Rights of the Child, particularly the doctrine of the best interests of the child as a primary consideration in all actions concerning children. From the perspective of developments in criminal law and the nature of modern sentencing, there is a concept known as the “*Doer-Victims*” Relationship approach. This new approach has replaced the traditional focus on the act or offender, referred to as “*daad-dader strafrecht*.”³⁸

Restorative justice within the SPPA framework is not merely a procedural alternative but a philosophical foundation of juvenile justice. Article 2 of the SPPA emphasizes principles such as protection, justice, non-discrimination, proportionality, and the best interests of the child. Diversion is mandatory for offenses punishable by imprisonment of less than seven years and non-repeat offenses, institutionalizing restorative mechanisms as the preferred approach. This approach aligns with international standards, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), which encourage member states to develop non-institutional measures and prioritize the child's reintegration into society. Thus, restorative justice is both a domestic legal obligation and an international human rights commitment.³⁹

Restorative justice mechanisms, such as mediation between the victim and child offender, family conferencing, and community-based agreements, achieve these objectives by replacing adversarial proceedings with dialogical processes. Rather than emphasizing guilt and punishment, restorative justice seeks accountability through acknowledgment of harm, reparation, and reconciliation.⁴⁰ From a developmental psychology perspective, children possess evolving capacities and are more responsive to rehabilitative interventions than punitive sanctions. Therefore, punitive incarceration often contradicts the principle of the best interests of the child, as it may exacerbate criminogenic factors, disrupt education, and reinforce social exclusion.⁴¹

A progressive legal interpretation is essential to ensure that restorative justice aligns with the best interests of the child. Strict adherence to rigid positivism risks reducing

³⁶ Julisa Aprilia Kaluku Lisnawaty Wadju Badu, ‘Restoratif Justice In the Perspective of Customary Law: A Solution to the Settlement of Narcotics Crimes Committed by Children’, *Jambura Law Review*, 4, no 2 (2022): 313–27, doi:<https://doi.org/10.33756/jlr.v4i2.11664>.

³⁷ Umbreit, *Restorative Juvenile Justice : Repairing the Harm of Youth Crime*. 213

³⁸ Ridwan Mansyur, ‘Keadilan Restoratif Sebagai Tujuan Pelaksanaan Diversi Pada Sistem Peradilan Pidana Anak’, *Artikel Mahkamah Agung*, 2017 < <https://www.mahkamahagung.go.id/id/artikel/2613/> > .

³⁹ Bambang Waluyo, ‘Relevansi Doktrin Restorative Justice Dalam Sistem Pemidanaan Di Indonesia’, *Hasanuddin Law Review*, 1.2 (2015), pp. 210–26, doi:<http://dx.doi.org/10.20956/halrev.v1i2.80>.

⁴⁰ Dewi Setyowati, ‘Memahami Konsep Restorative Justice Sebagai Upaya Sistem Peradilan Pidana Menggapai Keadilan’, *Pandecta: Research Law Journal*, 15.1 (2020), pp. 121–41, doi:<https://doi.org/10.15294/pandecta.v15i1.24689>.

⁴¹ Muhammad Budi Setyadi Angkasa, Saryono Hanadi, ‘Model Peradilan Restoratif Dalam Sistem Peradilan Anak’, *Jurnal Dinamika Hukum*, 9.3 (2009), pp. 186–204, doi:<https://doi.org/10.20884/1.jdh.2009.9.3.230>.

diversion to a procedural formality, undermining its transformative potential. Law enforcement officials must interpret the SPPA with a focus on its ultimate goals: child protection and reintegration.⁴² This approach aligns with substantive justice theory, which prioritizes moral and social outcomes over mere procedural correctness. In this context, restorative justice serves as an instrument to humanize criminal law, aligning law enforcement practices with constitutional principles and human rights.⁴³

The offender-victim relationship approach is implemented through diversion, as regulated by Law No. 11 of 2012 on the Juvenile Criminal Justice System (SPPA). Diversion refers to redirecting juvenile case resolution from formal criminal justice system to an alternative process outside the formal justice system. According to Articles 7 and 9 of the SPPA, diversion is **mandatory** at the investigation, prosecution, and trial stages for juvenile cases in District Courts under the following conditions: (i) the offense carries a penalty of less than seven years imprisonment; (ii) the offender has no history of repeat offenses; and (iii) the diversion process receives the consent of the victim and/or the victim's family. This provision specifies that if the juvenile offender commits an offense punishable by more than seven years of imprisonment and/or is a repeat offender, diversion is not mandatory. Repeat offenses refer to instances where the juvenile has previously committed a crime, whether of the same nature or not, including those resolved through prior diversion efforts. The phenomenon of repeat offenses by juveniles demonstrates that the objectives of earlier diversion efforts particularly instilling a sense of responsibility in the offender to avoid repeating criminal behavior have not been achieved. As such, while diversion efforts may still be pursued, they are not mandatory for law enforcement authorities in cases involving repeat juvenile offenders.

The debate over whether diversion is mandatory has become a point of contention among academics and law enforcement authorities. For this reason, this paper aims to explore the true essence of the concept of diversion as stipulated in the Juvenile Criminal Justice System Law (SPPA). Based on theories of legal discovery and interpretation, this study applies teleological interpretation as the primary tool to analyse the true meaning of diversion in its proper context according to *historia legis*. Teleological interpretation obligates law enforcement officials to interpret the law in accordance with the drafters intent.⁴⁴ This approach allows law enforcement to examine the dynamic interplay of ideas and theories considered by the legislators, as recorded in academic papers, meeting minutes, and the inventory of issues (DIM).

The initial deliberations at the Working Committee (Panja) level, as outlined in the Inventory of Issues (DIM), revealed a consensus between the government and parliamentary factions on the concept of diversion. Both sides agreed on adopting the idea of diversion, which was fully adapted from the international convention, *The Beijing*

⁴² Bagir Manan, *Restoratif Justice (Suatu Perkenalan): Refleksi Dinamika Hukum Rangkaian Dalam Dekade Terakhir* (Perum Percetakan Negara RI, 2015).

⁴³ M Yakub Aiyub Zaituni Zaituni, Riza Nizarli, Kadir, 'Non-Penal Policy of Syariah Institutions in Preventing Juveniles from Narcotics Abuse in Aceh Province, Indonesia', *Jambe Law Journal*, 4. no.1 (2021), pp. 21–41, doi:<https://doi.org/10.22437/jlj.4.1.21-41>.

⁴⁴ Ahmad Fakhrurrazi Mohammed Zabidi Rafika Nur, Darmawati Darmawati, Hijrah Lahaling, Handar Subhandi Bakhtiar, 'A Sustainable Rehabilitation Model for Children in Conflict with the Law: Conceptually Toward Global Protection and Recidivism Reduction', *Jambura Law Review*, 8. no 1 (2026), pp. 30–54, doi:<https://doi.org/10.33756/jlr.v1i1.31177>.

Rules. However, as discussions progressed to the technical implementation of diversion, differences emerged between the government and the parliamentary factions regarding its operationalization. The debate highlighted a fundamental issue: determining the guidelines to qualify juvenile offenders eligible for diversion. As directed by the Chair of the Bill's Working Committee (Panja), M. Nasir Djamil of the F-PKS faction suggested that offenses eligible for diversion should be those that can be set aside on restorative justice grounds. He referenced cases like Raju's, which gained public attention, and incidents involving children stealing a voucher worth Rp10,000 yet receiving a seven-year prison sentence. These examples, he argued, do not reflect restorative justice. This proposal underscores the F-PKS faction's stance that diversion should be pursued for all children in conflict with the law, regardless of the severity of the criminal charges or whether it involves repeat offenses.⁴⁵

The F-PKS proposal was rejected by most factions and the government, who argued that a regulatory system with criminal sanctions must retain the element of deterrence. Therefore, clear limitations are necessary to serve as definitive criteria for juvenile offenders eligible for diversion.⁴⁶ The author argues that the reasoning of the majority of factions and the government is not grounded in the philosophical understanding of handling children in conflict with the law, especially as offenders.⁴⁷ In examining the philosophy surrounding children, the author refers to the fundamental international convention on children's rights, the *Convention on the Rights of the Child* (CRC).⁴⁸ The CRC is the most comprehensive international human rights legal instrument and serves as a legal framework to protect children's rights. It is the first convention to fully guarantee the protection of children's rights and explicitly recognizes children as active holders of their own rights.⁴⁹ This convention establishes standards for the treatment, care, and protection of all children. The CRC has been adopted by the United Nations and ratified by 196 countries, including Indonesia, through Presidential Decree No. 36 of 1990 regarding the ratification of the CRC. The preamble of the CRC contains an essential provision stating that "a child, by reason of his or her physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth." According to the author, this serves as a fundamental basis for handling cases involving children in conflict with the law, particularly when the child is the perpetrator.

Law enforcement officials must recognize juvenile offenders as legal subjects with physical and mental immaturity, adopting a holistic perspective that extends beyond the offense. From a humanistic standpoint, they should consider other aspects of the child's life, acknowledging the possibility that the child offender may also be a victim, whether

⁴⁵ Nasir Djamil, *Anak-Anak Tidak Boleh Dihukum (Catatan Tentang Pembahasan Undang-Undang Sistem Peradilan Anak (UU-SPPA))* (Sinar Grafika, 2015). 31.

⁴⁶ Djamil, *Anak-Anak Tidak Boleh Dihukum (Catatan Tentang Pembahasan Undang-Undang Sistem Peradilan Anak (UU-SPPA))*. 45.

⁴⁷ Zulham Adamy Hafrida Hafrida, Nelli Herlina, 'The Protection of Women and Children as Victims of Human Trafficking in Jambi Province', *Jambe Law Journal*, 1. no. 2 (2018), pp. 207–30, doi:<https://doi.org/10.22437/jlj.1.2.207-230>.

⁴⁸ Ilham Yulianti Muthmainnah, Zakiyuddin Baidhawiy, Yusron Razak, Mundzir, 'Zakat Initiatives for Supporting Victims of Violence against Women and Children in Indonesia', *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 24. no. 2 (2024), pp. 331–357.

⁴⁹ United Nations, 'UN Treaty Collection: Status of the Convention on the Rights of the Child', *United Nations Treaty Collection*, 2012 < https://treaties.un.org/Pages/ViewDetails.aspx?s-rc=IND&mtdsg_no=IV-11&chapter=4&clang=en > .

due to an unhealthy upbringing or inadequate parental guidance. The resolution of juvenile offenses should adopt a specialized approach through diversion and restorative justice, aiming to protect children from the negative stigma of the criminal justice system while prioritizing their future growth and development.

In line with Prof. Barda Nawawi Arief's perspective, juvenile criminal justice requires a special approach that prioritizes protection and care of children in conflict with the law. This specialized approach views juvenile offenders as individuals in need of assistance, understanding, and compassion.⁵⁰ In addition, a persuasive-educative approach must take precedence over a narrow juridical perspective. Law enforcement officials should avoid purely punitive legal processes that degrade mental well-being,⁵¹ diminish morale, and stigmatize children, hindering their development, maturity, and independence.. Ultimately, the aforementioned considerations align with the F-PKS perspective as outlined in the Inventory of Issues (DIM), asserting that the value of offenses committed by children can be set aside on the grounds of restorative justice a viewpoint that is far from incorrect.

The Juvenile Criminal Justice System has yet to receive the recognition it deserves, as understanding of the diversion system remains limited both academically and technically. Addressing this requires a deep understanding of legal interpretation theories and a commitment to refining these interpretations. In today's open society, civilization demands that law enforcement apply regulations in accordance with their fundamental purpose to achieve substantive justice. Rigid positivist perspectives reduce enforcers to mere "mouthpieces of the law" (*la bouche de la loi*), are insufficient for achieving justice in legal enforcement.

The application of restorative justice to juvenile offenses is not just a procedural alternative but a structural reorientation of the philosophy of punishment within the juvenile justice system. By placing the child at the center of the legal process, restorative justice operationalizes the mandate of Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak and concretizes Indonesia's obligations under the Convention on the Rights of the Child. In this framework, the "best interests of the child" transform from an abstract slogan into a decisive interpretative guide for institutional responses to juvenile delinquency.⁵²

Analytically, restorative justice embodies a proportional and context-sensitive response to juvenile wrongdoing. It recognizes children as rights-bearing individuals with evolving capacities, still in the process of moral development. Therefore, the state's response must be educative, not retaliatory; transformative, not stigmatizing. Emphasizing dialogue, accountability, and restoration ensures that responsibility is reframed, not negated, in a manner compatible with the child's dignity and developmental needs.⁵³ Systematically, restorative justice also serves a constitutional function by harmonizing criminal law enforcement with human rights protection. By minimizing deprivation of liberty and prioritizing community-based solutions, it reduces the criminogenic impact

⁵⁰ Barda Nawawi Arief Muladi, *Teori-Teori Dan Kebijakan Pidana*, 4th edn (Alumni, 2010). 123.

⁵¹ Muladi, *Kapita Selektta Sistem Peradilan Pidana* (Badan Penerbit UNDIP, 2009). 41

⁵² Septa Candra, 'Restorative Justice: A Review of Criminal Law Reform in Indonesia', *Jurnal Rechts Vinding*, 2.2 (2013), pp. 263-77, doi:<http://dx.doi.org/10.33331/rechtsvinding.v2i2.76>.

⁵³ Rosnida Rosnida, 'Tinjauan Terhadap Keabsahan Perjanjian Terapeutik Antara Tenaga Kesehatan Dengan Pasien', *Jurnal Restoratif Justice*, 4.1 (2020), pp. 76-86, doi:<https://doi.org/10.35724/jrj.v4i1.2841>.

of institutionalization and mitigates the long-term social costs of punitive approaches. Thus, restorative justice contributes to both individual rehabilitation and broader social cohesion, and crime prevention.⁵⁴

The realization of this paradigm depends on interpretative integrity and institutional consistency. Without a substantive understanding among law enforcement, police officers, prosecutors, judges, correctional officers, and social workers, restorative justice risks becoming a mere procedural diversion, lacking meaningful participation and reconciliation. Therefore, capacity building, inter-agency coordination, and value-oriented legal interpretation are essential to safeguarding its authenticity. Ultimately, restorative justice in juvenile cases should be regarded as the normative default, not a discretionary exception. It reflects a mature legal civilization that acknowledges justice is not measured by the severity of punishment, but by the extent to which the legal process restores relationships, protects dignity, and secures the child's future as a responsible member of society.

2. CONCLUSION

The Juvenile Criminal Justice System has yet to be fully recognized, as the concept of diversion remains too narrowly understood, both academically and technically. Proper implementation requires mastery of legal interpretation theories and a commitment to applying the law in accordance with its substantive purpose, transcending rigid legal positivism that reduces law enforcers to mere “la bouche de la loi.” Although diversion is not mandatory for children charged with offenses punishable by seven years or more and/or for repeat offenders, it may still be pursued based on the principle of the best interests of the child. Therefore, reform of Indonesia's juvenile criminal justice system is crucial, particularly through clearer regulation of diversion and restorative justice for serious offenses and victimless crimes, as well as issuing internal guidelines by law enforcement to ensure consistent and effective implementation.

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⁵⁴ Marlina, *Pengembangan Konsep Diversi Dan Restorative Justice* (PT Refika Aditama, 2012).

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